



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC SUIT NO. 1005 OF 2012**

**RABUKI INVESTMENTS LIMITED.....PETITIONER**

**-VERSUS-**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**THIKA DISTRICT LAND REGISTRAR.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

The Petitioner filed the petition dated 10<sup>th</sup> December, 2012 and seeks orders in the following terms:-

- a. A declaration that the Petitioner is the lawful proprietor of Land reference number RUIRU KIU BLOCK 2/Githunguri/4240 (original number Ruiru East Block 1/546) as comprised in a certificate of title deed registered in the land registry at Thika on 15<sup>th</sup> January, 1997.
- b. An order of certiorari do issue to bring to this Honourable Court for the purposes of being quashed and/or cancelled, the register opened by the Respondent in violation of the petitioners rights;
- c. An order of prohibition do issue to prohibit respondents by themselves, servants, agents or whomever from any matter interfering with or issuing 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 to land reference number Ruiru Kiu Block 2/Githunguri/4240 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 restraint he respondents by themselves, their agents, servants or whomever from any manner alienating the petitioners property known as Ruiru Kiu Block 2/Githunguri/4240 (original number Ruiru East Block 1/546)
- f. The Respdnts be ordered to issue the title for Ruiru Kiu Block 2/Githunguri/4240 (original number Ruiru East Block 1/546).
- g. Damages and costs of the petition.

The petitioner has filed a supporting affidavit sworn by Nganga Munene on 10<sup>th</sup> December, 2012 in support of the petition with various annexures. The petitioner has through counsel further filed written submissions in support of its petition; in response and in opposition to the petition the respondents have through Christopher Maina Gichuki, Land Registrar, Thika filed a replying affidavit sworn on 26<sup>th</sup>

February, 2013.

The facts that emerge from this petition are fairly straight forward. On the part of the petitioner it is averred that the petitioner was the registered owner of land title number **Ruiru/East Block 1/546** having purchased the same from Prudential Finance Limited who were the chargees. The Petitioner was issued with a title deed for the parcel of land on 15<sup>th</sup> January, 1997 as per the copy of the title annexed and marked "NM1" in the Petitioner's supporting affidavit. The petitioner avers that in January, 2010 when it sought an official search certificate for purposes of subdivision the petitioner was advised at the offices of the 3<sup>rd</sup> respondent that the registration particulars for the area had been changed and that the registration for the parcel of land would now be **Ruiru Kiu Block2/Githunguri/4240**. The Petitioner avers that at the request of the Land Registrar it surrendered its original title to facilitate the issuance of a replacement title incorporating the new registration particulars. The land Registrar sought confirmation by the original owner M/s Githunguri constituency Ranching Company Ltd as regards the location and authenticity of the previous owner and the petitioner on or about 3<sup>rd</sup> September, 2010 obtained a clearance certificate from the said Githunguri constituency Ranching Company Ltd which showed that Land was allocated to Zachary Njoroge Ngatia who had charged the land to Prudential Finance Limited from whom the petitioner purchased the property.

The petitioner avers that despite repeated demands to the Land Registrar the 3<sup>rd</sup> Respondent has refused and/or neglected to issue the petitioner with a replacement title carrying the new registration details and the petitioner is apprehensive that the 3<sup>rd</sup> Respondent could act in collusion with other persons and fraudulently alienate the petitioner's parcel of land to third parties to the utter prejudice and detriment of the petitioner. The petitioner's apprehension that all is not well appears to have been fuelled by what he petitioner describes as the 3<sup>rd</sup> respondent's reluctance to issue official search certificates and/or abstracts of title when the petitioner applied for them and that precipitated the filing of this petition.

The 3<sup>rd</sup> Respondent acknowledge that the petitioner was issued with a title deed for title number **Ruiru East/Block 1/546** on 15<sup>th</sup> January, 1997 following the discharge of the charge in favour of Prudential Finance Limited but avers that sometimes in 2010 the petitioner through its official attended before the Land Registry Thika and sought to change the particulars of the Land Parcel from **Ruiru East/Block 1/546** to parcel number **Ruiru Kiu Block 2/4240** which the office proceeded to do as per new title marked 'CG2' attached to the replying affidavit. The 3<sup>rd</sup> Respondent however avers since there was no documentation to support the change, the 3<sup>rd</sup> respondent's office did not release the new title but rather required the petitioner to avail documentary proof that parcel number Ruiru East/Block1/546 was actually the same as Ruiru Kiu Block2/4240 and in this regard advised the petitioner to obtain a letter from Githunguri constituency Ranching who are the initial owners of the suit property explaining how the alleged changes came about. The 3<sup>rd</sup> respondent state that a clearance certificate from Githunguri constituency Ranching Company Ltd dated 3<sup>rd</sup> September, 2010 did not prove or explain how the suit parcel got changed and it merely certified one Zacharia Njoroge Ngatia as owner of Ruiru East/Block1/546 as per their records. The 3<sup>rd</sup> Respondent in the premises contends that they are not aware how the change of the parcel particulars was done and that their insistence that the petitioner furnishes documentary evidence to support the changes is not unreasonable and cannot be unconstitutional. The 3<sup>rd</sup> respondent avers that unless there is evidence to support the alleged changes of the parcel particulars it would be imprudent on their part to release the new title number **Ruiru Kiu/Block2/4240** as demanded by the petitioner as there is no proof that parcel number **Ruiru East/Block1/546** is one and the same property.

