



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC JUDICIAL REVIEW NO. 20 OF 2018

(Formerly Machakos JUDICIAL REVIEW ELC NO. 132 OF 2011)

IN THE MATTER OF: AN APPLICATION BY GEORGE KIMANI NJUKI 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/ 582

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.....1ST RESPONDENT

DISTRICT LANDS REGISTRAR, KAJIADO.....2ND RESPONDENT

EX – PARTE APPLICANT: GEORGE KIMANI NJUKI

JUDGEMENT

By a Notice of Motion dated the 3rd 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 26th November, 2010 revoking the Applicant's title to TITLE NO. NGONG/ NGONG BLOCK 2/ 582.

2. An order of mandamus compelling the District Lands Registrar, Kajiado to issue a fresh Gazette Notice revoking Gazette Notice No. 15581 of 26th November, 2010 with regard to TITLE NO. NGONG/ NGONG BLOCK 2/ 582.

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/ 582.

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 premised on the following grounds which in summary is that the 2nd Respondent revoked the Applicant's title to land parcel number TITLE NO. NGONG/ NGONG BLOCK 2/ 582 vide Gazette Notice no. 15581 of 26th November, 2010. The 2nd 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 Respondents acted ultra vires the Constitution and 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 prayed for are granted.

The application is also based on the grounds set out in the Statement of fact and the supporting affidavit of GEORGE KIMANI NJUKI the applicant herein. In the statement of facts, the applicant avers that he purchased the suit land at Kshs. 500,000/= from one Winifred Wambui Muya and he was issued with a Certificate of Lease on 27th September, 2007. He states that he has had uninterrupted occupation and possession of the suit premises and according to the Certificate of Official Search dated the 29th April, 2010, it confirms he is the registered proprietor of the suit land. He contends that the 2nd Respondent has published unilaterally and without giving him an opportunity to be heard, a notice revoking the title of the suit property vide gazette notice no. 15881 of 26th November, 2010.

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

Analysis and Determination

Upon perusal of the Notice of Motion dated the 3rd 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 26th November, 2010 that revoked the applicant's TITLE NO. NGONG/ NGONG BLOCK 2/ 582.
- 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/ 582.

The fulcrum of this suit revolves around the respondents' revocation of the applicant's TITLE NO. NGONG/ NGONG BLOCK 2/ 582 without according him a fair hearing. This is the reason the applicant has sought for judicial review against the said decision of the respondents.

In the case of **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001**, the Court of Appeal reemphasized 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 authorised by the statute creating it and in the manner authorised 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 title to the suit land was revoked.

As to whether an order certiorari should issue to quash the Gazette Notice No. 15581 of 26th November, 2010 that revoked the applicant's TITLE NO. NGONG/ NGONG BLOCK 2/ 582. I note the applicant is the registered proprietor of the suit land, having purchased the same

after which he was issued with a Certificate of Lease dated the 27th September, 2007. The applicant submitted that the Respondents acted contrary to section 27 of the repealed Registered Land Act in revoking his title. It is trite law that a Certificate of Title is the prima facie evidence of ownership, 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 lease 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 first given an opportunity to be heard. Further, even if the Land Registrar is to rectify a certificate of lease, the affected party has to be notified. In the current scenario, the Applicant contends that he was not given an opportunity before his title 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 his certificate of lease was revoked. In the case of **Livingstone Kunini Ntutu Vs Minister for Lands & 4 others (2014) eKLR**, which facts are similar to the instant case, Justices Odunga and Korir W observed 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 Respondents did not adhere to the due process of law to revoke the applicant's title to the suit land as he was not accorded a fair hearing before the said action was undertaken. I find the application dated the 3rd June, 2011 merited and will proceed to make the following orders:

- 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 26th November, 2010 revoking the Applicant's title to TITLE NO. NGONG/ NGONG BLOCK 2/ 582.
- b. An order of mandamus be and is hereby issued compelling the District Lands Registrar, Kajiado to issue a fresh Gazette Notice revoking Gazette Notice No. 15581 of 26th November, 2010 with regard to TITLE NO. NGONG/ NGONG BLOCK 2/ 582.
- 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