



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 1411 OF 2016

PETER NJOROGE REGERU.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KIAMBU.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

JUDGEMENT

1. Land reference number Muguga/Gitaru/1042 (“the Suit Property”) has been the subject of previous litigation and was dealt with in the judgement delivered by Majanja J on 19/4/2013 in **High Court Constitutional and Human Rights Division Petition No. 584 of 2012- George Gitonga Gachuhi and 4 Others v the Commissioner of Lands and 6 Others**. The Plaintiff in this suit was the 3rd Petitioner in the petition. Majanja J. ordered the rectification of Gazette Notice number 3788 dated 26/5/2006 by deletion of the entry in respect of plot number 842 County Council of Kiambu and substitution with the Petitioners’ parcels of land including the Plaintiff’s parcel of land. That Gazette Notice was rectified through Gazette Notice number 3236 of 16/5/2014 which excluded the Plaintiff’s parcel of land.

2. The Respondents applied to review the judgement of Majanja J on the ground that they had discovered new evidence which was not available at the time of the proceedings. Mumbi J in her ruling delivered on 12/2/2016 reviewed the judgement dated 19/4/2013 to the extent that the Commissioner of Lands, the Ministry of Roads and the Honourable Attorney General were not compelled to gazette the intention to compulsorily acquire L.R. No. Muguga/Gitaru/1042 belonging to the Plaintiff in this case. Mumbi J noted at paragraph 37 of the ruling that the Respondent had submitted that it was not possible to gazette the Plaintiff’s plot as one of the parcels of land the Respondent intended to acquire since it was not required for the construction of the Nairobi- Southern Bypass.

3. It would seem that the Plaintiff was not given possession of the Suit Property after the delivery of that judgement prompting him to file the instant suit. In the Amended Plaint dated 2/11/2018, he sought various orders directing the County Government of Kiambu to remove the fence erected on the Suit Property; directing the 2nd Defendant to nullify gazette notice number 6862 dated 17/7/2017 which purported to cancel the Plaintiff’s title over the Suit Property; a permanent injunction to restrain the Defendants or their agents or servants from entering or otherwise interfering with the Plaintiff’s quiet user of the Suit Property.

4. The Plaintiff averred that gazette notice number 6862 dated 17/7/2017 purported to cancel his title without affording him an opportunity to be heard and that it was in violation of the court order issued on 12/6/2016 in **High Court Petition No. 584 of 2012**.

5. The County Government of Kiambu filed a defence on 8/2/2017 denying the Plaintiff’s claim and averred that it had neither undertaken any development on the Suit Property nor had it directed its public works department to undertake any construction on the Suit Property. It averred that any construction done by the Defendant is undertaken in an open and transparent manner and is ordinarily preceded by the erection of a sign board informing all and sundry of the nature of the construction and on whose behalf it was being undertaken.

6. The Plaintiff gave evidence. He stated that he was the registered proprietor of the Suit Property which was originally known as Muguga/Gitaru/487/85. The land is situated in Kikuyu Township of Kiambu County. Sometime in 2006 the Commissioner of Lands issued a gazette notice giving his intention to acquire the land known as Muguga/Gitaru/487 for the construction of the Nairobi- Southern Bypass and erroneously indicated that the registered owner of the land sought to be acquired was the County Council of Kiambu. The Plaintiff and other persons who derived their titles from the subdivision of Muguga/Gitaru/487 filed **High Court Constitutional Petition Number 584 of 2012** seeking to be recognized as the legitimate owners of the plots created from the subdivision of Muguga/Gitaru/487 and to compel the State to compensate them. Kiambu County Council, sued as the 5th Respondent in the petition appeared in the proceedings but did not defend the petition. The Petitioner’s titles to their respective plots were recognized and upheld in the judgment delivered on 19/5/2013 which ordered the State to compensate the petitioners for their respective properties.

7. The Commissioner of Lands and the Kenya National Highways Authority subsequently decided that the Plaintiff’s plot which is the Suit Property in this case was not required for the construction of the Southern Bypass. They filed an application for the court to review its earlier decree and leave out the Suit Property from the list of the plots to be acquired for the construction of the Southern Bypass.

8. Despite those court orders, the Defendant's agents including the Sub-county administration, Kabete Sub-County encroached on the Plaintiff's land, fenced it off and denied him access to his land. The Plaintiff served copies of the judgment and decree issued in the Petition on the Defendant but the Defendant persisted in its illegal acts. The Plaintiff stated that he had lost the use and enjoyment of the Suit Property and that he had suffered substantial loss and damage as a result of the Defendants' actions.

