



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
ENVIRONMENT AND LAND DIVISION
E.L.C PETITION NO 01 OF 2019

LUCAS J. AYUKO1st
PETITIONER
LOICE ATIENO
AYUKO2nd
PETITIONER
ERASTUS JOSEPH
ONYANGO3rd PETITIONER

versus

ZADOCK OYUGI
NJUE1st
RESPONDENT
NICHOLAS OUMA
OYIEKO2nd RESPONDENT
MIGORI COUNTY LAND
REGISTRAR3rd RESPONDENT

JUDGEMNET

Introduction /Procedural Background

1. This Petition was filed on 28th January 2019 by Lucas J. Ayuko, Loice Atieno Ayuko and Erastus Joseph Onyango. They contend that they are

the joint registered proprietors of L.R. No. KANYAMKAGO/KAWERE II/1198, and that a portion of the said parcel, measuring approximately 0.41 acres, was unlawfully excised, subdivided and transferred to the 1st Respondent, Zadock Oyugi Njue, and the 2nd Respondent, Nichlas Ouma Oyieko, resulting in the creation of L.R. Nos. KANYAMKAGO/KAWERE II/6708 and 6709.

2. The Petitioners assert that these actions were undertaken without their notice or consent, and were purportedly grounded on a decree emanating from the Uriri Land Disputes Tribunal and adopted in Migori SRM Misc. Application No. 28 of 2006, which decree had already been quashed by the High Court at Kisii in Misc. Application (JR) No. 13 of 2008 through a ruling delivered on 15th June 2009.
3. Upon filing, the matter first came before the Court on 29th January 2019, when the Court directed that the Respondents be served for inter partes hearing. On 20th March 2019, counsel for the 1st and 2nd Respondents entered appearance and sought additional time to respond and to explore settlement. Several indulgences were granted over the course of 2019 and 2020, with the Court encouraging the parties to consider alternative dispute resolution in accordance with Article 159(2)(c) of the Constitution.
4. The record reflects that, despite repeated service and ample opportunities afforded to them, the 1st and 2nd Respondents did not file any responses to the Petition and ultimately failed to attend subsequent mentions of the matter. The 3rd Respondent, the Migori County Land Registrar, made limited appearances but filed no substantive response addressing the Petitioners' core grievances.
5. In an effort to resolve the dispute, the Court issued a consequential order on 2nd March 2021, directing all parties to appear before the Migori County

Land Registrar for mediation, with the Registrar required to file a report within sixty days. Summons were issued for appearances on 3rd August 2021 and 14th September 2021. On both occasions, the Petitioners and a representative of the Attorney General attended, but the 1st and 2nd Respondents failed to appear, thereby frustrating the mediation process. The Registrar consequently referred the matter back to the Court.

6. On returning to Court, and noting the persistent non-attendance and non-compliance by the 1st and 2nd Respondents, the Court on 25th November 2021 directed that the Petition proceed by way of written submissions. The Petitioners complied and filed their submissions on 9th February 2023, which were duly served. The Respondents filed none.
7. Subsequent mentions on 16th February 2022, 17th March 2022, 16th June 2022, 3rd October 2022, 23rd November 2022 and 5th December 2022 consistently show attendance on the part of the Petitioners and absence on the part of the 1st and 2nd Respondents. On 10th May 2023, the Court was informed that the Petitioners had complied fully with all directions but that the Respondents had still not filed any submissions. The Court accordingly fixed the matter for judgment.

The petitioners' Submissions

8. The Petitioners submitted that the subdivision and transfer of L.R. Nos. KANYAMKAGO/KAWERE II/6708 and 6709 were founded upon a decree that had already been quashed by the High Court in Kisii High Court Misc. Application (JR) No. 13 of 2008, where Muchelule J. held that the Uriri Land Disputes Tribunal had acted without jurisdiction in entertaining a claim touching on registered land.
9. They argued that once the tribunal's proceedings and the subsequent adoption in Migori SRM Misc. Application No. 28 of 2006 were nullified,

nothing remained capable of enforcement, and the 3rd Respondent's reliance on the revoked decree in 2018 unlawfully deprived them of part of their land. They emphasised that even if the tribunal's award had been valid, it never directed a subdivision, but only a re-survey, and therefore the Land Registrar acted ultra vires in creating new titles. In support of their arguments on nullity, they relied on the decision in Macfoy v United Africa Co. Ltd [1961] 3 All ER 1169, asserting that an act founded on a void decision collapses with it.

10. The Petitioners further submitted that as registered proprietors, their rights under Sections 24, 25 and 26 of the Land Registration Act and Article 40 of the Constitution are absolute and indefeasible, and could only be interfered with through a lawful process, which was absent in this case.
11. They contended that the High Court's judgment in JR No. 13 of 2008 vindicated their title and bound all public officers, including the 3rd Respondent, who nonetheless proceeded to subdivide their property nearly nine years after the decree had been nullified. They also relied on **Ocean View Plaza Ltd v Attorney General (KLR E&L 475-478)** for the proposition that a title lawfully issued cannot be defeated except in accordance with the law.
12. On the basis of these principles and the issues they identified namely, the validity of the decree, the legality of the subdivision, the extent of the Land Registrar's powers and the jurisdiction of this Court they urged that the resultant titles be cancelled and the land restored to its original parcel number and acreage.

