



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

PETITION NO. 22 OF 2019

IN THE MATTER OF: THE ALLEGED INFRINGEMENT OF CONSTITUTIONAL RIGHTS & FREEDOMS OF THE INDIVIDUAL UNDER ARTICLES 21, 27, 40, 47, 60 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION & PROTECTION OF FUNDAMENTAL RIGHTS & FREEDOMS OF THE INDIVIDUAL) PRACTICE RULES 2013, THE LAND REGISTRATION ACT NO. 3 OF 2012, SECTIONS 25, 26, 79 & 80, THE ENVIRONMENT & LAND COURT ACT NO. 19 OF 2011 SECTION 13 & ARTICLES 23 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

NARMAN CHANGAWA CHENGO.....PETITIONER

AND

- 1. ABEL NDUMBU**
- 2. FRANCIS N. NGATIA**
- 3. THE LAND REGISTRAR-KILIFI**
- 4. THE LAND ADJUDICATION & SETTLEMENT OFFICER- KILIFI**
- 5. THE ATTORNEY GENERAL.....RESPONDENTS**

JUDGMENT

1. By this Petition dated and filed herein on 1st July 2019 Narman Changawa Chengo (the Petitioner) prays for the following reliefs: -

a) A declaration that all the acts carried out by the 3rd and 4th Respondents or any one of them in erasing the records showing the Petitioner's registration as owner of Title No. Kilifi/Mtondia/89 including the green card at Kilifi Land Registry and all the acts of erasing the records showing the transfer of the suit property from the initial allottee Kenga Katana to the Petitioner including those showing payment of the fees to the Settlement Fund Trustees at Kilifi Land Adjudication & Settlement Offices infringed upon the Petitioner's right to property and amounted to unfair administrative action and a failure to accord the Petitioner equal protection and equal treatment under the law and a failure to protect the sanctity of the Petitioner's title in the suit property in contravention of Articles 21 (1), 27, 40, 47 and 60(1) (b) of the Constitution.

b) An order to the Kilifi Land Registrar to restore all the records showing the registration of the Petitioner as owner of Title No. Kilifi/Mtondia/89 including the green card and an order to the Kilifi Land Adjudication and Settlement Officer to restore all records showing the transfer of Parcel No. Kilifi/Mtondia/89 (Original No. 473/D) from the initial allottee Kenga Katana to the Petitioner.

c) An order cancelling the registration of the 1st and 2nd Respondents as owner of Title No. Kilifi/Mtondia/89.

d) Costs of the Petition.

