



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

JUDICIAL REVIEW CASE NO. 51 OF 2017

PLACID VIEW PROPERTIES LIMITED.....EXPARTE APPLICANT

=VERSUS=

NATIONAL LAND COMMISSION.....1ST RESPONDENT

CHIEF LAND REGISTRAR.....2ND RESPONDENT

KENYA NATIONAL HIGHWAYS AUTHORITY.....1ST INTERESTED PARTY

DESIGN LIMITED.....2ND INTERESTED PARTY

JUDGMENT

Background

1. Pursuant to the leave granted by this court on 9/2/2018, the ex-parte applicant, Placid View Properties Limited (**the applicant**) brought a judicial review motion dated 27/2/2018. The motion was subsequently amended on 25/9/2019 to join Kenya National Highways Authority and Design Limited as interested parties in the motion. Through the motion, the applicant sought an order of *certiorari* quashing **Item Number 14 of Table 16 – Southern Bypass**, contained in **Gazette Notice No 6865, S/No 14**, published by the National Land Commission (**the 1st respondent**) on 17/7/2017 in relation to **Land Reference Number 209/12367**, Nairobi (**the suit property**). The import of the impugned Gazette Notice was that the 1st respondent revoked the applicant's title in exercise of its review jurisdiction under the provisions of Article 68 (c)(v) of the Constitution and Section 14 of the National Land Commission Act.

2. The motion was premised on the following verbatim grounds:

a) The respondent is obliged by law to observe the rules of natural justice to act lawfully, fairly and reasonably in exercise of their statutory mandate under the Kenyan Laws.

b) The 1st respondent vide the impugned Gazette Notice revoked the Title of the ex-parte applicant on the basis of complaints and/or interests from the Kenya National Highways Authority and a company known as Messrs Design Limited.

c) The ex-parte applicant did not participate in any hearing against the indicated parties i.e Kenya National Highways Authority and Design Limited as indicated in the Gazette Notice.

d) The ex-parte applicant was not invited to examine the complaint lodged by either the Kenya National Highways Authority or Messrs Design Limited as indicated in the Gazette Notice; neither were they given an opportunity to defend themselves against the apparent complaint from the said parties contrary to Regulation 8 of The National Land Commission (Review of Grants and Dispositions of Public Land) Regulations, 2017.

e) The ex-parte applicant has to date not been notified of the findings of the Commission resulting to the impugned Gazette notice contrary to Regulation 28(5) of the National Land Commission (Review of Grants and Dispositions of Public Land) Regulations, 2017.

f) The 1st respondent to date has failed to render a decision in writing on the review of the ex-parte applicant's grant contrary to Regulation 29(1) that sets out the nature of the complaint lodged by either Kenya National Highways Authority or Messrs Design Limited; a decision that sets out a summary of the relevant facts and evidence adduced before the Commission, the determination and reasons supporting the Commission's decision contrary to Regulation 29(2) of The National Land Commission (Review of

Grants and Dispositions of public Land) Regulations, 2017.

g) The ex-parte applicant have not been informed of any remedy to which they are entitled to with respect to the decision of the commission contrary to Regulation 29(1) (d) of the National Land Commission (Review of Grants and Dispositions of Public Land) Regulations, 2017.

h) The ex-parte applicant is in lawful possession of Land Reference No 209/12367, all the transactions and entries therein have been appropriately sanctioned by the state.

i) Section 26 (1) of the Land Registration Act 2012 provides that the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge.

j) The ex-parte applicants stand to suffer damages and loss from the use and enjoyment of the suit premises. The ex-parte applicant has invested heavily on the property amounting to millions of US Dollars over time.

k) The ex-parte applicants humbly pray that this honourable court be pleased to issue the orders sought to safeguard and prevent the violation of their fundamental rights under the Constitution, and to protect the succinct principles, dictates and the supremacy of the constitution.

l) The court has unfettered jurisdiction to grant the orders sought.

Applicant's Case

3. The applicant's case was that it was the registered proprietor of the suit property together with an adjacent piece of land, Land Reference Number 209/12148. Both properties are located at the interchange of Mombasa Road and the Southern Bypass. The applicant has erected on the two properties a hotel going by the name **Ole Sereni**. The applicant contended that it acquired the suit property from M/s Swan Carriers Limited in 2007 at a consideration of Kshs 10,000,000.

