



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Miscellaneous Civil Application 1443 of 2004**

**REPUBLIC ..... APPLICANT**

**AND**

**THE PERMANENT SECRETARY,**

**MINISTRY OF LANDS AND HOUSING ..... RESPONDENT**

***EX PARTE* ..... JAMES CHERUIYOT BOIT**

**JUDGMENT**

1. In my judgment delivered on 21<sup>st</sup> September 2012 in the case of *Republic v the Permanent Secretary Ministry of Lands and Housing exparte James Cheruiyot Boit, Nairobi JR Mic. Appl. No. 251 of 2004*, I stated that, “[16] *In this case the applicant is the holder of lawful and indefeasible title [LR No. 209/13262] under the provisions of the Registration of Titles Act. The title cannot be taken away without following due process. Furthermore the demand for rent and threat of eviction are inconsistent with the provisions of the Act which provide for indefeasibility of title. The action of the respondent must therefore be declared arbitrary, unreasonable and unlawful.*”

2. The applicant in this case is the same applicant in the previous case. The subject property is House No. HG No. 655B situated in Kileleshwa, Nairobi on the property known as LR No. 209/13262. The only difference in this matter is that the letters threatening the applicant with eviction are written by the Permanent Secretary, Ministry of Roads, Public Works and Housing. In the previous case, the letters which were quashed were written by the Permanent Secretary, Ministry of Lands and Housing.

3. As the previous suit dealt with the status of the property and was one of declarative effect as regards the suit property, this suit is unnecessary in view of the specific findings I have alluded to in paragraph 1 above. Those findings bind the respondent in any case.

4. In the circumstances, the Notice of Motion dated 18<sup>th</sup> November 2004 is superfluous, serves no purpose and it is accordingly dismissed. There shall be no order as to costs.

**DATED and DELIVERED at NAIROBI this 2<sup>nd</sup> day of May 2013**

**D.S. MAJANJA  
JUDGE**

Mr Maweu instructed by Adera and Company Advocates for the ex-parte applicant.

Ms Masaka, Litigation Counsel, instructed by the State Law Office for the respondent.