2. Those prayers arise from the Petitioner's contention that he is the registered proprietor entitled to the exclusive possession of the suit property measuring 12 acres and situated at Mtondia Settlement Scheme within Kilifi Country. The Petitioner avers that he has utilized the land since the year 1970. On or about 23rd March 2009, the 1st Respondent proceeded to evict the Petitioner from the suit property on the strength of a Court Order obtained in **Mombasa HCCC No. 224 of 1997; Abel Ndumbu –vs- Norman Changawa Chengo & Others**.
3. The Petitioner avers that unbeknown to him the 1st Respondent was also issued with another Title Deed for the same property on 5th September 1985 purportedly after purchasing the same from the 2nd Respondent. He avers that after the eviction and upon conducting a search at the Kilifi Land Registry, he was shocked to find out that the particulars of his registration as the proprietor of the suit property had been erased completely before a title deed was issued to the 2nd Respondent.
4. The Petitioner maintains that the 3rd and 4th Respondents were duty bound to safeguard his proprietary rights over the property and that the erasure of the records could only have been effected in collusion with the 3rd and 4th Respondents.
5. Following an application made herein by the Petitioner, Abel Ndumbu and Francis Ngatia (the 1st and 2nd Defendants herein) were served with the summons herein vide an advertisement carried out in the Daily Nation of 14th January 2020. They have however since neither entered appearance nor filed any response to the Petition. The Land Registrar Kilifi, the Land Adjudication and Settlement Officer Kilifi as well as the Honourable the Attorney General sued herein as the 3rd, 4th and 5th respondents were also served with summons in July 2019. They equally neither entered appearance nor filed a response to the Petition.
6. Accordingly, and by directions issued herein on 3rd November 2020, the Petition proceeded by way of formal proof through the Affidavits filed on record.
7. I have perused the Supporting Affidavit sworn and filed by the Petitioner in support of the Petition together with the annexures thereto. I have equally perused and considered the submissions filed herein by Mr. Shujaa, Learned Counsel for the Petitioner.
8. The Petition herein is brought pursuant to the provisions of Articles 21, 27, 40, 47 and 60 of the Constitution of Kenya. The subject matter of the Petition is a parcel of land situated at Mtondia Settlement Scheme in Kilifi County measuring 12 acres or thereabouts.
9. According to the Petitioner, he acquired the suit property pursuant to a transfer from the initial allottee one Kenga Katana in the year 1970. Upon transfer and payment of the requisite charges and fees for the land to the Settlement Fund Trustees, the Petitioner was registered as the proprietor of the suit property on 17th August 1994.
10. The Petitioner told the Court that on 23rd March 2009, he was evicted from the suit premises by the 1st Defendant on the strength of a Court Order issued in **Mombasa HCCC No. 224 of 1997; Abel Ndumbu –vs- Norman Changawa Chengo & Another**. Upon carrying out a search at the Kilifi Land Registry following his eviction, the Petitioner was shocked to find that unknown to himself the 1st Respondent had been issued with a title deed for the same suit property on 5th September 1985- on the purport that he had purchased the same from the 2nd Respondent.
11. The Petitioner told the Court that during his eviction from the suitland, the 1st Respondent destroyed all the developments he had undertaken on the property including four permanent and two semi-permanent houses thereby causing the Petitioner immense loss and damage.
12. It is the Petitioner's case that the 2nd Respondent who sold and transferred the land to the 1st Respondent was not the allottee of the suit property and that the validity of the two titles, one in his name and the other in the name of the 1st Respondent was not determined in the said **Mombasa HCCC No. 224 of 1997** that led to his eviction from the suit property.
13. It is however not clear to this Court why the Petitioner chose to file these separate proceedings instead of moving the Court in the said **Mombasa HCCC No. 224 of 1997** for appropriate orders. Indeed, the Petitioner who was the 1st Defendant in the said case which he states proceeded ex-parte did not explain to this Court why he did not participate in the said proceedings.
14. The pleadings filed in the Mombasa case and the Judgment emanating therefrom were not availed to this Court. While the Petitioner maintains that the validity of the two titles were not determined in the Mombasa case, it was however clear from an extract of the Court order issued on 29th August 2000 (Pexh 2) that the 1st Respondent herein had sought in the Mombasa Case for the Petitioner's title to be determined as fictitious and of no legal validity. The 1st Respondent equally sought to have the Petitioner's title deed issued some nine years after the 1st Respondent was issued with title for the same property to be declared invalid and of no legal effect.
15. From a perusal of the Criminal Proceedings for Forcible Detainer brought against the Petitioner and his family in **Kilifi SRM Criminal Case No. 425 of 2009** (Pex 5), it is apparent from the evidence given therein by the 1st Respondent that the Court declared the Petitioner's title to be a forgery with no legal validity before ordering the Petitioner to remove all the structures therein at his own costs.
16. Those are the same records that the Petitioner wants this Court to compel the Respondents to restore. Given that the said documents were already declared by a competent Court to be forgeries and of no legal validity, they could not have been part of the records held by the 3rd and 4th Respondents and even though the Respondents never responded to this claim, this Court cannot grant the orders sought herein.
17. Accordingly, the Petitioner's case has no basis and is indeed filed in abuse of the Court process. It must fail. It is hereby dismissed with no order as to costs.

Dated, signed and delivered at Malindi this 30th day of July, 2021.

J.O. OLOLA

JUDGE