



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CONSTITUTIONAL PETITION NO. 13 OF 2018

IN THE MATTER OF: ARTICLES 10, 21, 11, 23, 35, 40, 47, 50, 60, 64, 73, OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 40, 47, 50, 64, 65, 73 AND 232 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION
AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)**

HIGH COURT PRACTICE AND PROCEDURE RULES 2006

AND

IN THE MATTER OF: THE ENVIRONMENT AND LAND COURT ACT NO. 19 OF 2011

AND

IN THE MATTER OF: THE LAND ACT SECTION 4, 7, 150 PART VIII, LAND

REGISTRATION ACT SECTIONS 24, 25, 26, 30, 34, 35, 37, 40 AND 101

AND

IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2012 SECTIONS 5, 16,14 AND 15

AND

IN THE MATTER OF: FAIR ADMINISTRATIVE ACT NO. 4 OF 2015 SECTION 2, 3, 4, 5,6, 7,9 AND 11

AND

IN THE MATTER OF: LEADERSHIP AND INTREGRITY ACT NO. 19 OF 2012 SECTION 3, 4, 7, 10, 11, 13, 24, 25, 30, 42, 43

AND

IN THE MATTER OF: PUBLIC OFFICER ETHICS ACT NO. 2003 SECTIONS 2, 3, 8, 9, 10, 15, 19 AND 38

BETWEEN

FATUMA SHEE

.

CHIODI PIERINA.....PETITIONERS

VERSUS

1. THE COUNTY LANDS REGISTRAR KILIFI

2. THE NATIONAL LAND COMMISSION

3. THE HONOURABLE ATTORNEY GENERAL

4. JOEL RICHARD WAMBWA

5. JOSEPH TAURA BAO.....RESPONDENTS

JUDGMENT

Background

1. By this Petition dated 20th September 2018 as filed herein on 24th September 2018, Fatuma Shee and Chiodi Pierina (the Petitioners) pray for orders: -

1. That all entries in the Register for Kilifi/Jimba/386 as duly reconstructed to the effect that the 4th Respondent is the registered absolute proprietor of Plot No. Kilifi/Jimba/386 be cancelled and/or deleted or expunged;

2. That the register for Plot No. Kilifi/Jimba/386 opened on the 22nd December 1986 be rectified by the 1st Respondent to reflect the Petitioners as the absolute proprietors of Plot No. Kilifi/Jimba/386 and that the title for the 4th Respondents issued by the 1st and 5th Respondents on the 21st March 2018 be cancelled and/or deleted;

3. A declaration be issued that the Petitioners proprietary rights to Plot No. Kilifi/Jimba/386 by way of a Gazette Notice No. 12517 dated 22nd December 2017 and the reconstruction of the Register to Plot No. Kilifi/Jimba/386 on the 21st March 2018 are ultra vires, unconstitutional, illegal and void ab initio;

4. A declaration that Gazette Notice No. 12517 dated 22nd December 2017 is illegal, unconstitutional, void and a nullity in law ab initio;

5. A declaration that the 2nd Respondent has no Constitutional and Legal mandate over Plot No. Kilifi/Jimba/386 it being a private property as known in law in which the 2nd Respondent has no Constitutional and legal mandate under Article 67 of the Constitution read together with Sections 5 and 14 of the National Land Commission Act, 2012;

6. A conservatory order to issue restraining the 4th Respondent from interfering with the Petitioners' occupation and possession of Plot No. Kilifi/Jimba/386 or entering, disposing, alienating, selling, transferring, letting or in anyway whatsoever interfering with Plot No. Kilifi/Jimba/386 or any part thereof until this Petition is heard and determined.

7. A Conservatory order of inhibition be issued against the 1st Respondent to inhibit the 1st Respondent in any manner howsoever and whatsoever from registering any further dealings, alienation, transfer, charges, mortgages, leases and/or any encumbrances on the title to Plot No. Kilifi/Jimba/386 until this Petition is heard and fully determined by this Honourable Court;

8. A declaration be issued that the actions of the 1st, 2nd and 5th Respondents jointly and severally aided and abetted the cancellation of the Petitioners title to Plot No. Kilifi/Jimba/386 through a Gazette Notice No. 12517 dated 22nd December 2017 and reconstruction of the Green Card Register on the 21st March 2018 infringed the Petitioners' rights as vouchsafed under Articles 31, 40, 47 and 50 of the Constitution of Kenya;

