



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. PET. NO. 5 OF 2018

FLEIFLEH LIMITED.....PETITIONER

VERSUS

DIRECTOR GENERAL, NATIONAL YOUTH SERVICE.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

JUDGMENT

1. In the undated Petition which was filed on 26th February, 2018, the Petitioner averred that on 22nd May, 2000, it entered into an Agreement for the purchase of land known as L.R. No. 22337 from Christopher Matata Lati; that after paying the requisite statutory fees, the Registrar of Titles registered the suit land in its favour and that it has enjoyed quiet and peaceful possession of the suit land for the past seventeen (17) years.
2. The Petitioner has averred that on 13th February, 2018, through its Manager, it saw a Public Notice by the 1st Respondent stating that the Petitioner ought to surrender its title in respect to the suit land and vacate the said land; that the Notice did not give any reasons for the said directive and that the Notice by the 1st Respondent was arbitrary and had no basis in law.
3. The Petitioner is seeking for a declaration that the intended repossession of L.R. No. 22337 as published in the Standard Newspaper of 13th February, 2018 is a violation of its constitutional rights under Articles 2, 12, 19, 23, 25, 27, 31, 39, 40, 47, 48, 60, 64 and 6 of the Constitution; an order prohibiting the eviction of the Petitioner and repossession of the suit property and a declaration that the Petitioner is the legitimate owner of the suit land.
4. The 1st and 3rd Respondents filed Grounds of Opposition in which they averred that the Petitioner has not annexed a resolution of the company to institute the suit or authority to the deponent to swear the Affidavit on behalf of the company; that the suit land is a public utility and that a public utility is not capable of alienation.
5. The Respondents finally averred that the protection offered under Article 40 of the Constitution does not extend to property that has been illegally acquired; that the granting of the orders sought by the Petitioner would be perpetuating an illegality and that a declaration of ownership cannot be made through a Constitutional Petition.
6. The Petition proceeded by way of written submissions. The Petitioner's advocate submitted that the Petitioner has proved that it is the registered proprietor of the suit land; that Section 14 of the National Youth Service Act stipulates the responsibilities of the Director, National Youth Service and that the Section does not provide for the issuing of public notices to persons to vacate from its properties.
7. Counsel submitted that the public notice that was issued by the 1st Respondent threatened and violated the rights of the Petitioner as guaranteed by the Constitution and that under Article 40, every person has the right to acquire and own property.
8. The Petitioner's counsel submitted that the Respondents have not disputed that the Petitioner is the rightful owner of the suit land and that before the public notice was issued by the 1st Respondent, there was no written reasons given to the Petitioner as to why it should vacate its land. Consequently, it was submitted, the Petition should be allowed.
9. The 1st and 3rd Respondents' counsel submitted that the 1st Respondent issued the public notice in respect to the suit land because the suit property belongs to the 1st Respondent; that the Petitioner had an obligation to prove how it acquired its title through documentary evidence and that there was no evidence to show that the initial allotments were done legally.

10. The Respondents' counsel finally submitted that the Commissioner of Lands did not have authority to alienate land set aside for public purpose and that the suit land was not available for alienation.

11. The Petitioner's case is that a parcel of land known as L.R. No. 22337 located in Machakos County (*the suit land*) was initially allocated to vide Christopher Matata Lati vide a letter of allotment whereafter a freehold Grant was issued to the petitioner.

12. The documents produced by the Petitioner shows that the suit land transferred was to the Petitioner on 26th October, 2000 for Kshs. 4,000,000.

13. Although the Respondents have averred in their Grounds of Opposition that the suit land was reserved for the 1st Respondent, and that being public land, the same was not available for alienation, they did not place before the court evidence to show that the suit land was reserved for the 1st Respondent.

14. Indeed, and as correctly submitted by the Respondents' counsel, any land which is reserved for public purpose cannot be available for alienation to a private entity, and if such alienation occurs, the holder of such a title cannot seek refuge in the provision of Article 40(1) of the Constitution. However, there must be concrete evidence either by way of a title, maps or part development plans to show that by the time the allocation of the land was done, the same was reserved for public purpose. That evidence was not placed before the court.

15. In any event, the 1st and 2nd Respondents did not hear the Petitioner before it issued its "*public notice*" in the Daily Nation Newspaper of 13th February, 2018 purporting to cancel the Petitioner's title. It is trite that the rules of natural justice, which is the corner stone of the right to a fair hearing, dictates that any person whose rights or interests are to be affected by a decision ought to be heard before the decision is made. In *Dickson Ngigi vs. Commissioner of Lands (1998) eKLR*, the Court of Appeal held as follows:

"The right to a hearing before a decision is made is a basic right which cannot be taken away by the hopelessness of one's case."

16. Having not given the Petitioner a hearing, the public notice of 13th February, 2018 by the 1st and 2nd Respondents is not only unconstitutional but also a nullity.

17. For those reasons, I allow the Petition as follows:

a. An order of permanent injunction be and is hereby issued restraining the Respondents either by themselves, agents, servants or by any other person whomsoever from interfering with the proprietorship of the Petitioner by evicting, trespassing on, remaining on, interrupting with activities on, or by howsoever interfering with the rights of the Petitioner's possession and/or ownership L.R. No. 22337.

b. A permanent injunction is hereby issued restraining the Respondents from revoking the Petitioner's title, registering any interest or encumbrances in the nature of caveats and/or in any other manner effecting registrations against the Petitioner's property known as L.R. No. 22337 without the consent of the Petitioner.

c. A declaration be and is hereby issued that the decision of the Respondents conveyed in a Public Notice published in the Daily Nation Newspaper dated 13th February, 2018 purporting to negate and divest the property of the Petitioner herein being L.R. No. 22337 threatens and violates the Petitioner's fundamental rights to protection of property guaranteed by Article 40 as read with Article 260 of the Constitution, and to fair administrative action guaranteed by Article 47(1) of the Constitution.

d. A declaration be and is hereby issued that the Petitioner is the legitimate owner of all that land known as L.R. No. 22337.

e. The Respondents to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE