



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KISII**

**PETITION NO. 9 OF 2017**

**IN THE MATTER OF ARTICLES 2(2), 10(2), 19, 20(2), 21(1), 22(1) & 2, 23(1), 40(2), 47(2), 50(1) AND 165 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT ON THE PROPERTY RIGHTS OF THE PETITIONER**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATION ACT, 2016**

**AND**

**IN THE MATTER OF LR NO. KISII MUNICIPALITY/BLOCK II/137**

**AND**

**IN THE MATTER OF GAZETTE NOTICE PUBLISHED ON 17/7/2017**

**AND**

**IN THE MATTER OF REVOCATION OF TITLE OF LR NO. KISII MUNICIPALITY/BLOCK II/137**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS & FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE RULES 2013**

**BETWEEN**

**SAMWEL D. OMWENGA ANGWENYI.....PETITIONER**

**AND**

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

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

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**J U D G M E N T**

**Introduction**

1. The Petitioner, Samwel D. Omwenga Angwenyi, being the registered proprietor of **LR No. Kisii Municipality/Block II/137** (“**the suit property**”) filed the Petition dated 2<sup>nd</sup> October, 2017 challenging the decision to revoke and nullify his title in respect to the suit property by the 1<sup>st</sup> respondent, the National Land Commission (NLC).

2. The Petitioner contended that he had been deprived of the exclusive and absolute entitlement over the suit property and his fundamental rights to ownership and protection of property under the Constitution of Kenya and in particular Articles 10, 27, 28, 40, 47 and 50(1) of the Constitution of Kenya, 2010 had been violated. The petitioner prayed for the following orders in the petition:-

**a) A declaration that the decision of the 1<sup>st</sup> respondent and in particular, the Kenya Gazette Notice published on the 17<sup>th</sup> day of July 2017, touching on and/or pertaining to LR No. Kisii Municipality/Block II/137, was irregular, illegal, unlawful and void.**

**b) Declaration that the revocation of the petitioner’s title in respect of LR No. Kisii Municipality/block II/137 was/is ultra vires the provisions of the National Land Commission Act, 2012 and hence invalid and unconstitutional.**

**c) The honourable court be pleased to grant an order of judicial review in the nature of certiorari to quash the gazette notice published on 17<sup>th</sup> day of July 2017 touching and/or concerning the revocation of the title in respect to LR No. Kisii Municipality/Block II/137;**

**d) Permanent injunction restraining and/or prohibiting the 1<sup>st</sup> respondent herein either by herself, agents, servants and/or anyone acting on her instructions from conducting and carrying out further proceedings touching and/or concerning the review of the lease over and in respect of LR No. Kisii Municipality/ Block II/137 and/or making any interfering with the petitioner’s developments on the suit property in contravention of the National Land Commission Act, 2012.**

### **Brief Background to the Petition:**

3. On 5<sup>th</sup> April 2004 the Petitioner entered into a sale agreement to purchase the suit property from Zachary Nyayiema Moturi. After paying the agreed consideration to Zachary Nyayiema Moturi, the parties to the agreement subsequently signed transfer documents, and the Petitioner caused the transfer to be registered in his favour. The Petitioner was thereafter issued with the certificate of lease in respect of the suit property and took possession.

4. On 16<sup>th</sup> March 2016, the 1<sup>st</sup> Respondent published a public notice in the newspaper in which it claimed that the suit property was a Government house. The Petitioner pursuant to the said advertisement made representations to the 1<sup>st</sup> respondent and tendered documents in regard to the transaction leading to acquisition of the suit property. The Petitioner contends that the 1<sup>st</sup> Respondent ignored the substance of his representation relating to the Petitioner’s acquisition of the suit property and proceeded to issue a gazette notice dated 17<sup>th</sup> July 2017 giving notice of the revocation of the Petitioner’s title to the suit property.

