



REPUBLIC OF KENYA



**Muthiora v Chief Land Registrar & 2 others (Environment & Land Case 537 of 2015) [2023] KEELC 605 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 605 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 537 OF 2015  
EK WABWOTO, J  
FEBRUARY 2, 2023  
ERLY HIGH COURT PETITION NO. 107 OF 2015**

**BETWEEN**

**JOSEPH M KIARIE MUTHIORA ..... PETITIONER**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**NELSON GIKERA KAHARA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner in the petition dated March 19, 2015 seeks the following reliefs: -
  - i. An order of mandamus be issued to compel the Respondents to produce the Original Title to Land Reference No. 11927/27.
  - ii. An order of mandamus be issued to compel the 1<sup>st</sup> Respondent to register the Decree issued on 30<sup>th</sup> August 2012 in Constitutional Petition No. 125 of 2012, Joseph Kiarie Muthiora vs Registrar of Titles & Another on L.R No. 11927/27.
  - iii. An order of mandamus be issued directing the 1<sup>st</sup> Respondent to register the Decree issued on 30<sup>th</sup> August 2012 in Constitutional Petition No. 125 of 2012, Joseph Kiarie Muthiora v Registrar of Titles & Another on L.R No. 11927/27.
  - iv. A declaration that the Petitioner's constitutional right to fair administrative action and right to property have been denied, violated and infringed and are threatened with further infringement, violation and denial by the Respondents.



- v. An order of mandamus be issued to compel the Registrar of Titles to register the lease dated 14<sup>th</sup> March 2010 between the Petitioner and the City Council of Nairobi (or any of its successors in law) on LR No. 11927/27.
  - vi. Any other appropriate relief in the circumstances.
2. The Petition was supported by an affidavit sworn on 19<sup>th</sup> March 2015.
  3. The Respondents opposed the Petition. The 1<sup>st</sup> Respondent filed a replying affidavit sworn by Charles Kipkurui Ngetich, the Deputy Chief Land Registrar on 22<sup>nd</sup> July 2022. The 2<sup>nd</sup> Respondent filed a replying affidavit dated 10<sup>th</sup> July 2015, sworn by Karisa Iha, its Director Legal Affairs while the 3<sup>rd</sup> Respondent filed a replying affidavit sworn on 7<sup>th</sup> April 2018.

### **The Petitioner's case**

4. The case of the Petitioner is that he acquired the suit property from the 2<sup>nd</sup> Respondent vide an allotment dated August 24, 1992. The Petitioner thereafter paid for all the associated costs in respect of the acquisition of the property including the standard premium, ground rent, conveyance fee and survey fees totaling Ksh 145,000/-
5. It was averred that after making the said payments, the 2<sup>nd</sup> Respondent prepared and issued him with a lease/grant document which was duly executed by both the 2<sup>nd</sup> Respondent's representatives and the himself, however when the same was forwarded for registration, the 1<sup>st</sup> Respondent failed to finalize the registration owing to a gazette notice issued on 26<sup>th</sup> November 2010 titled, 'Notification of Revocation Land Titles' which nullified various titles including the property.
6. It was further averred that, the Petitioner successfully challenged the legality of the Gazette Notice through Petition No. 125 of 2012, Joseph M. Kiarie vs Registrar of Titles which was determined in his favour, judgment of which has not been set aside nor appealed against.
7. It was also the Petitioner's case that he has made numerous attempts and follow – ups to have the lease/grant registered in his name with both the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent to no avail.
8. It was contended that the 3<sup>rd</sup> Respondent has no legitimate claim over the suit property since he did not acquire the same legally and procedurally.
9. During the hearing of the Petition, the Petitioner testified as the sole witness in support of his case. He relied on his witness statement and bundle of documents that had been filed herein as his evidence in chief and urged the court to grant the reliefs sought in his petition.
10. Upon cross examination by Counsel for the 1<sup>st</sup> Respondent, he conceded the following; that property known as L.R No. 11927/27 doesn't have registration in his name, that he did not have the allotment letter, he did not make the payments within the stipulated 30 days period and neither did he carry out any survey.
11. He also stated that he did not have any evidence that he had booked the decree obtained in Petition No. 125 of 2012 with the Chief Land Registrar.
12. The Petitioner filed his written submissions dated October 31, 2022 through M/S Kimani Muriithi Associates. In the said submissions, three issues were outlined for consideration by the court;
  - i. Whether the Petitioner is the legitimate owner of the property and if so whether his constitutional rights to property, fair administrative action and fair protection of the law have been infringed.