4. The applicant further contended that upon acquiring the two properties, it obtained relevant development approvals and established thereon the Hotel. The development took about 3 years to be completed. Ole Sereni Hotel is a reputable facility in the hospitality industry in Kenya.

5. In or about 2016, the applicant received a notice from the respondent indicating that a third party, **Indian Spray Painters Limited**, had lodged a complaint at the Commission, to the effect that the applicant had encroached onto their property, LR No. 209/11909. The 1st respondent subsequently, through a letter dated 11/4/2017, informed the ex-parte applicant that they had received a complaint from the Kenya National Highways Authority with regard to Land Reference Number 209/12367 (**suit property**) and Land Reference Number 209/11909, owned by the applicant and M/s Indian Spray Painters Limited, respectively.

6. The applicant contended that through the said letter dated 11/4/2017, the 1st respondent summoned the applicant for a hearing slated for 18/4/2017 on the complaint made by Kenya Highways Authority (KENHA) through a letter dated 17/6/2014. On the said date, the applicant attended but they were advised that the matter was taken out of the hearing list and that they would be notified of a fresh hearing date.

7. It was the applicant's case that, without any notification and without any hearing, the 1st respondent, through the impugned Gazette Notice, revoked the applicant's title on the basis of alleged complaints from the two interested parties named herein. The applicant contended that it did not participate in any hearing involving claims by the two interested parties.

8. The applicant further contended that the 1st respondent's revocation of its title was done without observing the rules of natural justice as set out in the Constitution, the Fair Administrative Action Act, and the National Land Commission Act.

1st Respondent's Case

9. The 1st respondent filed a replying affidavit sworn on 7/3/2019 by Brian Ikol, its Director for Legal Affairs and Enforcement. He deposed that the 1st respondent received a complaint from the 1st Interested Party vide a letter dated 17/6/2014. The 1st Interested Party requested for a review of the title to the suit property. The 1st respondent further received a complaint from M/s Matwetwe & Company Advocates acting on behalf of Indian Spray Painters Limited. The two complaints warranted the Commission to invoke its jurisdiction in line with **Section 14(1) of the National Land Commission Act**. Consequently, the 1st respondent admitted the complaints as a basis for review of the legality of the grant of the subject parcel. The 1st respondent invited, through a public notice in all dailies with nationwide circulation, all interested parties for a hearing on **16/2/2016, 23/2/2016 and 29/7/2016** at its Office, with a view to establishing the legality of the titles. The applicant, through their advocate, Mr Conrad Maloba, participated in and submitted during the hearings held on 16/2/2016, 23/2/2016 and 29/7/2016. Consequently, on 28/4/2017, the 1st respondent, after reviewing the legality of the applicant's grant, prepared a determination of its findings on the legality of the grant. It was the 1st respondent's case that the applicant was always informed and submitted during the proceedings before the Commission relating to the suit property.

2nd Respondent's Case

10. The 2nd respondent opposed the motion through Ground of Opposition dated 8/8/2019. He contended that the motion was defective because the parties who had initiated the review proceedings had not been joined in the motion. Secondly, he contended that the applicant

had been duly granted a hearing by the 1st respondent and there was no violation of Article 47 of the Constitution. Thirdly, he contended that the 1st respondent acted within its mandate. Fourthly, he contended that it was in the public interest that the impugned decision be upheld.

Case of the 1st Interested Party

11. The 1st interested party filed a replying affidavit sworn on 8/6/2020 by Milcah Muendo. She deposed that there was need for an interchange to ease traffic at the junction of Mombasa Road and Likoni Road. Consequently, in 1985, the Government developed a structural plan, **The Nairobi South Structure Plan No 42/28/85/9** whose purpose was to reserve land for the then proposed bypass road and railway reserve. Subsequently, the survey and design of the Nairobi Southern Bypass which includes the Nairobi Southern Bypass/Nairobi-Mombasa/Likoni Road Junction Interchange was completed in 1991. The said design covered the area reserved for the road by Structure Plan No 42/28/85/9 where the suit property was located. Construction of the Road began in 2010 and the initial alignments for the interchange were revised due to limited space resulting from encroachment onto the road reserve. While the construction was ongoing, the Cabinet Secretary for Transport, Infrastructure, Housing & Urban Development, in a letter dated 9/11/2016 (as a follow up to the earlier letter dated 17/6/2014), forwarded an updated list of properties encroaching on the By-pass to the 1st respondent for immediate review as they were required for the ongoing construction of the Bypass. After further investigations and survey, the said updated list excluded the suit property. The said exclusion was in no way a concession that the suit property was not on a road reserve or that the grant was legally issued.