5. It is the Petitioner’s contention that the actions of the 1<sup>st</sup> Respondent were *ultra vires* its mandate and constituted a violation and infringement of the Petitioner’s constitutional and fundamental rights as relates to the protection of his property rights. The Petitioner submitted he was a bonafide purchaser of the suit property and in support of his assertion made representations to the 1<sup>st</sup> Respondent and tendered various documents including copy of agreement for sale, transfer by chargee in exercise of power of sale executed in his favour by the National Bank of Kenya Ltd to demonstrate his bonafides. The 1<sup>st</sup> respondent notwithstanding the representations and documents tendered in support of the petitioner’s ownership of the suit property, on 17<sup>th</sup> July 2017 published a Gazette Notice revoking and/or nullifying the Petitioner’s title to the suit property.

6. The Petitioner contends that the 1<sup>st</sup> Respondent’s action to revoke and/or nullify his title was a violation of his constitutional rights to protection of his property and that the action was *ultra vires* the mandate of the National Land Commission and violated Article 40 and 47 of the Constitution and the provisions of the Fair Administrative Action Act, 2015. The Petitioner sought to be granted the prayers set out in the Petition.

### **The Petitioner’s Case:**

7. The Petitioner’s case is set out in the petition, the supporting affidavit and supplementary affidavit and the annexures thereof, the submission and supplementary submissions filed in court. Broadly, the Petitioner asserts that he lawfully and validly purchased the suit property and after due process he was registered as the owner of the property and was issued with a title in regard to the suit property, **LR No. Kisii Municipality/Block II/137**. The Petitioner contends he was a bonafide purchaser for value of the suit property without any notice of any defect in the title to the said property and in that regard deserves the protection of the law against deprivation of his property.

8. The Petitioner avers that the notification by the National Land Commission vide the Newspaper advertisement on 16<sup>th</sup> day of March 2016 asserted and contended that the suit property was unlawfully and/or irregularly allocated to the Petitioner and therefore liable to be invalidated was without any basis and/or justification.

9. The Petitioner identified the following issues as arising from the suit for determination.

**1. Whether the 1<sup>st</sup> respondent had jurisdiction to interrogate the acquisition, transfer and registration of the suit property?**

**2. Whether the petitioner acquired lawfully and legitimate rights over the suit property?**

**3. Whether the petitioner was accorded fair hearing before the inclusion of title of the suit property in the offensive list?**

**4. Whether the decision of the 1<sup>st</sup> respondent herein accord with the doctrine of natural justice?**

**5. Whether recommendations relating to the revocation of the title of the suit property are ultra vires?**

10. The Petitioner submitted that the 1<sup>st</sup> respondent was created pursuant to the provisions of Article 67 of the Constitution of Kenya, 2010 which provides for the mandate and functions of the 1<sup>st</sup> Respondent. Under Article 68(c)(v) of the Constitution, Parliament was required to enact legislation **“to enable the review of all grants or dispositions of public land to establish their propriety or legality”**. Parliament in obedience to this constitutional edict enacted the National Land Commission Act. Section 5 of National Land Commission Act restated the mandate of the 1<sup>st</sup> Respondent as set out under Article 67 of the Constitution. The Petitioner submitted that the 1<sup>st</sup> Respondent has no power or mandate to interrogate and recommend revocation of title against a bonafide purchaser and asserts that the decision by the 1<sup>st</sup> Respondent was made outside the jurisdiction bestowed on the 1<sup>st</sup> respondent. The Petitioner contended that after conducting due diligence, he lawfully acquired the suit property and his rights should not therefore be impugned owing to the ineptitude of Government officers.

11. The Petitioner argued that he was not accorded a fair hearing by the 1<sup>st</sup> Respondent as the 1<sup>st</sup> Respondent failed to furnish him or avail to him the particulars of the allegations of fraud or unlawful acquisition leveled against him and further failed to supply him with any information and/or documents the 1<sup>st</sup> Respondent relied on to support their allegations against the Petitioner. The petitioner was not afforded any opportunity to interrogate or cross examine any witness the 1<sup>st</sup> respondent had to testify against him. The Petitioner maintained as the registered owner of the suit property his title was indefeasible and could only be impugned as provided under the law. He submitted the decision by the 1<sup>st</sup> Respondent was *ultra vires* and it offended the Wednesbury principle of reasonableness.

