



Multi-Equipped Limited v Registrar of Titles Nairobi & another (Environment and Land Judicial Review Case E010 of 2024) [2024] KEELC 5056 (KLR) (2 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5056 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E010 OF 2024**

JA MOGENI, J

JULY 2, 2024

BETWEEN

MULTI-EQUIPPED LIMITED EXPARTE APPLICANT

AND

THE REGISTRAR OF TITLES NAIROBI 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

RULING

1. At the outset, it is noteworthy that pursuant to leave granted on 06/05/2024, the Ex parte Applicant, Multi-Equipped Limited represented by M/s Daniel Orenge & Co. Advocates applied for Certiorari, Prohibition and Mandamus orders in this matter. Leave was granted pursuant to the Ex Parte Applicant’s Application by way of Chamber Summons dated 30/04/2024 brought under Section 8(2) of the Law Reform Act, Order 53 Rule 1 of the Civil Procedure Rules and all enabling provisions of the law.
2. Subsequently, on 9/05/2024, the Ex-parte Applicant filed a motion on notice dated 8/05/2024 (the application herein) under Sections 8 & 9 of the Law Reform Act, Sections 1A, 1B and 3A of the Civil Procedure Act, Order 53 of the Civil Procedure Rules, Articles 22, 23 (f), 22, 23 (f), 40, 47,48, 159 (2) (a), 258 & 259 of the Constitution, 2010, the Orders of this Honorable Court made and issued on the 24/05/2023 and all other enabling provisions of the Law seeking for the orders infra;
 1. An order of Certiorari removes into this Honorable court for purposes of being quashed, quashing and to quash the decision of the Registrar of titles, Nairobi and the Chief Registrar the Respondents herein contained in Gazette Notice 11201 dated 25/08/2023 revoking the Applicant’s title to parcels of land known as IR. 204894 and IR. 204895.
 2. An Order of Prohibition prohibiting the registrar of titles Nairobi and the Chief Land Registrar the Respondents herein their servants, agents, assigns and/or whomsoever is acting



on their behalf from alienating, allocating, handing over or vesting title of the parcels of land known as IR. 204894 and IR. 204895 to any other person and from having any other dealing with the aforementioned properties or taking any further action in relation thereto.

3. An order of Mandamus directed at the Registrar of Titles Nairobi and the Chief Land Registrar the Respondents herein compelling them to reinstate the Applicant's title over parcels of land known as IR. 204894 and IR. 204895 by inter alia reinstating the Applicant's names in the register of the properties aforementioned as proprietors of a leasehold interest and to invoke and/or cancel any dealings with the said title documents and any entry made in the register pursuant to the revocation vide gazette notice 11201 dated 25/08/2023.
4. That the costs of this Application be provided for.
3. The Application is anchored upon a statutory statement dated 30/04/2024 including grounds (1) to (18) as set out on its face. The same is further anchored on the Ex parte Applicant's twenty-three (23) paragraphed verifying affidavit sworn by Francis Njeru on 30/04/2024 and the exhibits therein.
4. The Application is not opposed. The Respondents were duly served with the Application for Judicial Review on 9/05/2024 as evidenced by the Affidavit of Service dated 10/05/2024 but the Respondents neither entered appearance nor filed any replying affidavits despite the Court giving them time to do so.
5. When the Application came before me for determination on 15/05/2024, the Ex-Parte Applicant informed the Court that he will be relying on his pleadings and therefore will not be filing written submissions.
6. I have thoroughly read and considered the entire application inclusive of the exhibits relied thereupon. On that score, the issues which emerge for determination are the authority that the 1st and 2nd Respondent have to deal with private property. Secondly whether the Respondents followed the laid down procedures in arriving at its determination which is contained in Gazette Notice No. 11201 dated 25/08/2023. In my view, the two issues that I need to determine arising from this Ex Parte Application are as follows:
 - a. Whether the Registrar or the Government has power to revoke titles to land;
 - b. Whether the judicial review orders of certiorari, prohibition and mandamus are, in discretion, available in the circumstances of this case.

Whether the Registrar of Titles or the Government has power to revoke title to land.

