



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC JUDICIAL REVIEW NO. 19 OF 2018**

**(Formerly Machakos JUDICIAL REVIEW ELC NO. 137 OF 2011)**

**IN THE MATTER OF: AN APPLICATION BY JOEL TEGERET FOR ORDERS  
OF CERTIORARI, MANDAMUS AND PROHIBITION**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW UNDER**

**SECTION 8 AND 9 OF THE LAW REFORM ACT, CHAPTER 26 LAWS**

**OF KENYA, ORDER 53 OF THE CIVIL PROCEDURE RULES AD**

**ARTICLES 40, 47, 48 AND 50 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: GAZETTE NOTICE NO. 15581 DATED 26. 11. 2010**

**BY THE DISTRICT LANDS REGISTRAR, KAJIADO REVOKING THE**

**APPLICANT'S TITLE TO TITLE NO. NGONG/ NGONG BLOCK 2/ 583**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA AND**

**THE REGISTERED LAND ACT, CHAPTER 300 LAWS OF KENYA**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**COMMISSIONER OF LANDS.....1<sup>ST</sup> RESPONDENT**

**DISTRICT LANDS REGISTRAR, KAJIADO.....2<sup>ND</sup> RESPONDENT**

**EX – PARTE APPLICANT: JOEL TEGERET**

**JUDGEMENT**

By a Notice of Motion dated the 9<sup>th</sup> June, 2011, brought pursuant to the Law Reform Act, Order 53 of the Civil Procedure Rules, Constitution of Kenya and all the other enabling provisions of the law, the Applicant seeks the following orders:

1. An order of Certiorari to quash the decision of the District Lands Registrar, Kajiado, contained in the Kenya Gazette No. 15581 of 26<sup>th</sup> November, 2010 revoking the Applicant's title to TITLE NO. NGONG/ NGONG BLOCK 2/ 583.

2. An order of mandamus compelling the District Lands Registrar, Kajiado to issue a fresh Gazette Notice revoking Gazette Notice No. 15581 of 26<sup>th</sup> November, 2010 with regard to TITLE NO. NGONG/ NGONG BLOCK 2/ 583.

3. An order of prohibition prohibiting the District Lands Registrar, Kajiado from disseminating, publishing, placing advertisements, notification to the public in any form of media, expressing, making representations and/or verbal utterances to anyone in any way or manner or at all, of any manner or material which may be construed as being inconsistent with the legality of the registered proprietorship of the Applicant over TITLE NO. NGONG/ NGONG BLOCK 2/ 583.

4. Costs of this Application be provided for.

5. Any other order or relief as this Honourable Court may deem fit and expedient to grant.

The application is based on the grounds which in summary is that the 2<sup>nd</sup> Respondent revoked the Applicant's title to land parcel number TITLE NO. NGONG/ NGONG BLOCK 2/ 583 ('hereinafter referred to as the suit land') vide Gazette Notice no. 15581 of 26<sup>th</sup> November, 2010. The Applicant only recently discovered the said Gazette Notice. The 2<sup>nd</sup> Respondent acted in total contravention of the Applicant's Constitutional right to own property and in total disregard to sections 27 and 28 of the Registered Land Act. The decision to revoke the said title is in breach of the rules of natural justice. The Respondents have no power whatsoever in law or otherwise of revoking any title to any land under the Registered Land Act and it is only the High Court that had jurisdiction to make inquiries into any title to land. The Respondents' decision aforesaid will occasion the Applicant grave injustice and irreparable loss. No other remedy lies in law to prevent the respondents from acting illegally and beyond their powers and thus adversely affecting the Applicant's Constitutional rights. The Respondents will not be prejudiced in any way if the orders sought are granted.

The application is further premised on the grounds set out in the Statement of fact and the supporting affidavit of JOEL TEGERET the applicant herein. In the statement of facts, the applicant avers that he is the registered proprietor of the suit land, for a term of Ninety Nine (99) years from 1<sup>st</sup> April, 1997 as he was issued with a Certificate of Lease, by the Olkejuado County Council dated the 28<sup>th</sup> April, 2005, and has since been in uninterrupted occupation including possession of it. He contends that he duly paid the plot rent of Kshs. 4,525 and was issued with the Rates Clearance Certificate dated the 4<sup>th</sup> March, 2011 by the Ol Kejuado County Council. The 2<sup>nd</sup> Respondent has published unilaterally and without giving him an opportunity to be heard, a notice revoking the title of the suit land vide gazette notice no. 15881 of 26<sup>th</sup> November, 2010. The decision to revoke the said title was not only illegal and unlawful but also in breach of and repugnant to the Rules of Natural Justice as the same was done without giving him an opportunity of being heard.

