



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC PETITION NO. 10 OF 2018**

**BROTHERS OF OUR LADY MOTHER OF**

**MERCY REGISTERED TRUSTEES.....PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR .....2<sup>ND</sup> RESPONDENT**

**RULING**

***(Application for conservatory orders; petitioner claiming to be owner of suit land; 1<sup>st</sup> respondent directing the 2<sup>nd</sup> respondent to cancel the title of the petitioner; petitioner contending that this is a violation of her constitutional right to own property; important to preserve the title and possession pending hearing of the petition; application allowed and conservatory orders issued)***

1. This suit was commenced by way of a constitutional petition filed on 23 October 2018 and amended on 31 October 2018. The petitioner is the registered proprietor of the land parcel Nakuru Municipality Block 23/523 which it purchased on 29 August 2007 from its previous proprietor, one Salome Njeri Gichuru, for purposes of developing a secondary school. It did obtain registration as proprietor of the leasehold title on 25 October 2007. What has prompted this suit is that through a Gazette Notice dated 17 July 2010, the National Land Commission, sued as 1<sup>st</sup> respondent, indicated that the Government of Kenya, has revoked the title of the petitioner. It is contended by the petitioner, that prior to this notice, they were never informed of this intention nor given a hearing. It is thus the case of the petitioner that this action is a breach of Article 40 of the Constitution, which provides the right to own property. Various other alleged violations of the Constitution have also been stated in the petition. In the petition, the petitioner wants orders to quash the said Gazette Notice which purported to revoke its title and also a declaration that the petitioner is the legal owner of the suit land.

2. Together with the petition, the petitioner filed an application for conservatory orders seeking to restrain the respondents from dealing with the title of the suit property or interfering with its possession, pending hearing and determination of the petition.

3. Despite being served, the respondents have not entered appearance and have filed nothing to oppose the application.

4. I have considered the application alongside the supporting affidavits on record. I have seen that the petitioner did purchase the suit property at Kshs. 35,000,000/= through a sale agreement entered into on 29 August 2007. I have seen that the necessary taxes and stamp duty were paid. I have seen that the petitioner got registered as proprietor of the lease on 25 October 2007 and a Certificate of Lease issued to her. I have also seen a copy of the Kenya Gazette of 17 July 2017 which directs the Chief Land Registrar, the 2<sup>nd</sup> respondent, to revoke the petitioner's title and for the land to revert to the National Government for use as a Secondary School.

5. The petitioner in this petition contends that this action was a breach of her constitutional right to own property. At this point in time, I cannot make any determinate findings on the petition, suffice to state that I find it important to preserve the subject matter of the suit, so as to enable the petitioner ventilate her petition. If the conservatory orders are not issued, there is a risk that dealings over the suit property will be entered and the petitioner deprived of possession before this petition is heard, which will certainly prejudice the petitioner and may result in irreparable loss.

6. I therefore allow this application and make the following orders :-

**(i) That there be no dealings entered by the respondents over the land parcel Nakuru Municipality/Block 23/ 523 until this petition is heard and determined.**

(ii) That pending the hearing and determination of this petition, there be no registration of any disposition in the register of the land parcel Nakuru Municipality/Block 23/523.

(iii) That pending the hearing and determination of this petition, the possession of the petitioner on the land parcel Nakuru Municipality Block 23/523, not to be disturbed and the current status quo be maintained.

(iv) The petitioner shall have the costs of this application.

7. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 15<sup>th</sup> day of February 2019.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. Wairimu present for the petitioner.

No appearance for the respondent.

Court Assistant : Lotkomoi .

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**