7. The Ex-parte Applicant in his supporting affidavit contended that the decision revoking the title documents is ultra vires as the 1st Respondent has no authority under *the constitution*, statute or common law to undertake revocation of the titles vide the gazette notice no. 11201 dated 25/08/2023. The decision by the 1st Respondent is in breach of the principles of natural and constitutional justice and the same is untenable and unsustainable in law. The cancellation and revocation of the Ex-Parte Applicant's title is illegal, un-procedural and bad in law.
8. The Ex-Parte Applicant deponed that he was never allowed an opportunity to make representation on their proprietary interests over the subject parcels of land and the decision revoking the title is thus draconian and constitutes a capricious exercise of the Respondents mandate, powers and authority. The actions by the Respondents are ultra vires and unconstitutional in breach of the Ex-Parte Applicant's proprietary rights, interest and guarantees. The ex-parte applicant has undertaken significant developments over the said parcels of land for which they have held proprietary interests over and possession since 2011 a period of over 13 years.



9. Though there are no submissions filed, I have considered the judicial review application and I have perused several authorities emanating from the decisions of the courts which include but are not limited to *Nairobi Permanent Market Society & 11 Others v Salimia Enterprises & 2 Others, Civil appeal No. 185 of 1997*; *Ocean View Plaza Ltd v AG* [2002] 2 KLR 277; *Kenya Breweries Ltd vs. Municipal Council of Mombasa Misc. Appli. 244 of 2001* [2009] eKLR; *R v. Kisumu District Lands Officer & Another Misc. Appl. No. 80 of 2008* [2010] eKLR; *Nairobi Pet. No. 178 of 2011, Power Technics Ltd v AG & 2 Others*; and *Msa HC JR No. 24 of 2011, Republic v Registrar of Titles ex parte Bernard Atati*.
10. On the main issue of the Registrar’s power to revoke title to land, I find that there is unanimity among the courts that the Registrar has no authority in law to revoke or cancel titles to land, whether in public interest or otherwise. It is the Courts which must order the revocation of titles or refuse to uphold the private individual’s title to land in case of public interest or where the Applicant has committed fraud or other illegalities with regard to the title as happened in the several case authorities that I have cited above. To hold otherwise would lead to the usurpation of the judicial mandate of the courts by the Executive in contravention of the constitutional doctrine of Separation of Powers. In the ex parte Bernard Atati case, the Court said:
- “Under the Registered Titles Act, the Registrar has only power to rectify titles where there are wrongful or fraudulent entries under section 60 or where directed by the court under section 64 of the Act or to correct clerical errors in certificates of title, register or entries therein or to cancel spent entries. The Registrar has no power to revoke or cancel the title itself. Should there be a successful challenge to a registered proprietor’s title under section 23 of the Act, it would be the court to certify the rectification of title to effect the cancellation of the registered proprietor’s title on the ground of the fraud or misrepresentation, pursuant to section 64 of the Act.
- “The Gazette Notice No. 15570 attempts to justify the Government’s decision by a declaration that as the parcels of land which had been allocated to private developers “were reserved for public purposes under the relevant provisions of *the Constitution*, the Government Lands Act (Cap. 280) and the Trust *Land Act* (Cap. 288) the allocations were therefore illegal and unconstitutional”. Such a declaration is the constitutional province of the courts and to use it to justify the otherwise unauthorized revocation of titles is an unconstitutional infringement of the doctrine of separation of powers by the lands department of the executive government. While the government may take that constitutional view of things, it is only the court that can make authoritative and binding decisions on constitutional interpretation and therefore the Executive cannot be excused from the unconstitutionality of its action by its partisan interpretation of undisclosed constitutional provisions.
- “Even if the Government sought to reset the situation to the pre-alienation position before the parcels of land were in the words to the Gazette Notice “allocated and titles issued to private developers” it was obliged by the constitutional provisions on protection of private property under Article 40 of *the Constitution* to pay full compensation and subject to the owners right of access to court under Article 40 (3) (b) (ii) of *the Constitution* of Kenya. The transaction to revoke the allocations cannot have been done by a unilateral declaration by a Gazette Notice.”
11. For these reasons, I find that the government cannot revoke title to land even for alleged illegality or for public need and interest. The Government is obliged to move the Court for appropriate orders



to revoke, cancel or rectify title in such circumstances. A unilateral decision published in the Gazette will not do.

Whether the judicial review orders of certiorari, prohibition and mandamus are, in discretion, available in the circumstances of this case.