9. A declaration be issued against the 1st and 4th Respondents in the alternative to indemnify and pay the Petitioners the full market value of the Petitioners' proprietorship and ownership rights to Plot No. Kilifi/Jimba/386 promptly and in any event not later than fourteen (14) days after the Judgment and Decree of this Court;

10. A declaration be issued that the actions of the 1st and 5th Respondents to cancel the Petitioners title to Plot No. Kilifi/Jimba/386 breached Article 10, 47, 50 and 73 of the Constitution and the provisions of the Leadership and Integrity Act 2012 and the provisions (of) the Public Officer Ethics Act 2013 and the provisions of the Fair Administrative (Actions) Act and that the 5th Respondent be investigated and charged in accordance with the applicable laws for abuse of office and theft of private property of the Petitioners;

11. An order that the 4th Respondent be investigated and charged for aiding and abetting abuse of office by 5th Respondent and theft of private property of the Petitioners in cahoot or jointly with the 5th Respondent under the provisions of the relevant statutes and laws particularly the Penal Code and Land Registration Act by the Office of the Director of Public Prosecutions

12. An order that all costs of this Petition be jointly and severally paid by the Respondents with interest thereon at Court rates.

2. The Petition which supported by an affidavit sworn by Fatuma Shee (the 1st Petitioner) arises from the Petitioners' contention that all times material, they were the registered proprietors of the said Kilifi/Jimba/386 measuring approximately 1.8 Ha (the suit property) having acquired the same on 23rd July 2008 from one Abdalla Rashid Said and Gregolela Sandra at a consideration of Kshs 4.5 Million.
3. The Petitioners aver that on the basis of a letter dated 2nd March 2017 from the Advocates acting for Joel Richard Wambwa (the 4th Respondent) addressed to the National Land Commission (the 2nd Respondent), the 2nd Respondent required the County Land Registrar Kilifi (the 1st Respondent) to give the Commission a status report on the ownership records of the suit property.
4. By a letter dated 27th April 2017, the 1st Respondent responded that the Green Card for the suit property could not be traced and subsequently requested authority from Joseph Taura Bao (the 5th Respondent), requested authority from the Chief Land Registrar Nairobi to reconstruct the register. Thereafter on 21st March 2018 the 4th Respondent reconstructed the Register of the suit property by cancelling the Petitioners' records thereon after causing to be published a Gazette Notice on 22nd December 2017 purporting that the earlier records could not be traced. The 5th Respondent has now threatened to evict the Petitioners from the suit property using the newly acquired documents.
5. The Petitioners assert that the acts of the 1st and 5th Respondents of reconstructing the Register and deleting the Petitioners title violates their rights under Articles 10, 27, 31, 40, 47, 50, 60, 64, 73 and 233 of the Constitution and that the same contravene the Fair Administrative Actions Act, the Leadership and Integrity Act as well as the Public Officer Ethics Act.
6. The Petitioners further aver that the actions of the 1st and 5th Respondents are totally inconsistent with the purpose and objects of the Constitution and have brought total dishonour, disgrace and distrust to the public offices that they hold and hence the orders sought herein.
7. The Petition is however opposed. By a Replying Affidavit sworn and filed herein on 28th November 2018, the Kilifi County Land Registrar Stella Gatuiri Kinyua (the 1st Respondent) avers that on or about 5th December 2017, the 4th Respondent made an application to have the parcel file and the Green Card for the suit property reconstructed.
8. The 1st Respondent avers that the application was accompanied by a Copy of a title issued to the 4th Respondent on 29th August 1979 and that the proceeded to reconstruct the record as neither the parcel file nor the Greed Card could be traced and the only documents in their record were a transfer document transferring the land from one Victor Charo Gandi to two individuals, namely Gregoratti Sandra and Abdalla Said Rashid.
9. The 1st Respondent further avers that upon payment of the requisite fees by the 4th Respondent, her office proceeded to gazette the loss of the Green Card and the reconstruction of the parcel file. Accordingly, the parcel file and the Green Card were reconstructed on 22nd March 2018 when they issued a new title deed to the 4th Respondent.
10. The 1st Respondent further avers that subsequently in August 2018, the Petitioners herein presented themselves at their Registry with a title to the suit property claiming to be the owners thereof. The two further presented a transfer document from Gregoratti Sandra and Abdalla Said Rashid as the Vendors and the 1st Respondent's Registry thereafter registered on the title a Court Order issued on 5th October 2018 to the Petitioners inhibiting any dealings in the land.
11. The National Land Commission (the 2nd Respondent) is similarly opposed to the Petition. In a Replying Affidavit sworn on its behalf by its Acting Director, Legal Affairs and Enforcement Brian Ikol and filed herein on 30th September 2019, the 2nd Respondent asserts that pursuant to its mandate, it sought to address the historical land issues within the Kilifi Jimba registration Section wherein the suit property lies.
12. The 2nd Respondent further avers that after holding a public inquiry in respect of the said matters, it made the following findings; -
 - i) That all parcels of land falling within the Kilifi/Jimba area were trust lands and not government land. This was as per the finding of the Court in Nairobi HCCC 3106 of 1997; Regina Ngahu & Others –vs- Commissioner of Lands & 40 Others;***
 - ii) That consequently, the Commissioner of Lands had no authority to allocate and proceed to issue titles either under the Registration of Titles Act or the Registered Land Act;***
 - iii) That Kilifi/Jimba/386 was, pursuant to the adjudication process, registered in favour of Joel Richard Wambwa on 29th June 1979 and subsequently transferred as follows; on 14th June 2000 transferred to Victor Charo Gandi; on 30th August 2007 transferred to Gregoratti Sandra and Abdalla Said Rashid; on 23rd July 2008 transferred to Chiodi Pierina and Fatuma Shee***
 - iv) That the property had equally been issued through the settlement funds trustees programme in 1999 to one Hamid Bajoo.***
13. Based on the said findings, the 2nd Respondent asserts that it cleared the title in favour of the Petitioners herein as the title was duly and properly issued to them.