#### **1<sup>st</sup> Respondent’s Case:**

12. The 1<sup>st</sup> Respondent entered appearance and filed its replying affidavit and submissions. It submitted that it received a complaint from the Ministry of Lands, Housing and Urban Development listing several land parcels around the Country containing Government houses that they alleged were illegally acquired and registered to private individuals. The suit property in the petitioner’s name was listed as one of the properties and the 1<sup>st</sup> Respondent vide a public notice advertisement published the same in the Newspaper dated 16<sup>th</sup> March 2016 inviting parties to appear before the review committee of the National Land Commission. The Petitioner appeared before the Commission and submitted on how he acquired the suit property. The 1<sup>st</sup> Respondent submitted that the Petitioner did not raise an objection to the jurisdiction of the 1<sup>st</sup> Respondent. The suit property was claimed by both Petitioner and the Ministry of Lands, Housing and Urban Development. After conducting the review process, the 1<sup>st</sup> Respondent stated that on 28<sup>th</sup> April 2017 it produced a reasoned determination respecting the investigation and review of the Petitioner’s title.

13. The 1<sup>st</sup> Respondent submitted that Section 14 (1) of the National Land Commission Act gives mandate to the 1<sup>st</sup> Respondent to review all grants and dispositions of public land in order to establish their propriety and legality. The 1<sup>st</sup> Respondent further submitted that it had not occasioned a breach of the applicant’s right under Article 47 of the Constitution of Kenya, 2010 through its action and decision to revoke the Petitioner’s title to the suit property. The 1<sup>st</sup> Respondent contended that after consideration of the representation by both parties, it directed the Chief Lands Registrar to revoke the Petitioner’s title to the suit property. It placed reliance on the case of **Russel -vs- Duke of Norfolk (1949) 1ALL ER** where it was held that **“one essential dictate of natural justice was that the person concerned by any proceedings would not have had reasonable opportunity of presenting his case.”** It further contended that since the suit properties were unlawfully acquired by the Petitioner, then the rights under Article 40 of the Constitution of Kenya, 2010 are not open for enjoyment by the Petitioner.

#### **Analysis and Determination:**

14. The issues arising from this Petition are twofold. First, the Petitioner have challenged the jurisdiction of the 1<sup>st</sup> Respondent to revoke its title claiming it superseded its mandate; and secondly whether the actions of the 1<sup>st</sup> Respondent infringed the Petitioner’s rights under Article 40 and 47 of the Constitution.

15. The functions of the National Land Commission are set out under Article 67 (2) of the constitution of Kenya and include:

**a) to manage public land on behalf of the National and County governments;**

**b) to recommend a national land policy to the National government;**

**c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;**

**d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;**

**e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;**

**f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;**

g) to assess tax on land and premiums on immovable property in any area designated by law; and

h) to monitor and have oversight responsibilities over land use planning throughout the country.

16. Section 14 of the *National Land Commission Act*, on the other hand outlines the mandate of the Commission and provides as follows:

*(1) Subject to Article 68(c)(v) of the Constitution, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the National or a County Government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.*

*(2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1).*

*(3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.*

*(4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.*

*(5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.*

*(6) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.*

*(7) No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.*

*(8) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.*

*(9) The Commission may, where it considers it necessary, petition Parliament to extend the period for undertaking the review specified in subsection (1).*

17. Jurisdiction of National Land Commission was considered in the case of **Republic -vs- National Land Commission Ex parte Holborn Properties Ltd [2016] eKLR**, where the court held that the Commission had power to review titles that are privately held where such titles were initially public land and were converted to private holdings with a view of ascertaining whether the title was properly and legally acquired.

