



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISCELLANEOUS APPLICATION NO. 202 OF 2018

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI AND PROHIBITION**

AND

**AND IN THE MATTER OF ARTICLES 40, 47, 50(1), 50(2), 48, 64 AND 67 OF THE
CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTIONS 5(1) (2) AND 14(3) (7) OF THE NATIONAL LAND
COMMISSION ACT, NO 5 OF 2012**

AND

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORMS ACT, CAP. 26

AND

**IN THE MATTER OF SECTIONS 24 (A), 25 AND 26 (1) OF THE LAND REGISTRATION ACT,
No. 3 OF 2012**

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACT NO.4 OF 2015

BETWEEN

AND

THE REPUBLIC OF KENYA.....APPLICANT

AND

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE PRINCIPAL REGISTRAR OF LAND.....2ND RESPONDENT.

Ex-parte Applicant-JOSEPH MIRING'U NG'ANG'A

JUDGEMENT

1. The Ex-Parte Applicant is the registered owner of LR No. Nairobi Block 105/6961 (suit property). The Ex-Parte Applicant purchased the suit property from Embakassi Ranching Limited. The suit property was registered in the name of Ex-Parte Applicant after the necessary approvals and consents were granted by the National Land Commission which is the 1st Respondent.

2. On the 17th July 2017, the Ex-parte Applicant came across a gazette Notice No.6865 of 17th July 2017 published by the 1st Respondent. By this Gazette Notice, the 1st Respondent recommended revocation of the title to the suit property. In the said Gazette Notice the 1st Respondent stated that pursuant to the public notices issued in the press on 30th October 2016 and 18th January 2017, the 1st Respondent had notified the parties concerned that it was going to conduct a public inquiry to determine the propriety of otherwise of the listed titles.

3. The ex-Parte Applicant contends that he instructed his Advocates who perused the Daily Nation Newspaper and the Standard Newspaper of 30th October 2016 and 18th January 2017 but could not see any advert which listed the suit property. The Advocates were only able to find an advertisement of public and within Kiambu County.

4. The Ex-Parte Applicant therefore argues that the 1st Respondent condemned him without a hearing contrary to the rules of Natural Justice. The Ex-Parte also contends that the suit property is private land and as such, the 1st Respondent had no powers to recommend his title for revocation. It is on this basis that the Ex-Parte Applicant moved to court seeking orders quashing the determination by the 1st Respondent through Gazette Notice of 17th July 2017 and to prohibit the 2nd Respondent from acting on the recommendation of the 1st Respondent or registering any other person as owner of the suit property.

5. The application for Judicial Review was duly served upon the Respondents but the Respondents neither entered appearance nor filed any replying affidavits despite the court giving them time to so. Directions were given regarding filing of written submissions. It is only the Ex-Parte Applicant who filed submissions dated 19th July 2020. I have gone through the submissions by the Ex—parte Applicant. The issues which emerge for determination to deal with private property. Secondly whether the 1st Respondent followed the laid down procedures in arriving at its determination which is contained in Gazette Notice No. 6865 of 17th July 2017.

6. The authority of the 1st Respondent is derived from section 14 of the National Land Commission Act which states as follows:-

1. Subject to Article 68(c)(v) of the Constitution, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality. (2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1). (3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents. (4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination. (5) Where the Commission finds that the title was acquired in an unlawful

manner, the Commission shall, direct the Registrar to revoke the title. (6) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders. (7) No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title. (8) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution. (9) The Commission may, where it considers it necessary, petition Parliament to extend the period for undertaking the review specified in subsection (1).

7. It is clear from the provisions of section 14(1) of the National Land Commission Act (The Act) that the 1st Respondents' mandate is to review grants of public land to establish their propriety or legality. In the instant case the Ex-parte Applicant purchased the suit property from Embakasi Ranching Company Limited a Private Company incorporated under the Companies Act. There is no evidence that the 1st Respondent was inquiring on how Embakasi Ranching Company Limited acquired the land which it sold to the Ex-Parte Applicant.

8. From the determination by the 1st Respondent as seen from the gazette Notice No. 6865 of 17th July 2017, the 1st Respondent found that the suit property belonged to one Josephine Gakami . The 1st Respondent went ahead to direct that the said Josephine Gakami do exchange the suit property with LR No. Nairobi Block 105/6956 which was to go to the Ex-Parte Applicant. It is therefore clear that the 1st Respondent was not inquiring on how Embakasi Ranching Company acquired the mother title which was subsequently subdivided into similar portions of which is the suit property. The 1st Respondent therefore did not have jurisdiction to deal with private land and order exchange where the issue of propriety or legality of titles was not involved. The 1st Respondent had no jurisdiction to do what it did. In other words, it acted beyond its powers.

9. Section 14(3) of the Act provides that the Commission shall give every person who appears to have interest in the grant of disposition concerned, a notice of such review and an opportunity to appeal before it and to inspect any relevant documents. when the 1st Respondent is exercising its powers under section 14 of the Act, it is bound to be guided by the principles set out under Article 47 of the constitution.

10. Article 47 of the constitution provides as follows: -

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action”.

11. It is pursuant to Article 47(3) that the Fair Administration Action Act was enacted. This Act provides that where any administrative act is going to be carried out which will affect one, the person to be affected is supposed to be given notice of the action to be taken the opportunity to attend and be informed of what he is to expect so that he can prepare for his defence. In the instant case, there was no notice given for the Ex-Parte Applicant to attend. He did not know what he was going to meet. He was not given the determination and the reasons for the determination. The 1st Respondent reached a decision that he exchanges the suit property for that of Nairobi Block 105/6956. The decision of the 1st Respondent did not accord to the requirements of section 4(3) of the Fair Administrative Action Act. I therefore find that this case where the Notice of Motion dated 29th November 2018 must succeed. I make the following orders:

a. An order of certiorari is hereby, granted removing into this court and quashing the proceedings, directions orders and entire proceedings directions order sand the entire decision of the 1st Respondent as contained in the Kenya Gazette Notice No.69865 volume CXIX-No.97 page 4277 dated 17th July 2017 in so far as it touches on title Nairobi Block 105/6961 belonging to the

Ex-Parte Applicant.

b. An order of prohibition is hereby granted prohibiting the Land Registrar from revoking title in respect of Nairobi Block 105/6961 as per the recommendation of the 1st Respondent contained in Gazette Notice No.6865 of 17th July 2017. A further order is granted restraining the Land Registrar from registering any other part on as proprietor of title No. Nairobi Block 105/6961.

c. The costs of this application shall be borne by the 1st Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF JUNE 2021.

E. O. OBAGA

JUDGE

In the Virtual presence of:-

M/s Kamau for Ex-Parte Applicant

Court Assistant : John

E. O. OBAGA

JUDGE