14. Joel Richard Wambwa (the 4th Respondent) is also opposed to the Petition. In a Replying Affidavit sworn and filed herein on 30th November 2018, the 4th Respondent avers that this Petition is totally incompetent, bad in law misconceived, unmeritorious, wasteful and an abuse of the Court process and resources.

15. The 4th Respondent avers that he is the sole proprietor of the suit property the same having been allocated to himself in the year 1979. He further states that he was issued with a Certificate of Title on 29th August 1979 and that in the year 1980 he used the same to secure a loan facility of Kshs 65,000/- from Barclays Bank of Kenya.

16. The 4th Respondent further states that upon completion of the loan payment in 1986, he was unable to access the land as it had been invaded by unknown people. He contemplated evicting the people but decided to wait after he learnt that the Government had placed an embargo over some parcels of land in the Kilifi Jimba registration Section.

17. The 4th Respondent further states that he would occasionally visit the land to assess the condition and nature of developments made in his absence. He later asked his Advocates to write to the Bank to discharge the title in November 2009 upon confirming that he had completed the loan. On or about 13th November 2016, he received a letter from the Advocates forwarding to himself the original land certificate dated 29th August 1979.

18. The 4th Respondent avers that in February 2017, he conducted a search to confirm whether or not the discharge had been reflected but was surprised to find that the land had been registered in the names of the Petitioners herein. It was then that he asked Messrs Khaminwa & Khaminwa Advocates to forward a complaint to the 2nd Respondent Commission.

19. The 4th Respondent avers that in response, the 2nd Respondent through its Chairperson wrote to the 1st Respondent seeking to be furnished with the status of ownership records for the suit property. The 1st Respondent responded to the letter indicating the title was among those that had been affected by the embargo and that its Green Card was missing and could not be traced.

20. The 4th Respondent avers that from the documents attached to the 1st Respondent's response, he realized for the first time that the land had been registered in the name of one Victor Charo Gandi and that some squatters had been evicted from the land. Thereafter the 2nd Respondent directed the Chief Land Registrar to order the 1st Respondent to expunge the records in favour of the Petitioner and to rectify in the 4th Respondents favour.

21. The 4th Respondent avers that later on in September 2018, the 2nd Respondent commenced investigations in respect of the parcels of land in that area and the same remains under active investigations by the 2nd Respondent Commission.

22. In further response to the Petition, Joseph Taura Bao (the 5th Respondent) who was the Land Registrar Kilifi at the relevant time and who has been sued in his personal capacity avers that the registration section where the suit property is situated was first registered under the Land Adjudication process. However, the beneficiaries of the said section were later ordered to surrender their titles to the Government via Gazette Notice dated 30th May 1986.

