



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC PETITION CASE NO. 30 OF 2018**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLE 159 OF THE CONSTITUTION  
OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER ARTICLE 22, 23, 47, 48, 50, 165, 258,  
AND 259 OF THE CONSTITUTION OF KENYA AND THE  
ENFORCEMENT OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**THE CHURCH COMMISSIONERS FOR KENYA.....PETITIONER**

**AND**

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

**JUDGEMENT**

1. The Petitioner is a Trustee of the Anglican Church in Kenya. It oversees all properties of the Anglican Church in Kenya. The Respondent is a commission established under Article 67 of the Constitution of Kenya and its functions includes Management of Public Land on behalf of the National and County Governments.

2. The Petitioner filed this Petition against the Respondent in which it sought the following reliefs:-

*a) A declaration be made that the Petitioners fundamental rights , and in particular the right to be heard and access justice , and freedoms of the individual under Article 47,48,and 50 of the Constitution have been contravened and violated by the Respondents herein.*

*b) The Order of certiorari to call up into the High Court and to quash the proceedings and decision therein made by the Respondent leading to the recommendation published vide gazette Notice No.97 of 17<sup>th</sup> July 2017 as contained in Kenya Gazette Vol.CXIX revoking title LR No. Nairobi Block 72/2256.*

*c) There be an order of prohibition to prevent the Respondent by itself or through any other body from commencing any proceedings, discussing issues relating to LR No. Nairobi Block 72/2256.*

*d) Any further order direction or writ as the Honourable Court deems fit, just and appropriate to grant.*

*e) Cost of the suit.*

3. The Petition was served upon the Respondent which did not file any response. On 27<sup>th</sup> February 2020, the Respondent's Advocates prayed for 14 days to enable her file a replying affidavit to the Petition and file submissions but as at the time of writing this judgement in May, no replying affidavit or submissions had been filed and if any were filed, then they are not in the file.

4. The Petitioner contends that sometimes on 7<sup>th</sup> February 1983, the Commissioner of lands, the predecessor of the Respondent issued a letter of allotment to it in respect of a parcel of land situate at Langata area next to Civil Servants Estate measuring 0.76 hectares. The Petitioner accepted the allotment vide a letter dated 27<sup>th</sup> January 1984 after which the requisite fees were paid. As the plots in the area had not been properly surveyed, the Commissioner of Lands issued the Petitioner with a fresh letter of allotment but the acreage was reduced to 0.60 hectares. The Petitioner then went on to put up a church known as ACK, church of Good Shepard.

5. The Petitioner was issued with a title to the property on 13<sup>th</sup> July 2013 under LR No. Nairobi/Block 72/2256. The Petitioner then put up a sanctuary, Sunday school, office block and a nursery school. On 17<sup>th</sup> July 2017 the Respondent through a special issue of Gazette Notice Vol. CXIX-No.97 directed the Chief Land Registrar to revoke the title of the Petitioner on grounds that the land was public property. The decision was arrived at based on a complaint by Kenya National Highways Authority (KENHA).

6. The Petitioner contends that it was not served with any complaint by KENHA despite the Respondent claiming that it invited the affected parties through National dailies to go and give their views during the review process of the grants in question. The Petitioner states that the National dailies where the advertisements were made are not disclosed and that the petitioner was not aware of the said notices.

7. The Petitioner contends that it should have been notified through physical service as the Respondent was aware of its location and more so given the fact that the petitioner had sued KENHA in ELC case No. 893 of 2013 and this particular case had been mentioned in the Gazette Notice published by the Respondent. In that suit, the Petitioner had sought a permanent injunction against KENHA and the Attorney General, a declaration that it was owner of LR No. Nairobi/Block 72/2256 and costs of the suit. The Petitioner was granted temporary injunction orders which were limited to six months but which were subsequently extended by consent to last until hearing and determination of the suit.

8. The Petitioner therefore argues that its Constitutional rights under Articles 47, 48 and 50 of the Constitution have been violated. I have carefully gone through the supporting documents and the submissions filed. This being a constitutional petition, I have to determine whether the petitioner's rights have been violated because that is the basis upon which the reliefs will be granted if it is found that there was violation or denied, if there was no violation.

9. The Respondent acted on the basis of a complaint filed by KENHA. Before KENHA filed its complaint with the Respondent, KENHA had been embroiled in a dispute with the Petitioner. This dispute was the basis of the Petitioner filing ELC 893 of 2013. In the materials provided by the Petitioner, it is clear that the Petitioner with other land owners in the area had been notified that their properties were on a road reserve. There were notices given vide Gazette Notice No.3632 published on 6<sup>th</sup> August 2003 and notice of demolition published in the Kenya Times Newspaper of 6<sup>th</sup> August 2003. KENHA subsequently marked various buildings for demolition including the property of the Petitioner.

10. When KENHA complained to the Respondent, the Respondent published notices in the Daily Newspapers calling upon those whose properties were affected to go and give their views during review of the grants. The Petitioner was aware of the issue because it already had a case against KENHA in court. The Petitioner chose not to attend the hearings which went on ex-parte. This resulted in the decision which the Petitioner is now complaining.

11. Article 47 of the Constitution provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. In the instant case, the affected parties were given an opportunity to be heard when there was publication in the Daily Newspapers. It is not practically possible to serve each affected person individually hence the need to serve through publication in the newspapers. The Petitioner cannot claim that it did not know of the publication. This is particularly not tenable given the fact that there was already a dispute between the Petitioner and KENHA over the property. If a party is served and does not appear, the party cannot later turn around and say that it was condemned without being heard. In the circumstances therefore, I find that the rights of the Petitioner under Article 47 of the Constitution were not violated.

12. Article 48 of the Constitution provides as follows:-

***“The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice”.***

The Petitioner is already in Court

The Petitioner has not shown how its access to justice has been hindered.

13. Article 50 of the Constitution provides for a fair hearing. The Petitioner has moved the Court for hearing of its Petition. The Petition has been heard by the Court and there is no indication that the Petitioner's rights to fair hearing have been violated. The Petitioner has already a case before ELC Court. This is the best forum where the issue of the legality of title can be ventilated. As I have found that the Constitutional rights of the Petitioner were not violated. I find no merit in this Petition which is hereby dismissed with no order as to costs.

**Dated, Signed and delivered at Nairobi on this 14<sup>th</sup> day of May 2020.**

**E.O.OBAGA**

**JUDGE**

In the absence of parties who had been duly notified of the date and time of delivery of Judgement.

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**