12. The case of the 1st Interested Party was that the determination of the complaint contained in the letters dated 17/6/2014 and 9/11/2016 was ultimately left to the 1st respondent whose mandate entailed review of grants and dispositions.

Applicant's Rejoinder

13. In a further affidavit sworn on 15/6/2020 by Nazir Noordin, the applicant contended that the hearing before the Commission related to the complaint of encroachment on LR No 209/11909 raised by M/s Indian Spray Painters Limited. Secondly, the public notice published on 17/3/2017 did not include the suit property. Thirdly, the applicant's advocate appeared before the Commission in 2016 in relation to the complaint lodged by Indian Spray Painters Limited and not in relation to the complaint by the 1st and 2nd Interested Parties. Fourthly, the updated list of grants that was forwarded by the 1st Interested Party for review by the 1st respondent did not include the suit property.

Applicant's Submissions

14. Mr Maloba, counsel for the applicant, filed written submissions dated 15/6/2020. He framed the following as the four issues falling for determination in this motion: (i) whether **Gazette Notice No 6865, Table 16, S/No. 14** by the 1st respondent complied with the applicable law; (ii) whether the said Gazette Notice by the 1st respondent was lawful; (iii) whether the applicant is entitled to the reliefs sought; and (iv) who should bear costs of this suit.

15. On the first issue, counsel submitted that, when exercising its powers under **Section 14(c)** of the **National Land Commission Act**, the 1st respondent was to be guided by the principles set out in **Article 47 of the Constitution**, the **Fair Administrative Action Act** and **Section 14(3)** of the **National Land Commission Act**. Counsel added that under **Section 14(3)** of the **National Land Commission Act**, the 1st respondent was required to give notice to every person who appeared to have an interest in the grant or disposition to be reviewed and such person was entitled to appear before the Commission and inspect any relevant documents. Counsel argued that whereas the impugned Gazette Notice indicated that the 1st respondent published public notice of review hearings on 30/10/2016 and 18/1/2017 and that the material hearings were conducted from 30/1/2017 to 3/2/2017, Mr Brian Ikol deposed that the 1st respondent had published a public notice dated 17/3/2017 relating to review hearings scheduled for 16/2/2016, 23/2/2016 and 29/7/2016. Counsel contended that **Exhibit B1-2** which the 1st respondent relied on was a public notice published in the Daily Nation Newspaper Edition of 17/3/2017 and related to hearings scheduled for 27th and 28th March 2017. Counsel faulted Mr Ikol for deliberately misleading the court while aware that a notice published on 17/3/2017 could not serve to notify the applicant about review hearings purportedly conducted on 16/2/2016, 23/2/2016 and 29/7/2016 or the review hearings of 30/1/2017 to 3/2/2017 alluded to in the impugned Gazette Notice. Counsel added that in any case, the public notice exhibited by Mr Ikol did not contain the suit property. Counsel added that the hearings conducted on 16/2/2016, 23/2/2016 and 29/7/2016 related to a complaint of encroachment lodged by M/s Indian Spray Painters Limited. Relying on the **High Court** decision in **Livingston Kunini v Minister for Lands & 4 others (2014) eKLR**, counsel submitted that the 1st respondent had failed to follow the laid down procedure in conducting review of the applicant's grant.

16. On the second issue, counsel submitted that the 1st respondent acted contrary to the provisions of **Article 47 of the Constitution**; provisions of the **Fair Administrative Action Act**; and the provisions of **Section 14 (3)** of the **National Land Commission Act** which required that a party be given a hearing before the making of a review decision. On the third issue, counsel submitted that the applicant had met the threshold for grant of an order of *certiorari*.

2nd Respondent's Submissions

17. Mr Oscar Eredi, Deputy Chief State Counsel, counsel for the 2nd respondent, filed written submissions dated 2/7/2020. He framed the following as the two issues falling for determination in this motion: (i) whether the 1st respondent acted within its jurisdiction while observing the rules of natural justice in tandem with the requisite provisions of the law; and (ii) whether this honourable court is entitled to exercise its judicial discretion and grant the orders of *certiorari* sought by the *ex-parte* applicant.