The Respondents, even though duly served did not enter appearance nor file a response to the application. The Applicant thereafter filed his submissions that I have considered.

### **Analysis and Determination**

Upon perusal of the Notice of Motion dated the 9<sup>th</sup> June, 2011 including the statement of facts, the supporting affidavit and the submissions, these are the following issues for determination.

- Whether an order of certiorari should issue to quash the Gazette Notice No. 15581 of 26<sup>th</sup> November, 2010 that revoked the applicant's TITLE NO. NGONG/ NGONG BLOCK 2/ 583.
- Whether an order of mandamus should issue to compel the Respondents to issue a fresh gazette notice revoking the Gazette Notice No. 15581.
- Whether an order of prohibition should issue to prohibit the Respondents from interfering with the suit land TITLE NO. NGONG/ NGONG BLOCK 2/ 583.

The main contention in this suit concerns the Respondents' acts of revoking the applicant's TITLE NO. NGONG/ NGONG BLOCK 2/ 583 without according him a fair hearing. The applicant has hence sought for judicial review against the said decision.

In the case of **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001**, the Court of Appeal laid down the parameters of judicial review by stating as follows:

**“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision...It is the duty of the decision maker to comply with the law in coming to its decision, and common sense and fairness demands that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but it a statutory body which can only do what is authorized by the statute creating it and in the manner authorized by statute.”**

I note that the Respondents' did not file a response to the instant application and it is not clear as to whether the Applicant was granted a hearing before his certificate of lease was revoked.

As to whether an order certiorari should issue to quash the Gazette Notice No. 15581 of 26<sup>th</sup> November, 2010 that revoked the applicant's TITLE NO. NGONG/ NGONG BLOCK 2/ 583. I note the applicant is the registered proprietor of the suit land, having been issued with a Certificate of Lease on 28<sup>th</sup> April, 2005. The applicant submitted that the Respondents acted contrary to section 27 of the repealed Registered Land Act in revoking his certificate of lease. It is trite law that a Certificate of Title is the prima facie evidence of ownership of land and the same can only be challenged if it was issued through fraud or misrepresentation. The repealed Registered Land Act at sections 142 (c ), 143(1), 154(1) as well as the Land Act outlines the procedure to be adhered to if a certificate of title is to be cancelled/revoked. From a reading of the said provisions, it is the Court that is legally mandated to order for cancellation/ revocation of a title and the affected party has to be granted an opportunity to be heard before the same is done. Further, even if the Land Registrar is to rectify register, the affected party has to be notified. In the current scenario, the Applicant contends that he was not given an opportunity before his certificate of lease was revoked, and only saw the abovementioned gazette notice indicating so. Since the Respondents failed to file any response to the instant application, I find that Applicant's averments remain uncontroverted. In the above mentioned gazette notice, there is no indication as to whether the Applicant was accorded a hearing before the title was revoked. In the case of **Livingstone Kunini Ntutu Vs Minister for Lands & 4 others ( 2014) eKLR**, the learned Judges Odunga and Weldon Korir stated as follows: ' **we are of the view that judicial review is not the most efficacious remedy where what is in contention is the ownership of the suit property. On the other hand, there is clear evidence that the decision to revoke the Applicant's title is not backed by the law. The same was illegal and indefensible..... It is an abuse of power for a party to bypass the courts and use its might to determine its case against a powerless opposite party.**'

In relying on the facts as presented including the two cited judicial authorities, I find that failure by the Respondents to accord the Applicant a hearing before gazetting his certificate of lease for revocation was against the rules of Natural Justice and violated the Applicant's Constitutional right not to be condemned unheard. It is against the foregoing that I find Notice of Motion dated the 9<sup>th</sup> June, 2011 merited and proceed to allow it in the following terms:

- a. An order of Certiorari be and is hereby issued to quash the decision of the District Lands Registrar, Kajiado, contained in the Kenya Gazette No. 15581 of 26<sup>th</sup> November, 2010 revoking the Applicant's title to TITLE NO. NGONG/ NGONG BLOCK 2/ 583.
- b. An order of mandamus be and is hereby issued compelling the District Land Registrar, Kajiado to issue a fresh Gazette Notice revoking Gazette Notice No. 15581 of 26<sup>th</sup> November, 2010 with regard to TITLE NO. NGONG/ NGONG BLOCK 2/ 583.
- c. The costs of this application is awarded to the applicant.

**Dated signed and delivered in open court at Kajiado this 1st day of October, 2018.**

**CHRISTINE OCHIENG**

**JUDGE**