I have reviewed the petition and the supporting affidavit t hereto and the respondents replying affidavit and the submissions filed on behalf of the parties and the issues that stand to be determined is whether indeed there has been a change of land parcel number Ruiru East/Block1/546 to Ruiru Kiu/Block2/4240 has alleged by the petitioner and if so whether the respondents through the 3<sup>rd</sup> Defendant have unreasonably and/or unlawfully neglected to effect the changes to the prejudice of the petitioner.

Under section 6(1) of the repealed Registered Land Act Cap 300 laws of Kenya Land, Registries were

required to be maintained in each district and it provided thus:-

**6(1) There shall be maintained in each registration district a land registry in which there shall be kept:-**

- a. **A register, to be known as the land register, in accordance with Division 2;**
- b. **The registry map;**
- c. **Parcel filed containing the instruments which support subsisting entries in the land register and any filed plans and documents.**
- d. ....
- e. ....
- f. ....

Section 18 of the Registered Land Act provided for maintenance of Registry Maps for every registration district as follows:-

**18(1) the director of surveys shall prepare and thereafter maintain a map or series of maps to be called the registry map, for every registration district.**

**18(3) On the registry map, every registration district shall be divided into registration sections, which shall be identified by distinctive names and the registration sections any be further divided into blocks, which shall be given distinctive numbers or letters or combination of numbers and letters.**

Section 162(1) of the Land Act No. 6 of 2012 provides the savings and transitional provisions with respect to rights, actions and obligations that may have accrued before the coming into force of the act and provides as follows:

**162(1) Unless the contrary is specifically provided in this Act, any right, interest, title, power or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.**

I have made reference to the foregoing statutory provisions as I consider they have a bearing to the instant suit. The petitioner alleges there were changes to the registration particulars of the suit property and the respondents challenge the petitioner to prove there were indeed such changes. In my view I cannot see how there could be changes to registration particulars of a of a registration Section and/or block without the involvement of the Director of Surveys and the District land Registrar as envisaged under Section 18 of the Registered land Act. In the instant petition the change of the original title Ruiru East/block1/546 to Ruiru Kiu Block2/4240 could not be had without necessarily effecting an amendment to the Registry Map which would naturally involve the Director of Surveys and the Land Registrar. I am unable to appreciate how Githunguri constituency Ranching Company Ltd as the original owners of the various parcels of land including the one owned by the petitioner could on their own effect changes to the registration particulars of the parcels of land without the involvement of the District land Registrar.

It is not understandable why neither the petitioner nor the respondent exhibited a survey map delineating the suit property. In the premises, I am of the view the 3<sup>rd</sup> Respondent was justified to seek documentary proof to verify the changes as alleged by petitioners. The certificate of clearance furnished by Githunguri Constituency Ranching Company Ltd dated 3<sup>rd</sup> September, 2010 could not satisfy the request for proof of the changes.

In the circumstances I am unable to find any merit in the petitioners' petition and I decline to issue the declarations and/or orders sought. However, since the 3<sup>rd</sup> respondent acknowledges the petitioner is the registered owner of land title number Ruiru East/Block1/546 I direct that the 3<sup>rd</sup> Respondent restores the petitioners name as the registered owner of the said parcel of land and that should the registry map have been altered/amended to show that this property was changed to Ruiru Kiu/Block2/4240 the 3<sup>rd</sup>

respondent should issue the petitioner a title incorporating the changed particulars.

I make no orders for costs in regard to the petition and each party will bear their own costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>TH</sup> DAY OF OCTOBER 2013.**

**J. M. MUTUNGI**

**JUDGE**

In the presence of:

..... for the Plaintiffs

..... for the Defendants