23. The 5th Respondent who has since retired from service asserts that as a result Edition I of the Green Card for the suit property was cancelled and they could not trace it in the Registry. After the cancellation, Edition II of the Green Card was opened on 22nd December 1986. The 5th Respondent avers that he received a letter dated 14th March 2017 from the 2nd Respondent requesting them to provide ownership status of the suit property on the grounds that a complaint had been lodged regarding ownership of the same. The 5th Respondent then forwarded all documents available in their custody.

24. The 5th Respondent avers that on 23rd June 2017, he received a letter from the Chief Land Registrar's Office instructing him to expunge the records to reflect that the 4th Respondent was the owner of the land. Upon responding that he could not effect the directive as the Green Card was unavailable, the 5th Respondent asserts that he was instructed by another letter dated 20th November 2017 to construct the land register.

25. Subsequently on 5th December 2017, the 4th Respondent applied by way of an affidavit to have the parcel file and the Green Card reconstructed. The 5th Respondent then gazetted the loss, proceeded to reconstruct the file and Green Card after which he issued the 4th Respondent with a title deed. He asserts that he acted within the law at all times and that his decision to expunge the record was based on the instructions from the office of the Chief Land Registrar and were not made of his own volition.

Analysis and Determination

26. By a consent recorded herein on 27th March 2019, the parties agreed to maintain the status quo in regard to the suit property pending the hearing and determination of the Petition. The parties further agreed that the Petition be determined by way of affidavit evidence as well as written submissions.

27. I have accordingly perused and considered the Petition and the respective responses thereto. I have also carefully considered both the written and oral submissions as filed and canvassed before me by the Learned Counsel for the parties.

28. A perusal of the material placed before me reveals that until sometime on 21st March 2018, the two Petitioners herein were in possession of all that parcel of land measuring 1.8 Ha and more particularly known as Kilifi/Jimba/386(the suit property) as the registered proprietors

thereof. On the said date however, another brand new Title Deed was issued for the suit property in the name of Joel Richard Wambwa (the 4th Respondent). On the strength of this newly acquired documents, the 4th Respondent apparently moved to take control of the suit property from the Petitioners and thereby sparking this dispute.

29. The circumstances leading to the cancellation of the Petitioners' names from the records of the suit property can be gleaned from the Replying Affidavit of Stella Gatwiri Kinyua, the Kilifi County Land Registrar (the 1st Respondent) as filed herein on 28th November 2018. According to the 1st Respondent, sometime on 5th December 2017, the 4th Respondent made an application to her Registry by way of an affidavit, to have the Parcel File and the Green Card for the suit property reconstructed.

30. The 1st Respondent states that there followed thereafter a series of correspondences between the Offices of the Chief Land Registrar, her predecessor then Joseph Taura Bao (the 5th Respondent), the Land Adjudication and Settlement Office as well as the National Land Commission (the 2nd Respondent). The said correspondence culminated in the payment of some fees by the 4th Respondent upon which the 5th Respondent proceeded to gazette via Gazette Notice No. 12517 of 22nd December 2017, the loss of the Green Card and the reconstruction of the Parcel File.

31. Upon expiry of 60 days, the Parcel File and Green Card were reconstructed after which the 4th Respondent was issued with the Title Deed as aforesaid in March 2018. As it turned out, some five months later in August 2018, the Petitioners herein appeared at the 1st Respondent's Registry in Kilifi demanding to know the circumstances under which their title documents were cancelled and expunged from the record.

32. A perusal of the correspondence referred to by the 1st Respondent reveals that the cancellation was triggered by a letter dated 8th March 2017 addressed to the 2nd Respondent's then Chairman Prof. Mohammed A. Swazuri, by Messrs Khaminwa & Khaminwa Advocates acting for the 4th Respondent who wrote as follows: -

RE: KILIFI/JIMBA 386

JOEL RICHARD WAMBWA

We refer to the above parcel of land.

Our Client Mr. Joel Richard Wambwa is the legal owner of the said piece of land since 29th August 1979 to-date. The said Client was able to get the Title Deed in favour to his name(sic).

That on 26th November 1980, our client applied for a loan with Barclays Bank of Kenya Ltd of Kshs 65,000/- and the same was issued. Bank security was the Title Deed. Attached herewith is a copy of the Title Deed.