- ii. Whether the 3<sup>rd</sup> Respondent has any legitimate claim over the property.
  - iii. Whether the Petitioner is entitled to the orders/reliefs sought in the Petition.
13. On the first issue, it was submitted that the Petitioner is the legitimate owner of the suit property and his claim is an indefeasible one. In support of this position, the Petitioner invited the court to consider the 1<sup>st</sup> Respondent's evidence of the process/steps on registration of new grants comprising of making an application for allocation, confirmation of the availability of the plot, issuance of letters of allotment to the application, payment of requisite fees, survey of the specific or particular plot, issuance of Deed Plan by the Director of Survey, processing and execution of the new grant by the Commissioner of Lands and lastly Registration by the Registrar of Titles.
  14. It was submitted that the Petitioner followed all due process and procedures in acquisition of the suit property from the 2<sup>nd</sup> Respondent. Reliance was made to the following cases in support of this position; Court of Appeal case of *Cabin Crew Investments Limited vs Kenya Medical Training College and 4 Others* (Civil Appeal 441 of 2019) [2021] KECA 49 (KLR) and *Gio -Fo Limited vs National Land Commission & 4 Others* [2020] eKLR.
  15. The Petitioner reiterated that he had an indefeasible interest in the property and the actions and inactions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent of failure and blatant refusal to register the Petitioner's interest in the property amount to a breach of his constitutional right to property, right to fair administrative action and right to protection of the law since the 1<sup>st</sup> Respondent failed to maintain their duty of maintaining a registry and property registry containing the property's records under section 6 and 9 of the *Land Registration Act*, the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have resulted in the inability of the Petitioner to enjoy his property including undertaking developments as he had intended as proved from the receipts of the approvals produced on pages 17 – 23 of P Exhibit JKM1 and the delay occasioned by the inactions by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is inordinate and unreasonable.
  16. On whether the 3<sup>rd</sup> Respondent had any claim over the property, the Petitioner maintained that it remains unquestionable as to how the 3<sup>rd</sup> Respondent acquired the suit property since he had not demonstrated how he bought the property from the original allottee yet the Petitioner was the original allottee. The cases of *Munyu Maina v Hiram Gatbiha Maina* [2013] eKLR and *Charles Munge v Nairobi City County Government & 3 others* [2022] eKLR were relied upon.
  17. On the reliefs sought, reliance was made to the case of *Commission on Administrative Justice vs Kenya Vision 2030 Delivery Board & 2 others* [2019] eKLR wherein the court was urged to grant the order of mandamus and other reliefs sought.

### **The case of the 1<sup>st</sup> Respondent**

18. The 1<sup>st</sup> Respondent filed a replying affidavit sworn by Charles Kipkurui Ngetich, the Deputy Chief Land Registrar on July 22, 2022.
19. Charles Kipkurui Ngetich, deposed that the office of the Chief Land Registrar has no registration records in respect of I.R 59416 and I.R 130665.
20. It was further deposed that the decree issued in High Court Petition No. 125 of 2012 was never booked for registration and the Petitioner has never been the registered owner of the suit land L.R No. 11927/27.
21. It was contended that the High Court judgment only directed the registrar to cancel, delete and or remove all or any entries giving effect to or made pursuant to Gazette Notice number 1558 in respect



of L.R No. 11927/27 and never directed the registrar to register the Petitioner herein as the registered proprietor of the suit land.

22. It was also contended that no application has been made by the 2<sup>nd</sup> Respondent for application of a provisional title. The court was urged to dismiss the suit since the Petitioner had no proprietary interest over the suit property.
23. During trial, Charles Kipkurui Ngetich testified as the sole witness in support of the case for the 1<sup>st</sup> Respondent, he relied on his replying affidavit on the court record. He also reiterated that the suit property is already registered in the name of another person.
24. On cross examination by Counsel for the Petitioner, he stated that he did not have a search to confirm who is the current owner of the property. He also stated that the registrar of titles had communicated to the Petitioner to avail the original title which was never availed and that the Petitioner knew that there was somebody else with another title.
25. Save for the replying affidavit and oral testimony of Charles Kipkurui Ngetich, no written submissions were filed by the 1<sup>st</sup> Respondent as per the court record.

