



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC PETITION CASE NO. 30 OF 2018**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL**

**RIGHTS AND FREEDOMS UNDER ARTICLE 159 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**=AND=**

**IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL RIGHTS**

**AND FREEDOMS UNDER ARTICLE 22, 23, 47, 48, 50, 165, 258, AND 259 OF THE CONSTITUTION OF KENYA AND THE ENFORCEMENT OF THE CONSTITUTION OF KENYA**

**=BETWEEN=**

**THE CHURCH COMMISSIONERS FOR KENYA.....PETITIONER**

**=AND=**

**THE NATIONAL LAND COMMISSION.....RESPONDENT**

**RULING**

1. The Petitioner/Applicant filed a Constitutional Petition in which it sought for orders of certiorari and prohibition. The applicant contemporaneously filed a chamber summons in which it sought conservatory orders staying execution of the order by the respondent directing the Registrar to revoke title in respect of **LR No. Nairobi Block 72/2256**.
2. The subject of this petition is an order by the National Land Commission vide gazette Notice Vol CXIX-No 97 of 17<sup>th</sup> July 2017 in which the National Land Commission directed the Registrar to revoke title to **LR No. Nairobi, Block 72/2256**. The order by the National Land Commission was made pursuant to the powers granted to it under Section 14 (5) of the National Land Commission Act.
3. The applicant contends that it is the registered owner of the land which is now the subject of revocation of title. The applicant argues that it was not aware of the notice which called it to defendant its title before the same was ordered revoked. The applicant now wants the order directed at the Registrar to be stayed pending the hearing determination of the petition.
4. The respondent was duly served but it did not file any grounds of opposition or replying affidavit to the application by the applicant. This notwithstanding, I have to determine based on the materials before me whether the orders prayed for should be granted.
5. The applicant in the main petition is seeking for judicial review orders of certiorari and prohibition. I notice that the Respondent directed the Registrar to revoke the title deed held by the applicant in July 2017. The applicant has annexed a search issued on 12<sup>th</sup> July 2013 which shows that the land in issue was then in its name. There is no current search annexed to the supporting affidavit to show whether the title is still in the name of the applicant. The applicant has not given any reason as to why a current search was not annexed. It is therefore not clear whether the Registrar has revoked the title or not.
6. I have also noticed that there is a suit that is ELC 893 of 2013 in which the applicant is the plaintiff. The defendants are Kenya National Highways Authority and the Attorney General. There were interim orders granted in that suit protecting the applicant from eviction from the said land. This case is yet to be determined. In the circumstances the court cannot give conservatory orders of stay.
7. If the applicant proves that the allocation was lawful, the title can always be restored. I therefore dismiss the applicant's application with

no order as to costs.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 4<sup>th</sup> day of October, 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of:

Mr Nakhone for Mr Onindo for Petitioner

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**