



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC PETITION NO. 520 OF 2015**

**THE MARKET PLAZA LIMITED.....PETITIONER**

**VERSUS**

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

**JUDGEMENT**

1. The Petitioner which is a limited liability company, filed this petition on 24/11/2015 against the Respondent, being a commission established pursuant to Article 67 of the Constitution claiming that it was allocated the land known as land reference number (L.R. No.) 209/1855/2 (“the Suit Property”) sometime in 1992 and that a transfer was executed between it and the City Council of Nairobi on 22/12/1992 and registered on 24/12/1992. The Petitioner contended that its title over the Suit Property had never been revoked by a court of law and that it was therefore the indefeasible owner of the Suit Property.

2. The Petitioner contended that another suit being **High Court Civil Suit No. 72 of 1994** was filed against it and other parties on the allegation that the transfer of the Suit Property was irregular and contrary to law, and that the court delivered a ruling in which it dismissed the suit.

3. The Petitioner contended that the Respondent placed advertisements in the local newspapers on 17/11/2015 calling for public hearing for purposes of reviewing grants and dispositions of various parcels of land including the Suit Property. The Respondent invited written presentations from the interested parties listed in the advertisement and the complainants.

4. The Petitioner contended that this court had jurisdiction to grant the orders it seeks pursuant to Articles 20, 22 and 23 of the Constitution. It also contended that its right to own property was guaranteed under Article 40 of the Constitution. The Petitioner further contended that Section 23 of the repealed Registration of Titles Act provided that its certificate of title over the Suit Property was conclusive evidence of its proprietorship of the land.

5. The Petitioner contended that its rights were violated and that the court needed to restrain the Respondent from convening a public hearing in respect of the Suit Property and from calling for written presentations from interested parties or complainants since the issue had been adjudicated upon by a court of law. It averred that the issue of ownership of the Suit Property was conclusively dealt with in **HCCC No. 94 of 1994** and that the matter should not be re-opened by the Respondent. The Petitioner contended that it stood to suffer irreparable loss and damage having invested huge amounts of money in developing the Suit Property. It further argued that the Respondent’s decision and actions amounted to unfair administrative practices.

6. The Petitioner sought a declaration that the advertisement placed by the Respondent calling for a public hearing for purposes of reviewing the grant and disposition over the Suit Property was in violation of the its rights under Articles 19, 20, 21, 27, 40, 47, 48 and 50 of the Constitution. Further, that the hearing scheduled to be conducted by the Respondent in respect of the Suit Property should be declared unconstitutional and a violation of the Petitioners rights under Articles 19, 20, 21, 27, 40, 47, 48 and 50 of the Constitution.

7. In addition, the Petitioner sought a declaration that it was the *bona fide* registered owner of the Suit Property and an order to prohibit the Respondent from calling for, convening, organising or holding any public hearing or meeting for purposes of reviewing the grant or disposition of the Suit Property and from calling for, receiving, considering or perusing any written presentations by any person or body in respect of the Suit Property. It sought an injunction to restrain the Respondent or its agents from making any decision or recommendations to any person, body or authority or in any manner interfering with the Petitioner’s title over the Suit Property. The Petitioners sought the costs of the petition and any other relief the court may deem fit to grant.

8. Kamau Njoroge swore the affidavit in support of the petition. He produced copies of the transfer of the Suit Property from the City Council of Nairobi to the Petitioner dated 22/12/1992 and the certificate of title showing that the land was transferred to the Petitioner on 24/12/1992. The other entries noted on the register against the land include caveats and a court order. He produced a copy the notice published in the *Daily Nation* of 17/11/2015 regarding review of grants and dispositions of public land.

9. He produced a copy of the ruling delivered by Ole Keiwua J on 17/3/1994 in **HCCC No. 72 of 1994 – Prof Wangari Mathai and 2 others v City Council of Nairobi and 2 Others**. The Petitioner was the 3<sup>rd</sup> Defendant in that suit. The court notes that the judge was satisfied that the Plaintiffs had no *locus standi* in the case and could not be heard. The case was determined on a preliminary objection. Mr. Njoroge annexed a copy of the decision of Lenaola J in **High Court Petition No. 89 of 2014 – Ngamau Limited v Commissioner of Lands and 2 Others** through which the judge revoked the gazette notice dated 26/11/2010.

