



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

PETITION NO. 15 OF 2018

IN THE MATTER OF: ARTICLES 20, 21, 22, 23, 40, 47(2) AND 60 OF THE CONSTITUTION OF KENYA 2010

AND

**IN THE MATTER OF: VIOLATION OF THE RIGHT TO PROPERTY KNOWN AS LAND REFERENCE NO. RUIRU/RUIRU
EAST BLOCK 2/3690**

AND

IN THE MATTER OF: SECTIONS 3,4 OF THE ACCESS OF INFORMATION ACT 2016

AND

IN THE MATTER OF: SECTIONS 21,25,26,34,79,80,81,82,83 OF THE LAND REGISTRATION ACT 2012

BETWEEN

MIRIAM NJOKI KARANJA.....PETITIONER

VERSUS

CHIEF LAND REGISTRAR.....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

THIKA DISTRICT LAND REGISTRAR.....3RD RESPONDENT

JUDGMENT

By a **Petition** dated 20th September 2018, the Petitioner herein filed this Petition against the Respondent seeking for orders that;

- a) A declaration that the Petitioner is the lawful proprietor of land LR.No.Ruiru/Ruiru East Block 2/3690 as comprised in a certificate of Title Deed registered in the Land Registry at Thika on 22nd June 1992.
- b) An order of certiorari do issue to bring to this Honourable Court, for the purpose of being quashed and/or cancelled the register alteration opened by the Respondents in violation of the Petitioner's rights.
- c) An order of prohibition do issue to prohibit Respondents by themselves, servants, agents or whosoever from in any manner interfering with or issuing title documents to any other person or entity save the Petitioner in respect of the land.
- d) A declaration that the certificate of title registered in respect of land LR/No.Ruiru/Ruiru East Block 2/3690 is conclusive evidence of ownership and that the Petitioner is the absolute and indefeasible proprietor of the suit property.
- e) A conservatory order do issue to prohibit and restrain the Respondents by themselves, their agents servants or whomsoever from in any manner alienating the Petitioner's property known as LR.No.Ruiru Ruiru East Block 2/3690 and/or interfering with the Petitioner's possession of the property or issuing new title documents to anyone else save the Petitioner.
- f) The Respondents be ordered to cancel the subdivisions of LR.No.Ruiru Ruiru East Block 2/3690 and rectify any purported

changes on the register which were obtained by fraud, mistake and without the authorization of the Petitioner.

g) Damages for causing this suit.

h) Costs and incidental to the Petition.

In her Petition the Petitioner averred that she was registered as the proprietor of the suit property on **22nd June 1992**, and took possession having been a shareholder of **Nyakinyua Investments Limited**, that previously owned the suit property. She averred that on the **10th July 2018**, when she visited the suit property, she noticed strangers on the said parcel but when she applied for an official search at the **Thika Land Registry**, the **Land Registrar** declined to issue an official search and informed her that the title was closed on subdivision.

That through her Advocates **Munene & Company Advocates**, she wrote to the **Thika District Land Registrar**, and cited the failure to issue the official search and that in a follow up visit, the Land Registrar made remarks that she should apply for an extract of the title. He averred that on **14th June 2018**, she applied for an extract of the title for the suit property, but the **Thika Land Registrar** has declined to issue an extract of title and an official search.

It was her contention that the Respondents are perpetrating a fraud with intent to deprive her of her rights and therefore their actions are unconstitutional and fraudulent deprivation of her property and thus unlawful. She particularized the particulars of illegality and fraud as; violating provisions of; **Article 40(3) and 60(b)** of the **Constitution**, **Sections 25(2)** of the **Registered Land Act** by effecting subdivision without her knowledge, **Section 36** of the **Registered Land Act Cap 300**, by refusing to issue the certificate of title, **Sections 21, 25, 34** of the **Land Registration Act**, by interfering with the boundary features, **Section 79(1) (b)** by rectifying the register without her consent, **Section 3 and 4** of access to information by failing to provide information.

Despite being served, the Respondents did not respond to the Petition and therefore the evidence by the Petitioner remained uncontroverted. The Court directed the Petitioner to file written submissions and in compliance with the said directive, the Petitioner through the **Law Firm of Munene & Company Advocates**, filed her submissions on **29th August 2019**, which the Court has now carefully read and considered.