18. Counsel submitted that the 1st respondent conducted hearings on 16/2/2016, 23/2/2016, and 29/7/2017, and the applicant was duly represented during the said hearings. Counsel argued that the rules of natural justice were duly observed, and the 1st respondent had acted within its jurisdiction. Counsel added that there was no basis for the court to grant the judicial review order of *certiorari*. Counsel urged the court to dismiss the motion.

1st Interested Party's Submissions

19. The 1st Interested Party filed written submissions dated 29/6/2020 through the firm of Mumma & Kanjama Advocates. Counsel for the 1st interested party submitted that the main issue in this motion was whether the process leading to revocation of the applicant's title was procedurally fair. Counsel added that the 1st Interested Party was not involved in the decision-making process; contending that the impugned process and decision were outside the competency of the 1st Interested Party. Counsel submitted that procedural fairness entails one or three principles of natural justice; that no man should be condemned unheard. Counsel added that the right to be heard before condemnation is a fundamental human right enshrined in Article 47 of the Constitution and the Fair Administrative Action Act.

20. Counsel for the 1st Interested Party added that the 1st respondent had exercised its mandate lawfully because: (i) it published an invitation notice in the Daily Nation Newspaper informing the public of a hearing to review grants on 17/3/2017; (ii) the ex-parte applicant attended and was given a hearing; and (iii) following the hearing, the 1st respondent communicated its decision. Counsel urged the court to dismiss the motion.

Analysis & Determination

21. I have considered the motion, the responses thereto, the parties' respective submissions and authorities, the relevant constitutional and legal frameworks, and the relevant jurisprudence on the key issues falling for determination in the motion. Parties to the motion did not agree on a common statement of issues. Based on the parties' pleadings, evidence and submissions, the two key issues falling for determination in this motion are: (i) whether the National Land Commission observed the rules of natural justice and acted in tandem with the requisite law in the process leading to the revocation of the applicant's land title, Grant Number 65417 in which Land Reference Number 209/12367 is comprised. The second issue is whether the order of *certiorari* is an appropriate remedy in the circumstances of this dispute. I will make brief pronouncements on the two issues sequentially in the above order.

22. The applicant's main grievance is that the 1st respondent purported to review its grant without regard to the requirements of **Article 47 of the Constitution**, the framework in the **Fair Administrative Action Act**, the framework in **Section 14(3) of the National Land Commission Act**, and the framework in the **National Land Commission (Review of Grants and Dispositions of Public Land) Regulations, 2017**. The above constitutional and statutory frameworks are all geared towards ring-fencing the right to fair administrative action. The right to fair administrative action falls within Kenya's Bill of Rights.

23. The **Supreme Court of Kenya** underscored the sacronctity of the right to fair administrative action under Article 47 of the Constitution in **Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 others (2014) eKLR** in the following words:

"405... Suffice it to say that the intention of the Constitution, through Article 47 was to strengthen the procedural fairness expected when dealing with public administrative processes. These processes ought to be conducted in the sanctity of imperative principles such as expedition, efficiency, the rule of law, reason and procedural fairness"

24. The **Court of Appeal of Kenya** similarly underscored the centrality of the right to fair administrative action in administrative and *quasi judicial* processes in the case of **Judicial Service Commission v Mbalu Mutava & Another [2015] eKLR** in the following words:

"Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in Article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed."

25. In the motion under consideration, the applicant contends that they were not invited for any hearing leading to revocation of their title. They further contend that they were not given the opportunity to interrogate the documents placed before the Commission by the Interested Parties. They add that the only hearing which they attended related to an allegation of encroachment on LR No 209/1190, made to the Commission by M/s Indian Spray Painters Limited, and the said complaint was never heard and determined by the Commission. On their part, the 1st respondent contends that they duly notified and invited the applicant through a notice published in all the local dailies. To prove this, the 1st respondent has presented **Exhibit "B1-2"** which is a notice published in the Daily Nation Newspaper Edition of Friday 17th March 2017. Further, the 1st respondent contends that the review hearings were duly conducted on 16/2/2016, 23/2/2016 and 29/7/2016. The applicant denies this, and contends that the hearings of 16/2/2016, 23/2/2016 and 29/7/2016 related to the complaint of encroachment made by M/s Indian Spray Painters Limited in relation to LR No 209/11909.

