



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CIVIL APPL NO. 73 OF 2012 (J.R)

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
REMEDY OF CERTIORARI BY ROSEMARY WANJIRU NJIRAINI**

AND

IN THE MATTER OF GOVERNMENT LANDS ACT, CAP 280

AND

IN THE MATTER OF THE TRUST LAND ACT CAP 288

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, NO. 3 OF 2012

AND

IN THE MATTER OF REVOCATION OF LAND TITLES BY THE REGISTRAR OF TITLES

AND

**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI BY WAY OF
JUDICIAL REVEIEW**

BETWEEN

ROSEMARY WANJIRU NJIRAINI.....EX-APPLICANT

AND

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

THE REGISTRAR OF TITLES.....2ND RESPONDENT

RULING

1. Pursuant to leave granted on 4th December, 2012 allowing the *ex-parte* applicant to apply for *certiorari* the *ex-parte* applicant filed the notice of motion dated 18th December, 2012 seeking an order of *certiorari* calling for and quashing the decision by the Registrar of titles cancelling the title for the parcel of land LR NO.533/694 also known as Molo Township block 11/157 (hereinafter called "the suit property) belonging to her.

2. The application is premised on the grounds that the *ex parte* applicant is the registered owner of the suit property; that she obtained the suit property for value and without knowledge of any other person's interest or claim over it; that with the respondents' knowledge, she changed the property's registration regime from RTA to RLA. Further that the respondents did not, at any time, object to any of her dealings, including her application for consent to develop the suit property. That it's only recently when she learnt about the Registrar's decision cancelling her title to the suit property (vide gazette notice No. 8653 of 29th June, 2012).

3. The *ex-parte* applicant contends that the Registrar's decision ignores the fact that she obtained the suit property for value and without knowledge of any other person's interest or claim over the suit property; that in cancelling the title the Registrar failed to take into account relevant circumstances of the case notably, that she was not aware of any objection to the title or any defects or encumbrances on the land. Further that the Registrar failed to consider the fact that relevant consents for developing the land were approved without any objection from the respondents or at all.

4. It is also contended that the cancellation of the applicant's title was arbitrary and in breach of the principles of natural justice. It is also said to have contravened the applicant's proprietary rights as enshrined in the Constitution.

5. The application is supported by the *ex-parte* applicant's affidavit sworn on 18th December, 2012. In the affidavit the applicant has reiterated the grounds listed above. Annexed to the affidavit are an order by this court granting the *ex-parte* applicant leave to apply for *certiorari*, the Certificate of Lease issued to her, consent/ approval to develop the suit property, approval of proposed development and Gazette Notice No. 8650 of 29th June, 2012 vide which the title to the suit property was revoked.

6. Even though the respondents were served with the pleadings in this cause they did not enter appearance or file any response thereto. The application was therefore heard *ex-parte*.

7. Counsel for the applicant filed submissions. The gist of the submissions, which I have read and considered, is that the 2nd respondent does not have power to revoke or cancel a duly issued title deed. In support of this contention, reference is made to a number of High Court decisions where the issue was canvassed. Among the authorities cited is the decision of Edward M. Muriithi J., in *Republic v. The Registrar of Titles, Mombasa & 2 others ex-parte EMFIL Limited (2012)eKLR* where the judge observed:-

"I have considered the respective submissions by counsel on the main issue of the registrar's power to revoke title to land and the justification of public interest and I have to find that there is unanimity among the courts that the registrar has no authority in law to revoke or cancel titles to land, whether in public interest or otherwise. It is the courts which must order the revocation of titles or refuse to uphold the private individual's title to land in case of public interest where the applicant has committed fraud or other illegalities with regard to the title as happened in the several authorities cited by the respondents. To hold otherwise would lead to usurpation of the judicial mandate of the courts by the executive in contravention of the constitutional doctrine of separation of powers...For these reasons, I find that the government cannot revoke title to land even for public need or for alleged illegality. The government is obligated to move the court for appropriate orders to revoke, cancel or rectify title in such circumstances. A unilateral decision published in the gazette will not do. The consideration of public interest such as presented by the respondent in these proceedings may only be used by the court in an appropriate case in making an

order of cancellation of title or authorizing subject to due compensation the compulsory acquisition or take over of private property.” (emphasis mine).

8. The remedy of judicial review is concerned not with private rights or merits of the decision being challenged but with the decision-making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. (see **Republic V. Secretary of State for Education and Science** *ex parte Avon County Council* (1991) 1 ALL ER 282 at 285). It lies for for excess of jurisdiction or absence of it or for departure from the rules of natural justice. see **Kenya National Examination Council V. Republic**; Civil Appeal No. 266 of 1996.

9. In the instant application the applicant contends that the 2nd respondent, among other things, acted in excess of his powers by revoking the *ex-parte* applicant's title and that it breached the rules of natural justice by revoking the *ex-parte* applicant's title without giving her an opportunity to be heard before the decision, which affects her interest in the suit property was made.

10. From the record before me there is no doubt that the 2nd respondent, vide Gazette Notice No.8650 of 29th June, 2012 cancelled or purported to cancel a number of properties, the *ex parte* applicant's property included.

11.The question that arises from this cause is whether in revoking the *ex-parte* applicant's title the 2nd respondent acted in excess of its jurisdiction or acted in breach of the rules of natural justice. If it is proved that it acted in excess of its powers (jurisdiction) or in breach of the rules of natural justice, then, its decision would be quashed, in the appropriate circumstances by *certiorari*. I say this because *certiorari* will only issue if leave to apply for it was granted not more than six months of making of the impugned decision. See **Aga Khan Educational Service Kenya V. Ali Seif & 3 others** C.A No. 257 of 2003.

12.Upn considering the evidence before me, and on the basis of the authorities cited by the *ex- parte* applicant's counsel I find and hold that the 2nd respondent had no power to revoke or cancel the *ex-parte* applicant's title in the manner he did. I also find that by failing to accord the *ex parte* applicant a chance to defend herself, before the adverse decision was made, it breached the rules of natural justice.

13. As the remedy of judicial review is available for acting *ultra vires* (in excess of one's power) and for breaching the rules of natural justice, I am persuaded that a case has being made for granting the orders sought.

14. As regards whether the application herein meets the time limit for application of *certiorari*, I find that leave was granted before the time provided in our laws lapsed.

15. The upshot of the foregoing is that the application has merit and is granted as prayed.

Dated, Signed and Delivered at Nakuru this 8th day of November, 2013.

L N WAITHAKA

JUDGE

PRESENT

Mr Kirui holding brief for Ms Katambi for the respondent

Mr Matiri holding brief for Mr Karanja for the Applicant

CC: Emanuel Maelo.

L N WAITHAKA

JUDGE