### **The case of the 2<sup>nd</sup> Respondent.**

26. The 2<sup>nd</sup> Respondent filed a replying affidavit dated July 10, 2015, sworn by Karisa Iha, its Director Legal Affairs in opposition to the Petition. However, during the hearing of the Petition, they did not call any witness to testify on their behalf.
27. Upon close of their case, the 2<sup>nd</sup> Respondent filed written submissions dated November 28, 2022 through the firm of M/S Momanyi & Associates wherein two issues were outlined for determination;
  - i. Whether the petitioner's constitutional rights and fundamental freedoms were infringed.
  - ii. Whether the petitioner deserves any reliefs sought.
28. Citing the case of *Anarita Karimi Njeru vs Republic (No. 1)* (1979) 1 KLR 154, it was submitted that none of the Petitioner's rights had been violated by the 2<sup>nd</sup> Respondent since the 2<sup>nd</sup> Respondent does not register titles.
29. It was argued that the Petitioner did not comply with the conditions set out in the letter of allotment, he did not annex any proof of acceptance whatsoever of the letter of allotment within the stipulated 30 days and in fact as per P Exhibit JKM1 the letter of allotment is dated August 24, 1992 yet the stand premium was paid on September 29, 2009. Reliance was made to the case of Kenya Anti – Corruption Commission vs Paul Moses Ngetha; Sam N. Gachago (Chairman) & 2 Others (Interested Parties) [2020].
30. On whether the Petitioner was entitled to the reliefs sought, Counsel submitted that the same were not for granting since none of the Petitioner's rights had been violated by the 2<sup>nd</sup> Respondent. The threshold set out in Anna Rita Karimi Njeru case had not been met. It was also submitted that the prayer for injunction was not for granting as the Petitioner had quantified his claim which in essence could be compensated by way of damages.

### **The case of the 3<sup>rd</sup> Respondent**

31. The 3<sup>rd</sup> Respondent opposed the Petition vide a replying affidavit sworn by Nelson Gikera Kahara. It was the 3<sup>rd</sup> Respondent's case that he is the registered and bonafide owner of the suit property known



- as LR. 1192/27 which he acquired pursuant to a sale agreement dated 4<sup>th</sup> May 1999 between Philip Kuria Wainaina the original allottee and himself for a consideration of Ksh 2,500,000/-
32. It was averred that after the purchase, the vendor transferred his interest at the officers of the then City Council of Nairobi who later executed the lease over the property in his favour and the lease was registered on October 4, 1999 and he took over possession of the same in January 2000 and put up some temporary structures.
  33. The 3<sup>rd</sup> Respondent contended that the Petitioner's alleged allotment letter dated 24<sup>th</sup> August 1992 had a mandatory requirement for the need to have accepted the offer in writing as well as payment of a sum of Ksh 44,000/= within 30 days which requirements were not met. The premium and annual rent were made on 5<sup>th</sup> October 2009 which is 17 years after the letter of allotment.
  34. It was also contended that the lease agreement dated 14<sup>th</sup> March 2010 was irregularly when a registered lease in the favour of the 3<sup>rd</sup> Respondent was in existence.
  35. It was further contended that no cause of action had been disclosed to warrant the grant of the reliefs sought since no constitutional rights had been infringed.
  36. During the hearing of the Petition, the 3<sup>rd</sup> Respondent adopted and reiterated the contents of his replying affidavit as part of his evidence in chief.
  37. On cross examination by counsel for the 1<sup>st</sup> Respondent, he stated that he had been in the suit property for over 20 years and at no time has the Petitioner tried to take possession of the same and that he has always had the original deed plan of the suit property.
  38. On further cross examination by Counsel for the Petitioner, he stated that he had been a registered owner from January 16, 2001 after buying it from Philip Wainaina, the original allottee. He also conceded not having any receipts showing payment of stamp duty and stand premium.
  39. Upon reexamination by his Counsel, he stated that there was no occupant in the suit property before he purchased it.
  40. After close of his case, the 3<sup>rd</sup> Respondent also filed written submissions dated September 12, 2022 through M/S Narangwi & Associates Advocates.
  41. It was submitted that the Petitioner has no proprietary interest over the suit property since the 3<sup>rd</sup> Respondent is its registered owner having purchased the same from its original allottee Philip Kuria Wainaina. The cases of *Mbau Saw Mills vs Attorney General & 2 others* (2014) eKLR and *Bubaki Investment Co. Ltd vs National Land Commission vs National Land Commission & 2 others* (2015) eKLR were cited in support.
  42. The 3<sup>rd</sup> Respondent further submitted that the Petitioner was not entitled to the orders sought since he has no valid claim over the property and the Court was urged to dismiss the Petition with costs to the Respondents.

