



**Puley v Muhia & 3 others (Petition 12 of 2018)  
[2022] KEELC 3557 (KLR) (4 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3557 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
PETITION 12 OF 2018**

**MN GICHERU, J**

**MAY 4, 2022**

**IN THE MATTER OF ARTICLES 40(1) AND 40 (6), 60  
AND 162 (2) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS TO PROPERTY  
ENSHRINED IN THE ARTICLES 40 OF THE CONSTITUTION OF KENYA 2010 AND  
RIGHTS PROTECTED BY SECTION 26 OF THE LAND REGISTRATION ACT 2012**

**BETWEEN**

**JOHN OLE PULEY ..... APPLICANT**

**AND**

**JACKSON KARANJA MUHIA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KAJIADO ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR, KAJIADO NORTH ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. John Ole Puley, the petitioner seeks the following reliefs from Jackson Karanja Muhia (first respondent), County Government of Kajiado (second respondent), County Land Registrar Kajiado (third respondent) and the Chief Land Registrar (fourth respondent);
  1. That the registration of the first respondent in 2005 as the owner of LR Ngong/Township/Block 2/350 (suit land) which had already been allotted to the petitioner on March 26, 1996 was illegal and unlawful and ought to be revoked.



2. That the court declares that the act of the second respondent of issuing the consent of transfer and rates clearance certificate to a stranger in the name of Jeremiah Kipelian other than the rates payer as per its records was unlawful, void and of no consequence.
  3. A declaration that the application made in Machakos HC Misc 39 of 2012 was Judicial review in nature and did not deal with the merits of ownership to the suit land.
  4. A declaration that the proceedings and orders in Nairobi ELC No 1192 of 2014 did not deal with the merits of the ownership of the suit land.
  5. A declaration that the registration of the 1<sup>st</sup> respondent as the owner of the suit land was illegal, unlawful and it be and is hereby revoked.
  6. A declaration that the allotment of the plot known then as unsurveyed plot D Ngong and now known as Ngong Township/Block 2/350 and subsequent registration of the petitioner as the owner was valid, proper, lawful and it be upheld.
  7. An order to amend the register in respect of the suit land by removing the name of the first respondent and retaining that of the petitioner.
2. The petitioner case is as follows;
- He is the registered proprietor of the suit land. He was allocated the land on March 26, 1996 by the Commissioner of Lands and issued with an allotment letter. On 30/9/2011, he was issued with a 99 year lease from April 1, 1996.
3. Soon after the land was allocated to the petitioner, he took possession and started farming thereon. In the year 2007, he learnt that the first respondent had been registered as the owner of the suit land. The petitioner made a report to the County Council of Kajiado.
  4. The County Council together with the Commissioner of Lands carried out an investigation whose conclusion was that the lawful allottee of the suit land was the petitioner and not the first respondent. As a consequence, Kenya Gazette Notice number 1241 of February 4, 2011 was issued which revoked the lease issued to the first respondent because it was found to have been issued unlawfully.
  5. In response to the revocation of his lease, the first respondent filed Judicial Review No 39 of 2012 at Machakos High Court in which he claimed not to have been heard before the revocation of his lease. This was true because he had been summoned on 12/2/2010 to appear on 24/2/2010 before the District Land Registrar Kajiado but he had refused to attend.
  6. When the petitioner sought to join the judicial review case at Machakos High Court as an interested party, the first respondent objected and the case proceeded without his participation.
  7. Undeterred, the petitioner filed Nairobi ELC No 1192 of 2014 in which he sought to recover damages for the loss he had incurred as a result of the first respondent's interference with his property, the suit land. The first respondent would not let the case proceed and he raised a preliminary objection as a result of which the suit was struck out without the question of ownership being determined. A final attempt to revive the Machakos case ended in vain.
  8. Faced with no other choice the petitioner filed the current suit. He prays that the court goes to the root of the two leases to establish the lawful and the genuine one.
  9. In concluding, the petitioner says that the first respondent claims to have purchased the suit land from one Godfrey G Ole Katitia yet the consent to transfer and the rates clearance certificate were issued by



