



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

Petition 217 of 2011

**SATIMA ENTERPRISES LTD ..... PETITIONER**

**AND**

**REGISTRAR OF TITLES ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is another case concerning the revocation of title by the Registrar of Titles.
2. By an amended petition dated 17<sup>th</sup> January 2012 the petitioner has moved this Court for the following reliefs in order to enforce its fundamental rights and freedoms as follows;
  - (1) *An order of certiorari do issue to bring to this Honourable Court for purposes of being quashed the 1<sup>st</sup> respondent's Gazette Notice Number 6332 dated 6<sup>th</sup> June 2011 purporting to revoke the Petitioner's title to all that parcel of land known as Mainland North/I/6230, Mombasa*
  - (2) *An order of prohibition do issue to prohibit the respondents by themselves, their servants, agents or whomsoever from alienating the petitioner's parcel of land known as Mainland North/I/6230, Mombasa.*
  - (3) *An order of prohibition do issue to prohibit the 1<sup>st</sup> and 2<sup>nd</sup> respondents by themselves their servants, agents or whomsoever from in any manner issuing any title to any third party in respect of and/or allocating the petitioner's parcel of land known as Mainland North/I/6230, Mombasa.*
  - (4) *An order of mandamus do issue to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves their servants, agents to delete and remove any entry made on the Petitioner's Grant/Title made as a consequence to or in furtherance of the revocation of title for all that parcel of land known as Mainland North/I/6230, Mombasa.*
  - (5) *A declaration that the Respondent's purported revocation of the Petitioner's title to all that parcel of land known as Mainland North/I/6230, Mombasa is unconstitutional, null and void.*
  - (6) *A declaration that the Grant/Certificate of Title issued to the Petitioner for that parcel of land known as Mainland North/I/6230, Mombasa is conclusive evidence of ownership and that the Petitioner is the*

*absolute and indefeasible owner of the said property.*

*(7) A declaration that the Petitioner's right from deprivation of property under Article 40(2) and its right to acquire and own property in any part of Kenya under Article 40(1) of the Constitution has been contravened by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.*

*(8) A declaration that the Petitioner's right to have any dispute resolved by application of the law in a fair and public hearing before a court under Article 50(1) has been contravened by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.*

*(9) A declaration that the Petitioner's right to protection from laws and practices that are discriminatory under section 27 of the Constitution have been contravened by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.*

*(10) Damages.*

*(11) Costs of and incidental to this petition.*

### **The Facts**

3. The facts of this suit are not disputed in that the petitioner is the holder of all that property known as **Land Reference Number Mainland North/I/6230** situated in Mombasa ("the suit property"). The petitioner holds a grant to the property issued under the **Registration of Titles Act (Chapter 281 of the Laws of Kenya)**.

4. It is also not in dispute that on the suit property, there stands the Kenya Revenue Authority Training Institute which was developed in the 1970s by the Department of Customs and Excise, a predecessor to the Kenya Revenue Authority ("KRA"). The developments were already on the property when the grant was issued to the petitioner.

5. The notice that precipitated these proceedings is **Gazette No. 6332** dated 6<sup>th</sup> June 2011 published a notice in the Kenya Gazette and which stated, in part, as follows;

#### ***Gazette Notice No. 6332***

#### ***NOTIFICATION OF REVOCATION OF LAND TITLES***

***WHEREAS the parcels of land whose details are described under the Schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purpose under the relevant provisions of the Constitution, the Government Land Act (Cap. 280) and the Trust Land Act (Cap. 288). The allocations were therefore illegal and unconstitutional.***

***Under the circumstances and in view of the public need and interest the Government revokes the said titles.***

#### **SCHEDULE**

##### ***Mombasa Municipality***

..... ***Mainland North/I/6230*** .....

***All the above land was reserved for Kenya Revenue Authority.***

***The above land was reserved for Government Training Institute Mombasa.***

*Dated the 6<sup>th</sup> June, 2011*

**R.A. INGONGA**

**Registrar of Titles, Mombasa**

**Petitioner's Case**

6. The petitioner's case is that the revocation of its title is a breach of its fundamental rights and freedoms in that the Registrar of Titles has no authority to revoke title under the provisions of the **Registration of Titles Act**. Mr Mwaura, counsel for the petitioner, submitted that the action by the Registrar of Titles amounted to an acquisition of the property in breach of **Article 40** of the Constitution. The petitioner also asserts that there is a breach of **Article 47(1)** of the Constitution as the revocation was contrary to the rules of natural justice and fair administrative action. The petitioner's case is supported by the affidavits of Bhupendra Chandubhai Patel sworn on 9<sup>th</sup> January 2012 and 17<sup>th</sup> February 2012.