The said loan was paid back. Apparently it has come to our client's knowledge that the said land was transferred fraudly (sic) to 3rd party that's Chiodi Pierina and Fathuma Shee and Title Deed issued on 23rd July 2008.

Our earnest request is to your good office to cancel the Title Deed in (the) names of Chiodi Pierina and Fathuma Shee and to re-issue our client with new Title Deed in his names respecting the said portion of land."

33. Upon receipt of the said letter, the 2nd Respondent wrote to the 1st Respondent on 14th March 2017 asking for the status of the ownership records from the date of allocation. In his response to the 2nd Respondent dated 27th April 2017, the 5th Respondent who was then the Land Registrar Kilifi indicated that they were unable to locate the existing Green Card. In another letter dated 17th July 2017, the 5th Respondent asked the Chief Land Registrar for authority to have the Green Card reconstructed using the laid down procedures and the available documents.

34. It is not clear if the authority was given. However, on 5th December 2017, the 4th Respondent swore an Affidavit of Indemnity in which he undertook to indemnify the Government from any liability arising from the process of reconstruction. At Paragraph 5 of the Affidavit, the 4th Respondent swears as follows: -

"5. That I swear this Affidavit to declare that I am the registered proprietor of Plot No. Kilifi/Jimba/386 and that the Green Card in respect of the same got lost and that I have nothing to (do) with the said loss and further undertake to indemnify the government from any liability arising from the said loss."

35. One week after the Affidavit of Indemnity was sworn by the 4th Respondent, the 5th Respondent wrote to the Government Printer on 14th December 2017 forwarding notice of the reconstruction for publication in the Kenya Gazette No. 12517 of 22nd December 2017 as follows: -

"Reconstruction of A Lost or Misplaced Green Card

Whereas Joel Richard Wambwa, of P.O. Box 193 Malindi in the Republic of Kenya, is registered as proprietor in absolute ownership of all that piece of land containing 1.8 hectares or thereabout, situate in the district of Malindi, registered under title No. Kilifi/Jimba/386, and whereas the green card for that particular title cannot be located, whereas all efforts failed, notice is given that after expiration of sixty (60) days from the date hereof, I intend to reconstruct a new green card and proceed with the

transactions with regard to the above parcel of land, and upon such registration the lost green card constructed earlier shall be deemed as cancelled and of no effect, provided that no objection has been received within that period.”

36. True to the Gazette Notice, a new Green Card Marked Edition III was opened upon expiry of the notice on 21st March 2018 when the 4th Respondent was issued with a Title Deed.

37. As all these processes took place all the Respondents herein were aware of the fact that the suit property had since the year 2007 been registered in the name of the Petitioners but for some reason or the other it was decided not to involve them and none were copied to the two of them. The fact that they had been registered as such owners was clear from the letter from Khaminwa & Khaminwa Advocates dated 8th March 2017 in which the 4th Respondent asserted that the suit property had been fraudulently transferred to the Petitioners.

38. Indeed, from his own Replying Affidavit filed herein, the 4th Respondent has never been in possession of the land ever since, a fact which he blames on encroachment thereon by squatters. At Paragraph 13 of his affidavit, he avers that he conducted a search on the suit property in February 2017 only to be surprised to discover that the land was registered in the name of the Petitioners herein.

39. That assertion by the 4th Respondent can only be taken to mean that when they engaged in all sorts of correspondence herein both the 1st and 5th Respondents had records in their possession indicating that the Petitioners herein were the registered proprietors of the suit property. Indeed, from the material placed before me, they were so registered on 30th August 2007, some ten years before the 4th Respondent came calling.

40. From the material placed before me, I found the insistence of the 5th Respondent that the documents relating to the suit property could not be traced rather curious. From a perusal of his Replying Affidavit filed herein on 28th November 2018, it was clear that he was conversant with certain facts regarding the suit property and chose to conceal them to aid the acquisition thereof by the 4th Respondent.

41. I say so because at paragraphs 3 to 5 of the said Affidavit, he avers as follows: -

3. That the registration section where the suit property is situate was first registered under the land adjudication process and Land Certificate Titles issued to the beneficiaries. However, the beneficiaries of the said section were later ordered to surrender their titles to the Government vide Gazette Notice No. 2505 dated 30th May 1986 and letters issued to all land owners in the affected section to comply with the notice. Attached herewith and marked JTB-1 (a, b and c) are copies of the Gazette Notice and letters to the land owners.

