



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

CONSTITUTIONAL PETITION NO. 05 OF 2019

IN THE MATTER OF ARTICLES 10, 20, 21 (1), 40 (1), 40 (3), 40 (4), 47, 50, 60, 64, 67, 232 (1), 232 (2),

OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

-AND-

IN THE MATTER OF SECTION 14 AND 15 (2) (d) & (3) (e) OF THE NATIONAL LAND

COMMISSION ACT, 2012

-AND-

IN THE MATTER OF SECTIONS 27 (a) AND 28 (a) OF THE REGISTERED LAND ACT

-AND-

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

OLOOLOLO GAME RANCH LTD.....PETITIONER

-VERSUS-

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

IKAREKESHE GROUP TRUST.....2ND RESPONDENT

THE ATTORNEY GENERAL OF KENYA.....3RD RESPONDENT

-AND-

THE CHIEF LAND REGISTRAR.....1ST INTERESTED PARTY

THE MINISTRY OF LANDS.....2ND INTERESTED PARTY

THE DIRECTOR OF LAND ADJUDICATION

AND SETTLEMENT.....3RD INTERESTED PARTY

JUDGEMENT

By a Petition dated 4th March, 2019 the Petitioner sought for the following orders: -

- (i) A declaration that the 2nd Defendant is guilty of non-disclosure of material facts and concealment of the same in failing to disclose and produce the decision of the High Court at Nairobi and the Court of Appeal in Nairobi between the Petitioner and the 2nd

Respondent respectively.

- (ii) A declaration that the 1st Respondent had violated the provisions of the National Land Commission Act Section 14 and 15 (2) (d) and 15(3) (e) of the Fair Administrative Action Act Section 4 of Articles 10,20,21(1) 40(1) (3) (4) 47,50, 60,64,68,232, (1) (2).
- (iii) An order of certiorari to bring into the court and quash the decision of the 1st Respondent published in the Kenya Gazette on 1/3/2019 with respect of the suit property.
- (iv) An order of prohibition against the 1st Respondent from hearing and determining any complaint with respect to the suit property.
- (v) An order of prohibiting against the 1st, 2nd, 3rd interested party to act on the directive of the 1st Respondent published in the Kenya Gazette on 1/3/2019.
- (vi) An order of prohibition against the 2nd respondent from holding, publishing or in any way commenting on the petitioner's ownership, title and
- (vii) Costs of the suit

The Petitioner herein is a limited liability company and is the registered owner of land parcel Narok/Trans Mara/Ololo/1 hereinafter referred to as the suit property and the petitioner's contends that the 1st Respondent acting on the instructions of the 2nd Respondent had on the 1st March, 2019 revoked the Petitioner's titles to the suit land.

It is the Petitioner's further contention that all claims that were advanced by the 2nd Respondent regarding the ownership of the suit property were judicially determined in favour of the Petitioner herein vide Nairobi High Court Civil Case No. 4090/1994 Nairobi High Court Civil Case No. 3457 of 1995 and all appeals arising from the said case were withdrawn on 31/5/1996 and 20/4/2007.

It is the Petitioner's contention that despite the 1st Respondent's claim against the Petitioner for the suit land was extinguished and settled by the court by a Gazette Notice dated 1/3/2019. The 1st Respondent caused to be published a Notice revoking the title of the Petitioner to the suit land and reverting the said section back to the 2nd Respondent. This petitioner contends was done without Notice to the petitioner and being accorded a fair hearing and thus the petitioner avers the 1st Respondent acted exceedingly and ultra vires its mandate. The petitioner further avers the 1st Respondent failed, neglected and refused to disclose and produce to the 1st Respondent the decision of the High Court and the Court of Appeal with regard to the ownership of the suit land.

The Petitioner further contends that the 1st Respondent's action aforesaid undermined the decisions of two courts of competent Jurisdiction and subverted the sound decision of judicial proceedings of the said court.

The petitioner further averred that the decision to revoke its title was unreasonable and procedurally unfair and more so where it was not accorded a fair hearing and the unilateral manner in which the 1st Respondent offended the Rule of Natural Justice.

The 2nd Respondent opposed the Petition and filed a replying affidavit in opposition to the same. The 2nd Respondent stated that on 13/10/2014 it prepared a complaint on historical land injustices that it had suffered and addressed the same to various Government Agencies. They stated that the suit land was allocated to them in 1974 when they visited the former president in Nakuru. However, they stated unknown to them the land was unprocedurally, illegally and fraudulently allocated and registered in the names of the Petitioner and further that the Petitioner's title to the suit land is fraudulent.