**Respondents' Case**

7. The 1<sup>st</sup> and 2<sup>nd</sup> respondents oppose the petition although no affidavit was filed by the registrar of titles. Mr Moimbo, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the subject property was acquired through fraud and it did not therefore enjoy constitutional protection under **Article 40(6)**. The property, counsel argued, was never available for allocation in the first place as it was specifically reserved for use by the Customs and Excise Department.

8. The 3<sup>rd</sup> respondent, KRA, filed a comprehensive affidavit sworn by John Karimi, its Deputy Commissioner, on 8<sup>th</sup> February 2012. Mr Thuo, counsel for the KRA, submitted that the petition could not be granted for two main reasons. First, the property was public property reserved for a specific purpose and developed with public funds hence it could not be allocated to the petitioner. The petitioner, counsel emphasised, could not benefit from protection of the Constitution in such a case of blatant fraudulent acquisition. Secondly, that in considering this matter, the court must weigh the broader public interest against the petitioner's private interest. In this case, counsel submitted, the petitioner's interest must yield to the broader public interest.

**Determination and disposition**

9. I have considered the pleadings and written and oral submissions in this matter and in my view the issue for determination is a narrow and straight forward issue; Whether the Registrar of Titles has authority to revoke the petitioner's title.

10. A title to property however, acquired, has specific legal protection and in this case, **section 23** of the **Registration of Titles Act** could not be clearer. The issue of revocation of title is not new and has been the subject of several decisions of this court; **Republic v Kisumu District lands Officer and Another HC Misc. Appl. No. 80 of 2010 (Unreported)**, **Kenya Breweries Limited v Municipal Council of Mombasa & Others HC Misc. Application No. 244 of 2001 (Unreported)** **Kuria Greens Limited v Registrar of Titles and Commissioner of Lands Nairobi HC Petition No. 107 of 2010 (Unreported)**, **Sound Equipment Limited v Registrar of Titles and Commissioner of Lands Nairobi Petition No. 106 of 2010 (Unreported)** and **Power Technic Ltd v Attorney General & Others, Nairobi Petition No. 178 of 2011 (Unreported)**

11. These cases I have cited establish the following principles; First, the Registrar of Titles has no authority under the **Registration of Titles Act** to revoke a title by way of Gazette Notice in the manner he did. Second, such revocation is a breach of **Article 40** of the Constitution as it constitutes an arbitrary acquisition of property without compensation. Third, it is also a breach of **Article 47(1)** where it is clear that the petitioner was not given a hearing to contest the allegations subject of the revocation.

12. Serious allegations of fraudulent acquisition have been raised but I have been circumspect in dealing or commenting on them for several reasons. Firstly, **Article 46(6)** as I have held contemplates a legal process to establish these kinds of issues(See ***Chemei Investments Limited v The Attorney General & Others Nairobi Petition No. 94 of 2005 (Unreported)***). In this case there was no counter petition upon which the court could make finding or grant relief to the respondents on the basis of the fraud alleged. Secondly, there is in fact a case pending between the parties in respect of the suit property to wit: ***Nairobi HCCC No. 663 of 2004 Satima Enterprises Ltd v Kenya Revenue Authority & Commissioner of Lands***. In that case the same issues of fraud alleged in this suit have been raised and the Court adjudicating over that suit will no doubt deal with them.

13. I therefore find and hold that the issuance of the ***Gazette Notice No. 6332*** in relation to the suit property was in fact an attempt to undercut the pending proceedings and also a breach of the petitioner's rights under **Articles 40** and **47(1)** of the Constitution.

14. In view of what I have stated and taking into account all the circumstances, I allow the petition to the extent that I now grant the following relief;

- (1) **A declaration be and is hereby issued declaring that Gazette Notice No. 6332 in so far as it purports to cancel or revoke the petitioner's title No. Mainland North/I/6230, Mombasa is null and void.**
- (2) **The petitioner is restrained from selling, dealing or transferring the said property pending the hearing of Nairobi HCCC 662 of 2004.**
- (3) **The 1<sup>st</sup> and 2<sup>nd</sup> respondent shall bear the costs of the suit.**

**DATED and DELIVERED at NAIROBI this 3<sup>rd</sup> day of October 2012.**

**D.S. MAJANJA**  
**JUDGE**

Mr D. Mwaura instructed by Mboya Wangong'u and Waiyaki Advocates for the petitioner.

Mr M. Moimbo, Litigation Counsel, instructed by the State Law Office for the 1<sup>st</sup> and 2<sup>nd</sup> respondent.

Mr Thuo instructed by Regeru and Company Advocates for the respondent.