26. I have considered the evidential materials presented to the Court by the applicant and the 1st respondent. Firstly, the signed copy of the impugned decision was exhibited by the 1st respondent. It is clear from the signed copy that it was signed by the Chairman of the Commission on 28/4/2017. It was subsequently published in the Kenya Gazette on 17/7/2017 as Gazette Notice No 6865. The impugned determination reads as follows in relation to review hearings leading to the impugned revocation:

"Pursuant to the provisions of Article 67 of the constitution, Section 14 of the National Land Commission Act, the National Land Commission received a complaint from the Ministry of Transport and Infrastructure through Kenya National Highways Authority (KENHA) that land that was earmarked and reserved for expansion of the Southern Bypass Road had been encroached into by private individuals claiming ownership. This emerged upon the feasibility study conducted by the Government culminating in a final report in February 1988 over the Southern Bypass Road."

HEARING

Following the complaint, the Commission, pursuant to Section 14 of the National Land Commission Act invited all the interested parties to a hearing for review to determine the legality of the titles held by various individuals. The public hearing was set for 27th March 2017 and the parties were directed to file their written submissions and supporting documents”

27. Was the applicant invited for the hearing of 27/3/2017 alluded to in the signed determination? Were they invited for the hearing of 30/1/2017 to 3/2/2017 alluded to in the Gazette Notice? There is nothing in the evidential materials presented by the 1st respondent to suggest that the applicant was invited for the hearing conducted on 27/3/2017. Similarly, there is no evidence presented by the 1st respondent to suggest that the applicant was invited to the hearing alluded to in the Gazette Notice. Mr Ikol’s contention that review hearings were held on 16/2/2016, 23/2/2016 and 29/7/2016 contradicts the signed content of the impugned decision because the impugned decision is categorical that hearings were held on 27/3/2017. Similarly, Mr Ikol’s contention that relevant hearings were held on 16/2/2016, 23/2/2016 and 29/7/2016 contradicts the Gazette Notice which is categorical that review hearings were held from 30/1/2017 to 3/2/2017. Secondly, the **National Land Commission (Review of Grants and Dispositions of Public Land) Regulations** which operationalized the review exercise were not in force in 2016.

28. The applicant exhibited a letter dated 11/4/201 from the 1st respondent which reads as follows:

OFFICE OF THE VICE CHAIRPERSON

Ardhi house

Ngong road

P.O. Box 44417,

NAIROBI.

“Indian Spray Painters

P.O. Box 11152, Isiolo Road

Nairobi

Ole Sereni Ltd

P O Box 18187-00500

Nairobi

Placid View

Nairobi

Dear Sirs

SUMMONS TO APPEAR BEFORE THE COMMISSION ON L R NO 209/1190 AND LR No 209/12367, NAIROBI

The above matter refers.

The Commission received a complaint from the Kenya National Highways Authority (KENHA) Ref No MOTI/LA.35.08/Vol.A dated 17th June, 2014 listing several properties including the subject properties as having been hived off from the Mombasa Southern Bypass requesting for the review of the same. Copy enclosed.

As you are aware the Commission has been reviewing the above properties to determine their legality or propriety as per the law. You have been summoned and appeared before the Commission on several occasion and made submissions and presentations on how you acquired the stated properties.

The Commission, pursuant to the requirements of Section 14(3) of the National Land Commission Act, 2012 hereby summons you to attend the public hearing on 18th April, 2017 at ACK Garden Annex Building, 7th Floor, 1st Avenue Ngong Road Next to Ardhi House at 10.00am to make representation on how you acquired the above property.

Kindly be advised that you reserve the right to secure legal representation. Any documentation evidence or written representation that you will refer during the said hearings should be submitted to the Commission before hearing date.

Yours faithfully,

Abigael Mbagaya Mukolwe (MRS)

Vice Chairperson

For: CHAIRMAN, NATIONAL LAND COMMISSION.

CC.