10. The Petitioner filed submissions and relied on Section 23 of the repealed Registration of Titles Act. It also relied on Section 26 of the Land Registration Act on the point that a certificate of title was conclusive evidence of proprietorship and could only be challenged on grounds of fraud or misrepresentation which the person is proved to be a party to, or where the certificate of title was acquired illegally, unprocedurally or through a corrupt scheme. The petitioner submitted that it had not been shown that it was a party to the fraudulent or illegal activities that led to it being registered as the owner of the Suit Property.

11. The Petitioner contended that the Respondent had no power to revoke titles, grants or dispositions under the Constitution but added that it could only review the titles. The Petitioner went further to argue that the Respondent's mandate for reviewing grants and dispositions of public land to establish their propriety or legality under Section 14 of the National Land Commission Act (NLC Act) could only be undertaken within 5 years and that that period for review lapsed on 2/5/2017. Consequently, that the Respondent could not purport to review the Petitioner's title since its powers to review grants over a public land had lapsed. The Petitioner relied on the decision in **Shimoni Resort v Registrar of Titles and 5 Others [2016] eKLR** and **Charles Karathe Kiarie and 2 Others v Administrators of the Estate of John Wallace Mathare (Deceased) and 5 others [2013] eKLR**.

12. The issue for determination is whether the court should grant the orders sought by the Petitioner. The ruling in HCCC No. 72 of 1994 which the Petitioner relied on was delivered in 1994 before the new Constitution came into force. The Plaintiffs in that suit had sought declarations that the subdivisions, sale and transfer of the Suit Property were irregular and breached the special conditions in the grant dated 1/8/1928. The plaintiffs sought revocation of the subdivision and the sale alongside an injunction to restrain the 3<sup>rd</sup> Defendant, who is a petitioner in this case, from selling or carrying out any construction on the Suit Property. The court was satisfied that the Plaintiff had lacked the *locus standi* and that they could not be heard in that suit. The court went ahead to strike out the suit as urged in the preliminary objection. The Constitution which was promulgated in 2010 did away with the rigidity of the *locus standi* doctrine especially in cases pursuing public interest. In this court's view, that case was dismissed without parties being heard on merit and it is not true that the court upheld the Petitioner's title over the Suit Property as the Petitioner contended in this petition.

13. The court agrees with the Petitioner that the Respondent's mandate to review grants of public land to establish their propriety or legality lapsed on 2/5/2017 pursuant to Section 14 of the NLC Act. However, at the time this petition was filed on 24/11/2015 the Respondent still had power under Section 14 of the NLC Act to review grants and dispositions of public land to establish their propriety.

14. However, the court notes that Parliament retained the discretion to extend the period within which the Respondent could undertake the review of grants or dispositions of public land. Notably, Article 68 (c) (v) of the Constitution which required Parliament to enact legislation to enable the review of all grants or dispositions of public land to establish their propriety or legality did not set a time limit for that exercise to be undertaken.

15. The expectation under Article 68 (c) (v) of the Constitution was that **all grants or dispositions of public land** had to be reviewed to establish their propriety or legality.

16. That means that the Petitioner's title over the Suit Property is still amenable to review for purposes of establishing its propriety or legality under the relevant laws. The certificate of title over the Suit Property which the Petitioner produced shows that the Suit Property was previously registered in the name of the City Council of Nairobi, which was a local authority under the Local Government Act. Indeed, the transfer of the Suit Property was effected by the Nairobi City Commission to the Petitioner. The Suit Property was therefore public land and was amenable to review pursuant to Articles 68 (c) (v) of the Constitution.

17. The Respondent did not participate in these proceedings. From the court record, it would seem as if nothing happened in the matter after it was filed in 2015 until 2020. There is evidence in the court file that the Respondent was served with court documents. The impugned notice for the review of the grant of the Suit Property which the Petitioner attached to the petition was published in the daily newspapers on 17/11/2015. There is no evidence to suggest that the Respondent attempted to convene a public hearing or that it called for written presentations from interested parties or complainants regarding the title held over the Suit Property after 2/5/2017 when its power to review grants of public land lapsed.

18. No basis has been made for the court to grant the orders sought in the petition. The court declines to grant the orders sought in the Petition and makes no orders as to costs.

**Delivered virtually at Nairobi this 12<sup>th</sup> day of May 2021.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Jack Shivugu for the Petitioner

No appearance for the Respondent