9. The Plaintiff produced copies of the green card showing that he was registered as proprietor of the Suit Property and that a certificate of lease was issued to him on 23/9/1997; the lease over the Suit Property registered on 25/9/1997; gazette notice number dated 26/5/2006; Petition No. 584 of 2012 and the judgement delivered in that suit on 19/4/2013; a copy of the decree issued on 13/5/2013; the application dated 27/4/2018 seeking to review the judgement in the petition and a copy of the ruling delivered on 12/2/2016. He also produced a copy of the gazette notice number 3236 dated 16/5/2014 giving the 2nd Defendant's intention to acquire the parcels of land listed in the notice for the construction of the Nairobi Southern Bypass. The Plaintiff's land was not among the plots on the list.

10. The Plaintiff also produced photographs showing the Suit Property had been fenced off. The copy of the 2nd Defendant's letter dated 21/12/2016 addressed to plot owners informed them that the 2nd Defendant had received a complaint from the Deputy County Commissioner of Kikuyu Sub-County to the effect that their parcels of land were curved out of public land which was originally known as Muguga/Gitaru/1015. The Plaintiff's parcels of land is not among the plots listed on the face of the letter. The Commission observed in the letter that some of the plots fell on the land on which the sub county offices were being developed. The Commission stated that it had resolved to invoke its powers under Section 14 of the National Land Commission Act to review the plots specified to determine the propriety or legality of their acquisition and added that the review hearing would be held on 27/1/2017.

11. He also produced a copy of a letter dated 18/8/2010 from the Town Council of Kikuyu allocating various parcels of land in Muguga/Gitaru including part of the Suit Property to the District Commissioner of Kikuyu District. The Plaintiff produced a copy of the cadastral plan together with the copy of gazette notice dated 17/7/2017 which lists various parcels of land including the Suit Property which it indicated that the land was reserved for public utility for the County Commissioner's offices, roads and the County Government of Kiambu. The notice indicated that the titles were revoked and the land had been vested in the National and County Governments for re-planning to accommodate the public utilities and *bona fide* allottees. Mr. Regeru stated that he had never received any notice from the 2nd Defendant regarding his plot.

12. On cross examination, Mr. Regeru stated that they had no clue as to what was on the Suit Property since the 1st Defendant had refused to give him possession. He stated that the fence around the Suit Property was put up by the 1st Defendant who he claimed had encroached on his land. His attempts to enforce the court's judgment were unsuccessful because the 1st Defendant prevented him from accessing the Suit Property. He stated that the area was large and that there were several developments being carried out in the area including the building of offices for the County Administration.

13. He amended the suit to add the National Land Commission as the 2nd Defendant following the gazette notice of 17/7/2017 which revoked his title over the suit land. The 2nd Defendant did not participate in this proceedings. The 1st Defendant neither adduced evidence nor did it file submissions.

14. The Plaintiff filed submissions and urged that his right to property was protected by Article 40 of the Constitution. He added that the 2nd Defendant's purported revocation of his title over the Suit Property was void for the reasons that the 2nd Defendant's mandate to review grants of public land to establish their legality or propriety lapsed in May 2017. He added that under the law the 2nd Defendant could only recommend that the land registrar revoke the title but it had no power to revoke titles.

15. The issue for determination is whether the court should grant the orders sought in the amended plaint. Looking at the evidence adduced by the Plaintiff, the court already made a determination over his title in **High Court Constitutional Petition Number 584 of 2012**. The Defendants did not appeal against that decision or apply to set it aside. The 1st Defendant denied undertaking any development on the Suit Property in the defence it filed on 8/2/2017.

16. The 2nd Defendant's mandate to review grants of public land to establish their legality or propriety lapsed in May 2017 and the 2nd Defendant could not therefore have revoked the Plaintiff's title vide the gazette notice dated 17/7/2017 as it purported to do. The National Land Commission Act did not grant the Commission power to revoke titles.

17. The court is satisfied that the Plaintiff has proved his case on a balance of probabilities and grants prayers (a), (b), and (c) of the Amended Plaint dated 2/11/2018. The Plaintiff is awarded the costs of suit to be borne by both Defendants.

Dated and delivered at Nairobi this 5th day of March 2020

K.BOR

JUDGE

In the presence of:-

Mr. Kiarie Njuguna for the Plaintiff

Mr. D. Mararo holding brief for Mr. Ranja for the 1st Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 2nd Defendant