



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 18 OF 2011**

IN THE MATTER OF:           ARTICLE 22 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF:           ALLEGED CONTRAVENTION OF THE BILL OF RIGHTS UNDER  
ARTICLE 22, 23(3) AND 40(3) OF THE CONSTITUTION OF KENYA

**BETWEEN**

SOHOL LIMITED.....  
.....PETITIONER

AND

1. THE REGISTRAR OF LANDS,  
KWALE

2. THE ATTORNEY-GENERAL.....  
.....RESPONDENTS

**JUDGMENT**

1. In its Amended Petition dated 25<sup>th</sup> February, 2014, the Petitioner, SOHOL LIMITED sought the following orders -

**(a) A declaration that the Respondents have threatened to deprive the Petitioner's lawful right to its property and constitutional right under the Bill of Rights Articles 22(1) and Article 40(3) of the Constitution of Kenya.**

**(b) An order be issued to restrain the Respondents from having any dealings whatsoever involving any other title deed purportedly issued by the 1<sup>st</sup> Respondent in respect of the parcel of land known as Kwale/Galu Kinondo/715 or to make or cancel any entries in the green card in either Part B – Proprietorship Section or Part C – Encumbrances Section other than in respect of the title deed dated 25<sup>th</sup> February, 1987 issued by Kwale District Land Registry in the name of Sohol Limited of P. O. Box Number 30322, Nairobi being Edition 2, opened on the 24<sup>th</sup> March 1976 and signed by the Land Registrar at that time namely Mr. Mohamed Jembe.**

(c) A direction that for any future dealing or transaction the written consent of both the Chargees of the Charge dated 18<sup>th</sup> May 2009 registered herein as Entry No 5 namely Pradip Devram Somaia and Hiranyalata Pradip Somaia should be obtained and duly signed by them. A copy of the said Entry No. 5 dated 19/6/09 is annexed marked "A" as being the correct entry made in the Part C – Encumbrances Section.

(d) An order of prohibition to prohibit the Respondents from removing, cancelling or destroying the original green card in respect of the aforesaid title deed dated 25<sup>th</sup> February, 1987 being Edition 2 opened on the 24<sup>th</sup> March 1976 or from making, signing or issuing any other title deeds in respect of the said property Kwale/Galu Kinondo/715.

(e) A direction that the Respondents shall retain only one green card in respect of the aforesaid title deed dated 25<sup>th</sup> February 1987 being Edition 2 opened on 24<sup>th</sup> March 1976 and all lawful Entries relating to all transactions or dealings in respect thereof from Entry No. 1 to 11 inclusive. All future entries as from entry No. 12 onwards shall be made in the said green card only and page 2 of the original of the said green card, a copy whereof is annexed to the Affidavit sworn on the 18<sup>th</sup> September 2012 by Joseph Kiprotich Kosgei, should have the completed details of the Edition and the date when it was opened including the Registration Section and the Registry Map Sheet Number inserted therein as follows:-

Edition 2, opened on 24<sup>th</sup> March 1976; Registration Section – Galu/Kinondo Registry Map Sheet Number – 4, respectively to coincide with page 3 of the said green cards copies whereof are annexed to hereto marked "B", "C", "D" and "E".

(f) A certified copy of the Court Order relating to the aforesaid Order set out herein shall be registered against the title of Kwale/Galu Kinondo/715 in Part C – Encumbrances Section in the said original green card being Edition 2 opened on the 24<sup>th</sup> March 1976 and the said Court Order herein shall supersede the previous Orders of the Court issued herein dated 21<sup>st</sup> March 2011 and 22<sup>nd</sup> November 2011.

2. The Petition was supported by the Affidavit of Nareshchandra Girdharlal Hindocha sworn on 25<sup>th</sup> February, 2014 and the grounds on the face of the Petition. In addition the Petition was also supported by the oral evidence of the said Nareshchandra Girdharlal Hindocha (PW1) who testified on behalf of the Petitioner in his capacity as a director of the Petitioner. PW1 in his evidence produced the original of the Certificate of Lease issued to the Petitioner on 25<sup>th</sup> February 1987 and the charge to Devran Somaia for Shs. 200,000/=. He testified that upon carrying out an official search he discovered that there were two green cards on the same title. He also discovered a purported sale by the Petitioners to a third party of which they had no idea, and of whom they had no knowledge. Despite a report or complaint made to Criminal Investigation Department (CID), they had no information that any action was taken. The Petitioner suspected that with the issue of the two Green Cards, some fraud was being perpetuated by the Respondents upon the Petitioner who stood to lose its property hence the Petition.

3. When cross-examined by the litigation counsel, Mr. Eredi, PW1 reiterated that they did not deem it wise to inform the purported purchaser because, they had no knowledge of him, but when they got wind of the potential fraud, they filed the Petition, the subject of this Judgment.

4. Because the Respondents had opted to give no evidence, and the Petitioner had filed on 10<sup>th</sup> May, 2011 its written submissions dated 9<sup>th</sup> May, 2011 but the matter did not progress as fast as it should, both the Petitioners and Respondents agreed to call the Land Registrar, Kwale County Land Registry to come and shed light on the issue of the two Green Cards on the same title.