Brian Ikol

Head Reviews/Dep. Director Legal Affairs & Enforcement National Land Commission

29. It is clear from the above letter dated 11/4/2017 that the 1st respondent was inviting the applicant and two others to attend a review hearing on 18/4/2017. The applicant contends that they attended the 1st respondent's office but were advised that their matter had been taken out. There is no evidence to suggest that any other invitation was extended to the applicant for any subsequent hearing. Similarly, there is no evidence to suggest that a review hearing was held subsequent to 18/4/2017.

30. I have carefully examined the 1st respondent's Hansard exhibited by Mr Ikol. It relates to proceedings of 16/2/2016, 23/2/2016 and 29/7/2016. The said proceedings were not review proceedings. It relates to allegations of encroachment made by M/s Indian Spray Painters Ltd in relation to LR 209/11909. For instance, on 29/7/2016, **Commissioner Abigael Mukolwe** made the following remarks to the two counsel representing M/S Indian Spray Painters and M/s Ole Sereni (the applicant):

“ Okey, this is No 16. You know I am listening to you and you are really fighting so hard. I do not know how I should handle both of you. KENHA has just written a letter I saw it yesterday and the reason why we are amused is because, as we are busy struggling with this matter, somebody else is busy writing saying that you people are on the road you should get out. Hii Imekuja jana, in fact I have written KENHA to give me mine (sic) to advertise all of you including Ole Sereni the Hotel. Hiyo barua imekuja juzi so nikaona there are a lot of other properties so I do not know how the surveyor's reports can help both of you. This is the truth from the bottom of my heart, we can suspend so that we can bring KENHA. They have brought a whole list of properties on the Southern Bypass and the truncation of Mombasa”

31. What emerges from the above excerpt is that Mr Ikol was not truthful in his allegation that relevant review hearings were held on 16/2/2016, 23/2/2016 and 29/7/2016.

32. I have similarly looked at the Newspaper Notice exhibited by Mr Ikol. It was carried in the Daily Nation Newspaper Edition of 17 March 2017. It does not make logic for Mr Ikol to contend that a notice published on 17/3/2017 was a valid invitation for hearings held in February 2016 and July 2016 (the preceding year).

33. The conclusion I make out of the evidence presented to the court is that the proceedings of February 2016 and July 2016 related to the complaint lodged by M/s Indian Spray Painters. It was not a review hearing under Section 14 of the National Land Commission Act. Secondly, the only evidence of invitation relating to review hearing is the letter dated 11/4/2017 which invited the applicant to a review session scheduled for 18/4/2017. Thirdly, there is no evidence to suggest that the review session scheduled for 18/4/2017 took place. Fourthly, if a review hearing took place on 27/3/2017 as suggested in the signed decision, there is no evidence of any invitation extended to or participation by the applicant. Fifth, if a review exercise took place between 30/1/2017 and 3/2/2017 as indicated in the impugned Gazette Notice, there is no evidence that appropriate notice was served on the applicant. The totality of the above evidential findings is that the National Land Commission failed to observe the rules of natural justice. Further, the National Land Commission failed to act in tandem with the requisite law in the process leading to the revocation of the applicant's title.

34. The second issue in this motion is whether the order of *certiorari* is appropriate in the circumstances of this suit. The impugned decision affects a developed parcel of land housing a reputable hotel. If it is left to stand, the investor(s) will lose their investment without the benefit of a hearing. The socio-economic philosophy upon which Kenya is founded does not permit that. Indeed, the framework in Section 14 of the National Land Commission Act was specifically enacted to ensure that there would be due process before a title is revoked. It should, however, be made clear that an order of *certiorari* does not resolve the substantive dispute relating to the title held by the applicant. Secondly, the 1st interested party retains the right to ventilate its claim to the suit property through the available legal mechanisms.

35. This being a public law litigation, parties will bear their respective costs of the suit.

36. In light of the above findings, I make the following disposal orders in relation to the amended notice of motion dated 25/9/2018:

a) An order of certiorari is hereby issued quashing Item Number 14 of Table 16 – Southern Bypass, contained in Gazette Notice No 6865, S/No 14, published on 17th July 2017, relating to Land Reference Number 209/12367, Nairobi.

b) Parties shall bear their respective costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6TH DAY OF OCTOBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Mr Conrad Maloba for the *ex-parte* Applicant

Ms Owano holding brief for Mr Kanjama for the 1st Interested Party

Court Clerk - June Nafula