



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC PETITION CASE NO. 30 OF 2018**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLE 159 OF THE CONSTITUTION  
OF THE REPUBLIC OF KENYA**

**=AND=**

**IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER ARTICLE 22, 23, 47, 48, 50, 165, 258, AND 259 OF THE CONSTITUTION OF KENYA AND THE  
ENFORCEMENT OF THE  
CONSTITUTION OF KENYA**

**=BETWEEN=**

**THE CHURCH COMMISSIONERS OF KENYA.....PETITIONER**

**=AND=**

**THE NATIONAL LAND COMMISSION.....RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 15<sup>th</sup> October 2018, which seeks review of my ruling which was delivered on 4<sup>th</sup> October 2018. The applicant contends that there is an error apparent on the record in that in the ruling, I observed that the applicant in its application which sought conservatory orders did not annex a recent search. I also observed that the search which was annexed was issued on 12<sup>th</sup> July 2013. The applicant contends that 12<sup>th</sup> July 2013 is not the date when the search was issued but it is the date when the certificate of title was issued to the applicant. The applicant therefore argues that this constitutes an error on the face of the record and that had I not got the date wrong, I would have reached a different decision in my ruling.
2. The applicant argues that if the ruling of 4<sup>th</sup> October 2018 is not reviewed and conservatory orders granted, the applicant's case in ELC 893 of 2013 will be dismissed as the defendants in that case have filed an application seeking to have it dismissed on grounds that as the National Land Commission has recommended revocation of the title held by applicant, there is no cause of action against the defendants.
3. The respondent which was duly served did not file any grounds of opposition or replying affidavit. I have considered the application by the applicant and the oral submission made by the applicant's lawyer. The only issue for determination is whether the applicant has made out a case for review of my ruling.
4. In the ruling sought to be reviewed, the applicant had filed a Constitutional Petition alleging that its rights had been violated. One of the reliefs sought in the petition was an order of certiorari seeking to quash the decision of the respondent which recommended the revocation of the title held by the applicant. The applicant had also sought conservatory orders staying the implementation of the decision by the National Land Commission.
5. In as much as I agree with the applicant that the date of 12<sup>th</sup> July 2013 was not the date when the search was issued, the conservatory orders were not declined on that aspect alone. In my ruling I clearly said that if the applicant succeeded in showing that the title was acquired

lawfully, even if it were revoked, it could still be restored. The other reason for rejecting conservatory orders was that there were interim orders granted in ELC 893 of 2013 which protected the applicant from being evicted from the suit property. The issue of whether the title was acquired lawfully or not will best be decided in that case and the decision in this case will depend on whether the process leading to the decision was fair or not. It is therefore clear that even if the court found that there was a recent search it could not follow that conservatory orders were to be granted. I therefore find that the application for review has no merit. I dismiss the same with no order as to costs.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 21<sup>st</sup> day of February 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of;-

M/s Githinji for Mr Onindo for Petitioner

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**