12. Is the ex parte applicant entitled to the reliefs of certiorari, mandamus and prohibition which he has sought? An order of certiorari will issue if a decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with. An order of prohibition ordinarily issues to forbid a tribunal or body from continuing proceedings in excess of its jurisdiction or in absence of jurisdiction. On its part, an order of mandamus compels the performance of a public duty which is imposed by statute. See *Kenya National Examination Council v Republic Ex-Parte Geoffrey Gathenji Njoroge & 9 Others* [1997] eKLR and *Joseph Malakwen Lelei & another v Rift Valley Land Disputes Appeals Committee & 2 others* [2014] eKLR.
13. This being an application for judicial review, what the court is supposed to determine is whether the applicant has established valid grounds for the grant of the orders sought. Judicial review is now both a statutory and a common law remedy.
14. Section 8 of the [Law Reform Act](#) Cap 26 Laws of Kenya specifically set out the orders that the High Court can grant in Judicial review proceedings. Section 8 of the [Law Reform Act](#) provides under subsection 1 and 2 as follows: -
 8.
 - (1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of Mandamus, prohibition or certiorari.
 - (2) in any case in which the High Court in England is, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous provisions) Act, 1938, (1 and 2, Geo 6, C. 63) of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make a like order.
15. Under judicial review the court's jurisdiction is restricted to issue orders of Mandamus, certiorari and prohibition which of necessity are confined to review of decisions whose propriety is in question. The decision whether or not to grant judicial review remedies is discretionary, the Court will no doubt look at the efficacy of the remedy sought- See *Republic v National Transport & Safety Authority & 10 others Ex parte James Maina Mugo* [2015] eKLR; *George Arab Muli Mwalabu v Senior Resident Magistrate Kangundo & 2 others and Festus Mbai Mbonye (Interested Party)*, [2019] eKLR.
16. The Ex-Parte Applicant claims that before the publication of Gazette Notice No. 11201 dated 25/08/2023, they were the registered owner of leasehold interests in parcels of land IR. 204894 and IR. 204895. The 1st Respondent, with the consent of the 2nd Respondent, revoked the Applicant's title to these properties through this gazette notice without addressing the status of the Applicant's mother title and its subdivisions. Additionally, the Respondents destroyed the Applicant's title register without following due legal process. The Applicant argues that the revocation of their titles is beyond the authority of the 1st Respondent and violates principles of natural and constitutional justice. They were not given a chance to present their case, rendering the revocation process illegal and procedurally



flawed. The Applicant emphasizes that they have held and developed the land for over 13 years, and the Respondents' actions are unconstitutional and violate their proprietary rights.

17. An application for judicial review is largely about reviewing the process through which the decision was made to determine whether the process was indeed fair and not about the merit or the demerits of the decision. The Ex Parte Applicant contended that the 1st Respondent under the supervision, authority and consent of the 2nd Respondent vide gazette notice no. 11201 dated 25/08/2023 published his decision revoking the Applicant's title over the suit properties without referring to the status of the Applicant's mother title and subdivision thereof. That the Respondents destroyed the Applicant's titles' register without following the due process.
18. I have perused Gazette Notice No. 11201 dated 25/08/2023. The same is for reconstruction of lost or destroyed land register. The Registrar of titles Nairobi gives notice that after the expiration of 60 days from 25/08/2023, the land register shall be reconstructed under provisions of Section 33 (5) provided that no objection has been received within that period. In my humble view, the impugned Gazette Notice did not revoke the Ex Parte Applicant's title documents. It is my holding and finding that the Applicant's application for judicial review orders is misconceived and incompetent and cannot be granted.
19. I find the allegations made by the Ex Parte Applicant are serious enough to warrant an investigation into the matter. I am actually shocked to read (if it is true as alleged) that the Registrar of Lands just revoked and cancelled a private land title without any Court order. This is unheard of but again let the Ex Parte applicant find recourse by filing a suit in the appropriate manner. It is therefore up to the ex parte applicant to seek to have the matter investigated further using the right forum because it will require adducing of evidence viva voce. The judicial review platform is not it.
20. Accordingly, for the reasons given in the foregoing paragraphs, the Ex Parte Applicant's Notice of Motion dated 8/05/2024 and the prayers made herein are unmerited. The Application dated 8/05/2024 is hereby dismissed and since the Respondents did not enter appearance, I will not make any orders as to costs.
21. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF JULY, 2024

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MOGENI J

JUDGE

In the Virtual presence of:

Mr. Ongeri holding for Mr. Orange for Ex parte Applicant

Caroline Sagina - Court Assistant

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MOGENI J

JUDGE