- the said respondent called Jeremiah Kipelian. The two documents mentioned above have been declared by the second respondent to be forgeries.
10. In support of his case, the petitioner filed 31 documents which are all on record, a witness statement by Lengai Ole Samperu and an affidavit by himself.
  11. The first respondent filed his answer to the petition on 19/2/2020. He avers that he was shown a letter of allotment of the suit land by Jeremiah Kipelian prior to purchasing the land. This was on May 14, 1999. Again Olkejuado County Council on February 1, 2005 issued the said Kipelian with consent to transfer the suit land. If there was any fraud, then the first respondent says that he bears no responsibility for that.
  12. The first respondent goes on to add that there is no proof that he was served with the letters dated 12/2/2010 summoning him to the District Land Registry. The High Court at Machakos reversed the cancellation of his title document by the Kenya Gazette Notice.
  13. Finally, the first respondent describes himself as an innocent purchaser for value.
  14. In support of his case, the first respondent filed his own witness statement, another one by Eston Karanya Muguro and the following documents;
    - i. Letter of allotment dated 14/5/1999 in the name of Jeremiah Kipelian.
    - ii. Letter dated 1/2/2005 authorizing transfer of the suit land from Kipelian to the first respondent.
    - iii. Certificate of lease dated 28/2/2005 in the name of the first respondent.
    - iv. Order issued in Machakos case No 39 of 2012 whereby an order of mandamus was issued withdrawing Gazette Notice No. 1241 of February 4, 2021.
    - v. Letter dated February 8, 2010 and February 12, 2010 emanating from the Ministry of Lands.
  15. The second respondent filed a replying affidavit through Philip Murkuku the County Land Registrar dated 1/3/2019 in which he recognizes the petitioner as the lawful owner of the suit land.
  16. The third and fourth defendants filed grounds of opposition dated 6/9/2019 stating that the petitioner is trying to appeal against the judgements in the concluded suits in Nairobi and Machakos, that the petition does not specify which constitutional rights have been infringed and that the issues of ownerships would best have determined in a normal suit where witnesses would have been called upon to testify.
  16. At the trial on November 16, 2021 the petitioner, the first respondent and his witness, Eston Muguro testified.
  17. Counsel for the parties filed written submissions on 14/2/2022 (petitioner), 17/2/2022 (first respondent), 5/4/2022 (second and third respondents) and (third and fourth respondents). The issues raised therein are as follows;
    - i. Whether the constitutional rights and fundamental freedoms of the petitioner have been breached, violated or infringed.
    - ii. Whether a private individual can maintain an action for declarations against another private individual for breach of fundamental rights under the *constitution*.
    - iii. Who is the rightful owner of the suit property?



- iv. Whether the petitioner's offer lapsed for failure to meet the special conditions in the letter of allotment.
  - v. Who should bear the costs?
18. I have carefully considered the evidence adduced by the parties in form of witness statements, documents and *viva voce* evidence at the trial.
  19. I have also considered the submissions by all the counsel and the case law cited therein.
  20. I find that the above issues as framed will determine the suit.
  21. I make the following findings.

On the first issue, I find that the action of registering the suit property in the name of the first respondent breached the petitioner's right to property under article 40 of the Constitution. The suit property having been allocated to him on March 26, 1996, the same could not be taken away from him without notice.

On the second issue, I find that a private individual cannot maintain an action for declarations against another private individual for breach of fundamental rights under the constitution. The authority of Uhuru Muigai Kenyatta vs Nairobi Star Publications Limited (2013) eKLR is good law on this point. It was aptly cited by Miss Fatma Ali for the Attorney General.

However in this case, all the declarations are sought not against the first respondent but against the second, third and fourth defendants who are all Government agencies.

On the third issue, I find that it is the petitioner who is the rightful owner of the suit property. The reasons for this finding are various.
  22. Firstly, the land allocating authorities who are all represented in this case have said unequivocally that the lawful allottee is the petitioner. This averment is in all the pleadings filed by the second, third and fourth respondents. Their word on who owns the land is final.
  23. Secondly, Constitution in article 40(6) provides as follows;

"The rights under this article do not extend to any property that has been found to have been unlawfully acquired".
  24. The land allocating authorities have stated loudly and clearly in these proceedings that the acquisition of the suit land by Jeremiah Kipelian was fraudulent. If that be so, then both Kipelian and the first respondent are caught up by article 40(6) of the Constitution. The Constitution being the supreme law prevails over all other laws as per Article 2 which enunciates this position.
  25. On the fourth issue, I find that the petitioner's offer in the letter of allotment did not lapse. If it had lapsed, the commissioner of lands would have said so. All the correspondence that is in evidence in this case by all the parties except the first petitioner shows that all the inquiries conducted by the land allocating authorities found the petitioner as the lawful allottee. This answers that question of lapse.
  26. If there was any lapse, then the authorities issuing the allotment letter would have said there was. They did not.
  27. For the above stated reasons, I find that the petitioner has proved his case against the respondents on a balance of probabilities. I therefore enter judgement for him as prayed for in the petition dated January 25, 2019.



28. Costs will be borne by the first, second and third respondents.

Order accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 4<sup>TH</sup> DAY OF MAY, 2022.**

**M.N. GICHERU**

**JUDGE**