18. The question this court is called upon to determine is whether the 1<sup>st</sup> Respondent in carrying out its mandate to investigate the title infringed the rights of the Petitioner. Article 47 of the Constitution of Kenya makes provision for the threshold to be met by any institution that exercises any administrative function that has the potential to impact or affect the interest of a person adversely. Article 47 provides:

**1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**

**2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.**

**3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall-**

**a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and**

**b. promote efficient administration.**

19. The Court of Appeal in the case of **Judicial Service Commission -vs- Mbalu Mutava & Another [2015] eKLR** held as follows:

**“In exercise of its powers under the Constitution or under legislation, public officers, state officers, state organs and independent bodies or tribunals may make decisions which may be characterized as judicial, quasi-judicial or administrative depending on the empowering provision of the Constitution or the law. The landmark decision of the House of Lords in Ridge v. Baldwin [1964] AC 40 clarified the law, that the rules of natural justice, in particular right to fair hearing, (audi alteram partem rule) applied not only to bodies having a duty to act judicially but also to the bodies exercising administrative duties. In that case, Lord Hodson at page 132 identified three features of natural justice as:**

**i. the right to be heard by an unbiased tribunal.**

**ii. the right to have notice of charges of misconduct.**

**iii. the right to be heard in answer to those charges.**

20. The 1<sup>st</sup> Respondent gave evidence that on 16<sup>th</sup> March 2016, it published a public notice in the newspapers inviting interested parties to appear before them, and that on 8<sup>th</sup> April 2016 the Petitioner was invited to a review hearing. The Petitioner submitted that the 1<sup>st</sup> Respondent proceeded with the review on the basis and presumption that he, the Petitioner was the allottee of the suit property, yet he was but a bonafide purchaser for value without any notice of any defect in the title. The Petitioner further submitted that the 1<sup>st</sup> Respondent failed to avail him any information and/or any documents on which they based their claim that the land was irregularly acquired. In the case of **Republic -vs- National Land Commission & Tropical Treasure Limited Ex-parte Krystaline Salt Limited (2015) eKLR** Korir J. held as follows:

**“[68.] The notice in the newspapers did not have the name of the complainant and neither did it disclose the complaint against the Applicant’s titles. In order for the Applicant to prepare its defence it ought to have been served with the particulars of the allegations by the Interested Party and informed of the manner in which it allegedly obtained grants to public land in an illegal or improper manner.**

**[69.] In a matter that eventually led to the revocation of the Applicant’s title, a notice in the newspapers without any useful information was not sufficient...”**

21. In the present matter, the National Land Commission merely carried an advertisement in the Star Newspaper of 16<sup>th</sup> March 2016 where several names were carried intimating that the Commission would be carrying out a review of the grants and titles relating to public land as indicated against the names of the interested persons. Against No. 131 in the list, the title **LR No. Kisii Municipality/Block II/137** was indicated but the name of the owner was not given. The designated use was indicated to be **“Government House”**. There was no statement of any facts constituting the illegality and/or irregularity that the Commission was alleging while giving notification to carry out a review of the title.

22. The 1<sup>st</sup> respondent’s replying affidavit affirms that the petitioner amongst other persons was served with the Notice of the Commission’s intention to review their grants and/or titles vide the Gazette Notice of 16<sup>th</sup> March 2016. This notice was deficient to the extent that it did not set out any particulars of the facts constituting any alleged illegality, irregularity and/or fraud in the alienation and/or acquisition of the property. The notice did not afford the petitioner the opportunity to know the allegations and/or case he was required to answer. The notice in my view did not satisfy the provisions of Article 47(1) which provides that:

**“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”**

The 1<sup>st</sup> Respondent was in actual sense carrying out an administrative function as per its mandate yet it did not avail to the petitioner the relevant information and/or any documents to enable him to respond appropriately.