As noted, above, the evidence of the Petitioner remains unchallenged as the Respondents did not file any suit papers. The Attorney General only filed a Memorandum of Appearance on **16th May 2019**. However even if the Petitioner's the evidence is not challenged, it does not mean that the Court will not interrogate the said evidence. The Court still has an obligation to interrogate the Petitioner's evidence and determine whether the same is merited or not so that the Court can come up with a logical conclusion as exparte evidence is not automatic prove of a case. The Petitioner had a duty to discharge her burden of proof. See the case of **Kenya Power & Lighting Company Limited... Vs...Nathan Karanja Gachoka & Another [2016] eKLR**, where the Court stated:-

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”

Further the case of **Gichinga Kibutha...Vs...Caroline Nduku (2018) eKLR**, the Court held that:-

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

From the available evidence, the Court finds the issues for determination are;

1. Whether the Petitioner is the lawful owner of the suit Property.

2. Whether the Petitioner is entitled to the orders sought.

1. Whether the Petitioner is the lawful owner of the suit property

It is trite that the registration of a person and Certificate of title held by such a person as a proprietor of a property is conclusive proof that they are the owner of the property. However, the registration of such title is not absolute as the same maybe impeached under certain circumstances as provided by **Section 26(1)** of the **Land Registration Act** which states as follows;

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

The Petitioner has averred that she is the owner of the suit property having being a shareholder of **Nyakinyua Investment Limited**. Further the Petitioner has produced before this Court a certificate of title that was issued in her name dated the **22nd June 1992**. The provisions of

law are very clear on the circumstances under which a title of land issued to a proprietor of property can be impeached. In this instant suit as already stated above, the evidence of the Petitioner remain uncontroverted. Being the title holder of the said property, therefore it is this Court's considered view that unless her title to the suit property is impeached and or revoked, she remains the lawful owner of the suit property and therefore is entitled to enjoy all the rights and privileges that appertain to it. See **Section 25** of the **Land Registration Act**, which states as follows;

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

Without any evidence to contradict the evidence of the Petitioner and taking into account the exhibits provided before his Court, this court finds and holds that the Petitioner is the lawful owner of the suit property.

2. Whether the Petitioner is entitled to the Orders sought.

The Petitioner has sought for various orders amongst them a declaration that she is the lawfully registered proprietor of the suit land which the Court has already held and found that she is the registered proprietor of the suit land. Secondly the Petitioner has sought for an Order of Certiorari to quash the registry alteration, an Order of Prohibition, a Conservatory Order and that the Respondents be ordered to cancel the subdivision of the property.

The Court has already held and found that the Petitioner is the Lawful registered proprietor of the suit land. The petitioner has sought for quashing of the alterations made in the Register and Order of Prohibition. **Section 24** of the **Land Registration Act** provides;

“the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;”

Since the Petitioner is the lawful owner of the suit property, her rights are protected by **Article 40** of the **Constitution** and **Section 24** of the **Land Registration Act**, and therefor no any other person has authority to claim over the suit land and that no one should deal with the suit land in a manner that is contrary to her interests and without the Petitioner's express authority and or consent. Further the alterations of the register which is contrary to her interests is also not proper and therefore the same ought to be quashed.

Section 80 of the **Land Registration Act** gives the Court the power to order for rectification of the register. The Court finds that the assertions by the Petitioner that the register may have been altered to her detriment have not been controverted and if that is the case therefore, the same must be rectified to reflect the true position. Consequently, the court finds that the Petitioner is entitled to the orders sought.

Having carefully read and considered the pleadings, the exhibits before this Court and written submissions by the Petitioner, the Court holds and finds that the Petitioner has proved her case on the required standard of balance of probabilities and accordingly the Court allows the Petitioner's claim in terms of prayers **No. (a), (b), (c), (d), (e), (f) and (h)**.

It is so ordered.

Dated, Signed and Delivered at Thika this 5th day of March 2020.

L. GACHERU

JUDGE

5/3/2020

In the presence of

Mr. Munene for the Petitioner

No appearance for 1st Respondent

No appearance for 2nd Respondent

No appearance for 3rd Respondent

Lucy - Court Assistant.

L. GACHERU

JUDGE

5/3/2020