



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Petition 322 of 2012

TONY MUNENE PETITIONER

AND

THE COMMISSIONER OF LANDS 1ST RESPONDENT

THIKA LANDS BOARD 2ND RESPONDENT

DCIO THIKA POLICE STATION 3RD RESPONDENT

NJOKA & NJOKA (K) LIMITED 4TH RESPONDENT

DAVIS NYAMU NJOKA 5TH RESPONDENT

ATTORNEY GENERAL 6TH RESPONDENT

RULING

1. I have considered the facts in this matter and in essence they are in respect of a sale and or acquisition of the property known as LR No. 14282 and 12861/1 – Thika. It is the petitioner’s contention that the property belongs to the estate of James Flavian Chege Munene (now deceased). The petitioner alleges that the property was fraudulently acquired by Davis Nyamu Njoka.

2. Davis Nyamu Njoka’s position is that he purchased the property from Esmail Haji Ebrahim in June 2012 for valuable consideration and that he is now the title holder. Esmail Haji Ebrahim contends that he purchased the property from the deceased way back in 2006.

3. At the core of the matter before the court is a property dispute but the petitioner has moved the court to enforce its property rights under the provisions of **Article 40** of the Constitution which protects the property rights of the individual.

4. It is correct and proper that every litigant is granted unhindered access to relief to protect guaranteed rights under the Constitution but it has been said time and again that the provisions of **Article 22** are not intended to bypass or undermine the usual dispute resolution process and established procedures for ventilation of disputes (see *Rashid Allogoh and Others v Haco Industries Limited Nairobi CA Civil Appeal No. 110 of 2001 (Unreported)*, *Harrikisoon v Attorney General of Trinidad and Tobago [1980] AC 265* and *Methodist Church in Kenya and Another v Rev. J. Muku and Another Nyeri CA Civil Appeal No. 233 of 2008 (Unreported)*).

5. As I have stated before, **Article 40** protects property rights which are acquired under the law (see ***Joseph Ihugo Mwaura and Others v Attorney General and Others Nairobi Petition No. 498 of 2009 (Unreported)***, ***Philma Farm Produce and Supplies and Others v The Attorney General and Others Nairobi Petition No. 194 of 2011 (Unreported)***). Various statutory enactments like the ***Registration of Titles Act (Chapter 281 of the Laws of Kenya)*** fulfil the protection guaranteed by the Constitution by providing an orderly manner of acquisition, holding and disposal of property. Where disputes arise between parties, the ordinary procedures for dispute settlement are invoked. This is evidenced by the fact that our courts, on a day-to-day basis, deal with land cases within the framework established by the Constitution to protect property rights.

6. I have taken the drastic step of dealing with this matter in the manner I have in order to avoid burdening the parties with unnecessary costs and so that they may use established forensic processes to establish their rights in accordance with established laws and procedures.

7. I am not saying that I do not have jurisdiction to entertain this claim but on the facts as presented, I think that the case is better ventilated in the proper forum. The Constitution has now established the Land and Environment Court specifically for these purposes.

8. In light of what I have stated, the petition be and is hereby struck out with no order as to costs.

DATED and DELIVERED at NAIROBI this 9th day of October 2012

D.S. MAJANJA
JUDGE

Mr Onyore instructed by Onchuru Oyieko and Company Advocates for the petitioner.

Ms Makori, Litigation Counsel, instructed by the State Law Office, for the 1st, 2nd, 3rd and 6th respondents.

Mr Gaita, instructed by Gaita and Company Advocates for the 4th respondent.

Mr Mogeni instructed by Kelvin Mogeni Advocates for the 5th respondent.