23. The Petitioner submitted that upon payment of Kenya Shillings Two Million Five Hundred Thousand (Kshs.2,500,000/=) to Zachary Nyayiema Moturi and upon registration of the transfer, the Petitioner was issued with a certificate of title. Article 40 of the Constitution 2010 provides that every person has the right, either individually or in association with others, to acquire and own property of any description and in any part of Kenya. However in the case of **Isaac Gathungu Wanjohi & Another -vs- Attorney General & 6 Others Petition 154 of 2011 [2012] eKLR**, Majanja, J. took the view that protection of property under Article 40 of the Constitution was only available where the property is shown not to have been unlawfully acquired. In the case he stated thus:

**“...Article 40 must be read as a whole so that protections afforded by Article 40 which protects the right to property must be read to exclude property found to be unlawfully acquired under Article 40(6). This requirement is an extension of the fact that the Constitution protects higher values which are to be found in the preamble to the Constitution and Article 10. Values such as human rights and social justice cannot countenance a situation where the Constitution is used to rubberstamp what is in effect unlawful...”**

Section 26, the Land Registration Act provides that:

**“26(1) The Certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-**

**a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**b) Where the certificate of title has been acquired illegally unprocedurally or through corrupt scheme.[Emphasis added]**

24. In the case of **Samuel Kamere -vs- Lands Registrar, Kajado Civil Appeal Number 28 of 2005** where the Court of Appeal which held that:

**“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a VALID and LEGAL title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”**

25. This court sitting at Milimani Environment and Land Court Nairobi in the case of **Shimoni Resort -vs- Registrar of Titles & 5 Others [2016]eKLR** had occasion to consider the application of the doctrine of sanctity of title as espoused under Section 26(1) of the Land Registration Act, 2012 vis-à-vis Article 40(6) of the Constitution which taken literally would appear to have dealt a fatal blow to sanctity of title as we have known it to apply. Under paragraph 53 of the judgment, I expressed myself as follows:-

**“It has been suggested and Hon. Justice Majanja appears to have taken this view in the case of Isaac Gathungu Wanjohi & Another -vs- AG & 6 Others (Supra) that Article 40 (6) which provides that, “The rights under this Article do not extend to any property that has been found to have been unlawfully acquired” watered down the doctrine of sanctity of title such that any title that is found to have been procured unlawfully is not protected notwithstanding when the fraud was committed and by whoever. Literally interpreted, this constitutional provision would appear to suggest even the title of a bona fide purchaser for value without any notice of fraud would not be protected if a predecessor of the title is found to have acquired the property unlawfully and/or fraudulently. For my part, I would fault such interpretation as it would mean the same constitution that protects the fundamental rights of all persons would be infringing the rights of the bonafide purchaser. The Constitution should be interpreted under Article 259 of the Constitution in a manner that best promotes the object of the Constitution.**

Article 259 (1) of the Constitution provides thus:

259 (1) This Constitution shall be interpreted in a manner that-

- (a) Promotes its purpose, values and principles.
- (b) Advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights.
- (c) Permits the development of the law; and
- (d) Contributes to good governance.

Sections 26 (1) (a) and (b) of the Land Registration Act, 2012 was enacted after the promulgation of the Constitution 2010 and clearly provided the title of a bonafide purchaser cannot be impugned unless the title holder is proved to have been a party to the fraud or misrepresentation that led to the registration of the title. In my view, the most appropriate interpretation of Article 40 (6) of the Constitution would be that it would apply to a defrauder and there would be no intention to deprive an innocent buyer of his property. Thus Article 40 (6) of the Constitution in my considered opinion would only apply to registered owners who are found to have acquired the properties unlawfully. It is such property that would not be protected under Article 40 of the Constitution. The property in the hands of a bonafide purchaser would be protected even if it is shown that at some point in the past before the bonafide purchaser acquired the property the same had been fraudulently transacted.”