The 2nd Respondent contends that the Petitioner was accorded an opportunity to be heard and they were invited to all proceedings that took place prior to the cancellation of its titles.

On the issue of the previous court cases that related to the suit land the 2nd Respondent stated that the said cases did not substantially and definitively and sufficiently deal with the dispute between the parties. It stated that the 1st case Nairobi HCC No. 4090 of 1994 Ikarekeshe - Versus- Land Adjudication Officer Narok, the dispute which the court was to solve was the legality of the process leading to the issuance of title to the Petitioner.

The 3rd Interested party also filed a replying affidavit in which the Senior Assistant Director Land Adjudication stated that all previous cancellation process were challenged by the petitioner's title and further that the 2nd Respondent filed a suit Nairobi HCC No. 262 of 1994 in which they sought the cancellation of the Petitioner but stated that the same was dismissed on 9/5/1995 and he further stated that the Petitioner had sought vacant possession of the suit property which was determined in favour of the Petitioner.

The 3rd interested party further stated that matters involving land Parcel Narok/Trans Mara/Ololo/1 was dealt with judicially and the court had determined the ownership of the suit land for the petitioner and therefore the 3rd interested party could not carry out the mandate to revoke the title.

I have considered the petition before me and the replying affidavit in opposing to the same by the 2nd Respondent. I must state at this stage that the 2nd Respondent had at the initial stages of filing this petition filed a cross petition that was struck out by the court as being Res

Judicata since the issues that were raised in the said cross petition were issues that were raised in the said suit petition were issues that were determined by court of competent jurisdiction.

In the instant petition it is the petitioner's contention that the 1st respondent acting on the instructions of the 2nd respondent caused to be published the cancellation of its title to land parcel Narok/Ololo/1 on 1/3/2019 without being accorded a fair hearing and also contends that the 1st respondent purported to act on an issue that was determined by a court of competent jurisdiction.

The petitioner accuses the said 1st Respondent to have concealed from the 1st Respondent the existence and the determination of the two court cases that touched on the ownership of the suit land which cases were conclusively determined by courts of competent jurisdiction. The 2nd Respondent though acknowledged the existence of the two cases, it casually contends that the said case did not determine definitively the issues of ownership. I have considered the Petitions and the Notice that precipitated the same and I find that the 1st Respondent in acted on a complaint that was lodged by the 2nd Respondent without giving the petitioner the opportunity to be heard against the Rules of Natural Justice and the petitioner's right to fair administrative action. Furthermore, the 1st Respondent had no reasons whatsoever to purport to hear and arrive at a decision on a matter that was conclusively heard and determined by courts of competent jurisdiction and in this regard I do fault the 1st Respondent for being guilty of non-disclosure of material facts to the 1st respondent. In any event I am sure the 1st Respondent would not have purported to revoke the title of the petitioner. It disclosed by the 2nd Respondent that indeed both the High court and the Court of Appeal had determined the issue of ownership of the suit land.

Having found that the 1st Respondent had acted ultra vires its powers and the 2nd respondent having exhausted its claim of ownership before the High Court and Court of Appeal I find that the Petitioner herein is entitled to the reliefs sought and I thus issue the following orders: -

1. That a declaration do hereby issue that the 1st Respondent violated Section 14,15(2) (d) (3) and the provisions of the National Land Commission Act and Articles 10,20,21 (1) 40(1)4, 47,50,60,64,68,23(1) and 23(2)
2. That an order of certiorari do issue to quash the decision of the 1st Respondent published in the Kenya Gazette of 1st March, 2019 with regard to that parcel of land known as Narok/Ololo/1.
3. That an order of prohibition is hereby issued prohibiting the 1st Respondent from hearing and determining any compliant with respect to that parcel of land known as Narok/Ololo/1.
4. That an order of prohibition is hereby issued against the 1st, 2nd and 3rd interested party from acting on the instructions of the 1st Respondent published in the Kenya Gazette of 1/3/2019 or in any manner whatsoever to interfere with the petitioner's interest and title in the suit land.
5. That a declaration is hereby issued that the 2nd Defendant is guilty of material non-disclosure and concealment from the 1st Respondent by failing to inform and/or disclose that there existed a High Court and Court of Appeal case involved the Petitioner and 2nd Respondent touching on the suit land and which suits were conclusively determined by the High Court and the court of Appeal.
6. That the costs of the Petition be borne by the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 16TH DAY OF APRIL, 2021.

MOHAMED N. KULLOW

JUDGE

16/4/2021

In the presence of: -

CA:Chuma

Mr. Kere for Mr. Kemboi for the Petitioner

Mr. Katana for the 2nd Respondent