### **Analysis & Determination**

43. I have considered the Petition together with all the responses to the Petition. I have similarly considered the parties' submissions, together with the cited law and authorities. Having considered the parties' pleadings, evidence and submissions, the following are, in the court's view, the three key issues falling for determination in this petition;
  - i. Whether the petitioner has any proprietary interest over the suit property,



- ii. Whether the petitioner has established violations of his rights by any of the respondents,
  - iii. Whether the petitioner is entitled to any of the reliefs set out in the petition against any of the respondents.
44. The first issue for determination is whether the Petitioner has any proprietary interest over the suit property. The Petitioner contended that he is the legitimate owner of the suit property and his claim is an indefeasible one. In support of this position, the Petitioner invited the court to consider the 1<sup>st</sup> Respondent's evidence of the process/steps on registration of new grants comprising of making an application for allocation, confirmation of the availability of the plot, issuance of letters of allotment to the application, payment of requisite fees, survey of the specific or particular plot, issuance of Deed Plan by the Director of Survey, processing and execution of the new grant by the Commissioner of Lands and lastly Registration by the Registrar of Titles.
45. The Respondents however maintained that the Petitioner was not the registered owner of the suit property and hence therefore did not have any legitimate claim over the same. The 3<sup>rd</sup> Respondent further demonstrated how he acquired the suit property pursuant to a sale agreement made between him and Philip Kuria Wainaina.
46. I have considered the evidence that was placed before this Court, it is evident that letter of allotment required the petitioner to make a formal acceptance of the conditions of the allotment and to effect payment of the requisite charges thereof within thirty (30) days. It is my understanding that acceptance needed to be in writing for it to be capable of being received. The letter of allotment further provided that
- “if acceptance and payment respectively are not received within the said thirty (30) days from the date hereof the offer herein contained will be considered to have lapsed”.
47. Faced with the above scenario the Respondents averred that the Petitioner breached the terms of the allotment to it when he failed to comply with the set requirements.
48. In the present case the letter of allotment carried a specific time frame within which a written acceptance of the offer and payment of the charges thereto were to be made. The petitioner has not demonstrated he made a written acceptance of the offer and/or made payment within 30 days of the posting of the letter of offer or within 30 days of the date of the offer letter. It is incumbent on the petitioner to satisfy the court that he in fact accepted the allotment and made payment within the specified period. The import of that is because the letter of allotment provided that the offer would lapse within 30 days from the date of the offer.
49. My view is that no acceptance and/or payment was made in accordance with the letter of allotment and therefore there was no compliance with the conditions of the letter of allotment.
50. Having held that the petitioner did not comply with the terms and conditions of the letter of allotment it follows that the petitioner could not and did not acquire any proprietary interest in the suit property notwithstanding the late payment he made.
51. On the second issue, the petitioner contends that the acts by the Respondents in failing to register him as the legal owner of the suit property is unlawful, unjust and in contravention of the petitioner's, constitutional rights. The Petitioner argues that the Respondents contravened articles 19, 22, 23, 40, 47 and 64 of *the Constitution* and that the registration of the 3<sup>rd</sup> Respondent was made in contravention of the law. Regrettably, the petitioner failed to place before court evidential material to demonstrate that he was the lawful owner of the suit property and that he was at all material times in lawful occupation



of the same. He did not place before court any conclusive evidential material to enable the court arrive at a conclusion that he was the owner of the suit property and that the alleged occupation of the same by the 3<sup>rd</sup> Respondent property was unlawful. The court therefore has no basis upon which to make a finding of liability against the Respondents, the Petitioner having failed to prove the fact that he was the lawful owner and occupier of the suit property, the very foundation of the petition, he cannot be said to have established a basis for a claim of violation of any of his rights as enumerated in the petition. My finding on the second issue therefore is that the Petitioner has not established any violation of his rights by any of the respondents.

52. The last issue is whether the petitioner is entitled to any of the relief set out in the petition against any of the respondents. As I have pronounced myself earlier, having found that the petitioner has not proved lawful ownership and occupation of the suit property and have similarly failed to establish violations of his constitutional rights by any of the respondents, it follows that he has failed to prove his petition on a balance of probabilities. The net result is that he is not entitled to any of the reliefs sought in the petition.
53. In the end, it is my view that the Petitioner has not proven his case to sustain this petition and it is my holding that no fundamental rights and or other constitution rights of the petitioner have been violated and or infringed as alleged. In the circumstances, the Petition dated March 19, 2015 is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF FEBRUARY 2023.**

**E.K. WABWOTO**

**JUDGE**

**In presence of:**

Ms. Mwihaki for the Petitioner.

Mr. Allan Kamau for the 1<sup>st</sup> Respondent.

Ms. Oduru h/b for Mr. Nyakoe for the 2<sup>nd</sup> Respondent.

Mr. Narangwi for the 3<sup>rd</sup> Respondent