5. In his evidence taken on 10<sup>th</sup> December, 2015, the First Respondent represented by Mr. Abraham Ngugi Njoroge testified that the two Green Cards represented a transition between the old law under land certificates were issued upto 31/01/1976. The new Green Card represented the change in the Registered

Land Act (Cap 300, Laws of Kenya, now repealed) under which Title Deeds (not Land Certificates) were issued as evidence of title, and commenced from 4<sup>th</sup> March 1976 and DW1, confirmed that both editions of title are lawful. DW1 also confirmed that Entry No. 5 made on 19<sup>th</sup> June, 2009 against the Title was made in error, hence the cancellation. DW1 had no objection to the orders sought being granted.

### **ANALYSIS AND DETERMINATION**

6. The Petition herein was filed following an official search by the Petitioner's Counsel in which they discovered attempts to fraudulently deprive them of their title to the parcel of land known as GALU/KINONDO/715 (the suit land). The Petitioner's counsel discovered entry purportedly issued on 16<sup>th</sup> February, 1987, of a Land Certificate, whereas the proprietorship section showed the transfer was made on 16<sup>th</sup> February, 1987, Land Certificate was issued on 25<sup>th</sup> February, 1987, which coincided with the Land Certificate held by the Petitioner. At the same time the Petitioner came across an Agreement for Sale dated 27<sup>th</sup> September, 2010, a transfer of land dated 12<sup>th</sup> November, 2010 purportedly made in its name, and executed by a person whose identity could not be established from the signature but certainly, not a director of the Petitioner. The Petitioner honestly believed that these were acts being perpetrated by the Respondents or other persons in collusion with the Respondents.

7. DW1, who impressed the court as being sincere testified that they would not know of the activities of parties outside there, and only acted pursuant to documentation presented at the Land Registries, and of which they would have no suspicion that they were forgeries. Nevertheless I think, the Respondents were proper parties, as the first Respondent in particular is the custodian of all land records in the County and country through the various Land Registries, country-wide.

8. In the circumstances, there is reason, sufficient and adequate for the grant of orders sought herein, **firstly** to bind the First Respondent to be vigilant that every person who purports to be a seller and transferor of land is the person, natural or juridical who is the legal owner of the property he/she/it is purporting to sell and transfer, and **secondly**, it puts the purported purchaser on alert, that checks and road blocks on the title, need to be investigated and cleared before the transaction can or could proceed.

9. There shall therefore be Judgment for the Petitioner in terms of the orders out in paragraphs (a) – (f) of the Petition, and as follows –

(a) A declaration that the Respondents have threatened to deprive the Petitioner's lawful right to its property guaranteed under the Bill of Rights Articles 22(1) and Article 40(3) of the Constitution of Kenya.

(b) An order be issued to restrain the Respondents from having any dealings whatsoever involving any other title deed purportedly issued by the 1<sup>st</sup> Respondent in respect of the parcel of land known as Kwale/Galu Kinondo/715 or to make or cancel any entries in the green card in either Part B – Proprietorship Section or Part C – Encumbrances Section other than in respect of the title deed dated 25<sup>th</sup> February, 1987 issued by Kwale District Land Registry in the name of Sohol Limited of P. O. Box Number 30322, Nairobi being Edition 2, opened on the 24<sup>th</sup> March 1976 and signed by the Land Registrar at that time namely Mr. Mohamed Jembe.

(c) A direction that for any future dealing or transaction the written consent of both the Chargees of the Charge dated 18<sup>th</sup> May 2009 registered herein as Entry No. 5 namely Pradip Devram Somaia and Hiranyalata Pradip Somaia should be obtained and duly signed by them. A copy of the said Entry No. 5 dated 19/6/09 is annexed marked "A" as being the correct entry made in the Part C – Encumbrances Section.

(d) An order of prohibition to prohibit the Respondents from removing, cancelling or destroying the original green card in respect of the aforesaid title deed dated 25<sup>th</sup> February, 1987 being Edition 2 opened on the 24<sup>th</sup> March 1976 or from making, signing or issuing any other title deeds in respect of the said

property Kwale/Galu Kinondo/715.

(e) A direction that the Respondents shall retain only one green card in respect of the aforesaid title deed dated 25<sup>th</sup> February 1987 being Edition 2 opened on 24<sup>th</sup> March 1976 and all lawful Entries relating to all transactions or dealings in respect thereof from Entry No. 1 to 11 inclusive. All future entries as from entry No. 12 onwards shall be made in the said green card only and page 2 of the original of the said green card, a copy whereof is annexed to the Affidavit sworn on the 18<sup>th</sup> September 2012 by Joseph Kiprotich Kosgei, shall have the completed details of the Edition and the date when it was opened including the Registration Section and the Registry Map Sheet Number inserted therein as follows:-

Edition 2, opened on 24<sup>th</sup> March 1976; Registration Section – Galu/Kinondo Registry Map Sheet Number – 4, respectively to coincide with page 3 of the said green cards copies whereof are annexed hereto marked “B”, “C”, “D” and |E”.

(f) A certified copy of this Order shall be registered against the title of Kwale/Galu Kinondo/715 in Part C – Encumbrances Section in the said original green card being Edition 2 opened on the 24<sup>th</sup> March 1976 and the said Court Order herein shall supersede the previous Orders of the Court issued herein dated 21<sup>st</sup> March 2011 and 22<sup>nd</sup> November 2011.

10. There shall be orders accordingly. As conceded to by counsel for the Petitioner, there shall be no costs against the Respondents.

**Dated, Signed and Delivered in Mombasa this 10<sup>th</sup> day of March, 2016.**

**M. J. ANYARA EMUKULE, MBS**

**JUDGE**

In the presence of:

Miss Onesmus holding brief for Mr. Khanna for Petitioner

No Appearance for Respondents

Mr. Silas Kaunda Court Assistant