I still subscribe to the view I expressed in the said matter and see no basis to depart from it. Indeed, the Court of Appeal in the case of **Charles Karathe Kiarie & 2 Others -vs- Administrators of Estate of John Wallace Mathare (deceased) & 5 Others [2013]eKLR** which I cited with approval stated as follows in regard to indefeasibility of title:-

**“The Registration of Titles Act is entirely a product of the Torrens System of registration. The word “Torrens” is derived from Sir Robert Torrens, the third premier of South Australia and pioneer and author of a simplified system of land transfer which he introduced in 1958. This system emphasizes on the accuracy of the land register which must mirror all currently active registrable interests that affect a particular parcel of land. Government as the keeper of the master record of all land and their owners guarantees indefeasibility of all rights and interests shown in the land register against the entire world and in case of loss arising from an error in registration the person affected is guaranteed of government compensation. This statutory presumption of indefeasibility and conclusiveness of title under the Torrens System can be rebutted only by proof of fraud or misrepresentation which the buyer is himself involved.”**

In my view, Section 26 1(a)&(b) is a codification of the principle of indefeasibility of title such that where a person is registered a proprietor of a parcel of land his/her title can only be impugned on grounds of fraud and/or misrepresentation to which he is shown to have been involved and/or party to.

26. The evidence presented by the Petitioner is that after conducting an official search at the lands registry he was issued with a Certificate of Official Search showing Zachary Nyayemi Muri was the registered proprietor of the suit property. The Petitioner upon paying a consideration had the suit property transferred to him and was subsequently issued with a title. The evidence adduced by the petitioner as to how he acquired the property clearly demonstrates he was an innocent and bonafide purchaser. The property was registered initially in the name of Hellen Ondimu before being transferred to Zachary Nyayemi Muri who charged the same to National Bank of Kenya Ltd. The Bank upon exercising its power of sale conferred under the charge, transferred the property by way of Transfer by Chargee to the petitioner. In those circumstances, no fraud and/or knowledge of any fraud can be imputed to the petitioner. He was a bonafide purchaser of the property at arms length. I therefore find and hold that the Petitioner is a bonafide purchaser entitled to the benefit of the provisions of Section 14(7) of the National Land Commission Act which provides that **“No revocation of title shall be effected against a bonafide purchaser for value without notice of a defect in the title.”** The Petitioner was such a purchaser. In the case of **Republic -vs- National Land Commission Ex parte Holborn Properties Ltd 2016 eKLR** the court observed as follows;

**“One must have acquired land that was initially public land and issued with a title document, either as a freehold or leasehold, for a review to be done. It is therefore not true that once land falls under the purview of the definition of “private land”, the same cannot be reviewed. Indeed, it is only such parcels of land that can be reviewed by the Respondent with a**

view of recommending to the Registrar to revoke the title. The recommendation to the Registrar by the Respondent to revoke title which it finds was illegally issued is only in respect to the initial allottee. However, where the initial allottee of public land has transferred land to a bona fide purchaser for value without notice of defect in the title, the Registrar does not have the jurisdiction to revoke such a title (see Section 14(7) of the National Land Commission Act). The issue of whether the parcel of land under review by the Commission was initially public land has to be established first by the Respondent before it can make a recommendation for or against revocation.”

27. In the circumstances of this matter, I find and make a determination that the Petitioner’s constitutional rights under Articles 40, 47 and 50 of the Constitution were contravened. I accordingly allow the Petition dated 2<sup>nd</sup> October 2017 and quash the 1<sup>st</sup> Respondent’s decision to revoke the Petitioner’s title to the suit property. I grant prayers (a), (b) and (c) of the Petition and award the costs of the petition to the Petitioner as against the 1<sup>st</sup> Respondent.

JUDGMENT DATED, SIGNED AND DELIVERED AT KISII THIS 5<sup>TH</sup> DAY OF APRIL 2019.

**J. M. MUTUNGI**

**JUDGE**

**In the Presence of:**

Adawo for the petitioner

N/A for the 1<sup>st</sup> respondent

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents

Ruth Court Assistant

**J. M. MUTUNGI**

**JUDGE**