4. That from the foregoing, Edition I Green Card for Parcel Kilifi/Jimba/386 which records we could not trace in the Registry was cancelled following the Gazette Notice mentioned above.

5. That after the cancellation of the titles Edition II Green Cards were opened dated 22nd December 1986 in the name of (the) Government of Kenya.”

42. From the foregoing, it was evident that the 5th Respondent was aware the titles in respect of the suit property had been cancelled and a new edition of the Green Card had been opened in 1986. The 4th Respondent equally confirms knowledge of this position at Paragraph 7 of his Replying Affidavit filed herein on 30th November 2018 thus: -

“7. That in the year 1986 upon completing the repayment of the loan facility I was unable to access my land since it had been invaded by unknown people. I contemplated evicting the unknown people when I learnt that the Government had placed an embargo over some parcels of land in Kilifi Jimba registration section (including the suit property). In light of the said developments I decided to wait for the Government’s subsequent action.”

43. Evidently he did not do anything until some 21 years later when he purports to have conducted a search at the Land Registry in February 2017 to confirm if the loan he had taken in 1980 had been discharged and reflected on his title. In the meantime, the Government had taken the subsequent action he was waiting for way back in the year 2000 by allocating the suit property to one Victor Charo Gandi who was then issued with a Title Deed on 14th February 2000.

44. From the material placed before me which were in the possession of the 1st and 5th Respondent, the said Victor transferred the property by way of sale some seven (7) years later on 30th August 2007 to two individuals named therein as Gregovatti Sandra and Abdalla Said Rashid. A year down the line, the two named individuals sold the suit property to the Petitioners who were then duly issued with a title therefor on 23rd July 2008.

45. Evidently the Petitioners could not be said to have acquired their title fraudulently as was stated by the 4th Respondent in his Advocates letter dated 8th March 2017 that led to the cancellation of the Petitioners documents of title. The moment they were registered as the proprietors of the suit property on 23rd July 2008, their interests thereon were guaranteed and protected under the law.

46. The title deed issued in their names and which the Respondents were aware of was prima facie evidence that the Petitioners were the absolute owners of the property and the only way the same could have been challenged was on the ground of fraud or misrepresentation that they were party to as provided under Section 26 of the Land Registration Act, 2012.

47. As it were, the cancellation of the Petitioners title was done without their knowledge and/or involvement as none of the Respondents

thought it wise to notify them of the 4th Respondent's complaint and the processes that took effect thereafter. In addition, it was unclear to me where the Respondents got the power to cancel the Petitioners title or rectify the Register to reflect that the 4th Respondent was the title holder of the property.

48. In respect to rectification of the Register, Section 80 of the Land Registration Act, 2012 provides thus: -

“Rectification by Order of Court

80.(1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

49. That is not what happened herein. In the instant matter, the Chief Land Registrar acting on directions given by the 2nd Respondent simply authored letters dated 6th June 2017 and 22nd June 2017 directing the 5th Respondent to expunge the current records and rectify the same to reflect the 4th Respondent as the owner of the suit property. That was clearly in contravention of Article 47(2) of the Constitution which stipulates that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

50. Under Section 4 of the Fair Administrative Actions Act 2015, such a person is equally entitled to prior and adequate notice of the nature and reasons for the proposed administrative decision and an opportunity to be heard and to make representations in that regard.

51. In the matter before me, there was not even an attempt by any of the Respondents to inform the Petitioners of their intention to cancel their title deed. In respect of the 2nd Respondent, it had not conducted a hearing even if it could be assumed to have had jurisdiction to deal with the matter and issued the directives it purported to give on the matter. To their credit however, when it finally did consider the matter a year later, the 2nd Respondent arrived at the decision that the suit property belongs to the Petitioners.

52. Arising from the foregoing, this Court was satisfied that the Petitioners have proved beyond doubt that the actions of the Respondents in cancelling their title were ultra vires and contravened both the Constitution and the relevant laws. The Petitioners were the registered proprietors of the suit property having acquired the same in a lawful manner.

53. In the result, I allow the Petition as prayed in terms of Prayers 1, 2, 3, 4, 6, 7 and 8 thereof.

54. The cost of this Petition shall be jointly and severally paid by the Respondents with interest at Court rates.

Dated, signed and delivered at Malindi this 2nd day of October, 2020.

J.O. OLOLA

JUDGE