Issues For Determination

13. Having considered the Petition, the submissions filed, the uncontested record before the Court, and the applicable law, the following issues arise for determination:

- a) Whether the subdivision and transfer of a portion of L.R. No. KANYAMKAGO/KAWERE II/1198 into L.R. Nos. 6708 and 6709 were lawful, valid and within the powers of the 3rd Respondent, given the prior quashing of the decree relied upon.

- b) Whether the Petitioners are entitled to the remedies sought, including the restoration of the original title and any ancillary reliefs.

Analysis and Determination

Issue 1: Whether the subdivision and transfer of a portion of L.R. No. KANYAMKAGO/KAWERE II/1198 into L.R. Nos. 6708 and 6709 were lawful, valid and within the powers of the 3rd Respondent, given the prior quashing of the decree relied upon

14. The central grievance in this Petition concerns the subdivision of the Petitioners' land and the subsequent creation of L.R. Nos. KANYAMKAGO/KAWERE II/6708 and 6709, actions which the Petitioners state were undertaken on the strength of a decree issued in Migori SRM Misc. Application No. 28 of 2006, itself founded upon an award of the Urii Land Disputes Tribunal.

15. It is not disputed that the said tribunal proceedings and the resultant decree were quashed in Kisii High Court Misc. Application (Judicial Review) No. 13 of 2008, wherein Muchelule J. held that the tribunal had acted outside its jurisdiction in purporting to determine rights over registered land. The High Court unequivocally pronounced that the tribunal lacked the mandate conferred by section 3(1) of the repealed Land Disputes Tribunal Act, and consequently, that the adoption of its award and any decree flowing from it were in excess of jurisdiction. That decision has never been set aside, reviewed or appealed.
16. The legal effect of a decision made without jurisdiction is well settled. A proceeding undertaken without jurisdiction is a nullity from the outset, incapable of conferring rights or imposing obligations. The Petitioners cited **Macfoy v United Africa Co. Ltd [1961] 3 All ER 1169**, in which Lord Denning stated that a void act is “incurably bad” and “cannot be the foundation of anything lawful”. I agree with that exposition of the law. Once the High Court quashed both the award and the Magistrate’s Court decree, there remained no lawful instrument upon which the 3rd Respondent could rely to alter, subdivide or transfer the Petitioners’ land. Any action undertaken on the basis of a void decree was equally void.
17. Even if one were to assume, hypothetically, that the tribunal’s award had been valid, a careful reading of the impugned award shows that it merely directed a re-survey of the parcels to confirm acreage and resolve boundary confusion. It did not direct a subdivision, nor did it authorise a transfer of ownership to the 1st and 2nd Respondents. The 3rd Respondent therefore acted outside the scope of any purported directive by proceeding to excise a portion of the land and create new titles. Such a step required a lawful basis, and none existed.

18. The Court notes that the subdivision in question occurred on 17th October 2018, nearly nine years after the tribunal award and decree had been declared invalid by the High Court. By that time, the legal position was long settled: the decree was a nullity, and no public officer could lawfully enforce or revive it.
19. Any administrative action taken in reliance on an extinguished decree violated the Petitioners' rights under Article 40 of the Constitution and the protections afforded to registered proprietors under Sections 24, 25 and 26 of the Land Registration Act, which preserve the sanctity of title except where fraud, illegality or procedural impropriety is proved. Here, the Petitioners' title was interfered with without any lawful process, and in direct contradiction to a superior court decision.
20. In light of the foregoing, I find that the subdivision of L.R. No. KANYAMKAGO/KAWERE II/1198 and the creation of L.R. Nos. 6708 and 6709 were unlawful, unprocedural, and undertaken without jurisdiction. The 3rd Respondent acted ultra vires, and the resultant titles have no legal foundation.

Issue 2: Whether the Petitioners are entitled to the remedies sought, including the restoration of the original title and any ancillary reliefs

21. Having found that the subdivision and transfer of a portion of L.R. No. KANYAMKAGO/KAWERE II/1198 were undertaken without jurisdiction and in reliance on a decree that had long been quashed by the High Court, the question that follows is whether the Petitioners are entitled to the reliefs sought. The Petitioners seek declarations on the violation of their constitutional rights, the cancellation of the resultant titles L.R. Nos. 6708 and 6709, and the restoration of their original parcel.

22. The Court has already determined that the process leading to the subdivision and transfer was invalid. It is therefore apparent that the Petitioners' proprietary rights under Article 40 of the Constitution were infringed when their land was interfered with without lawful justification. The Petitioners' title, protected under sections 24, 25 and 26 of the Land Registration Act, could not lawfully be diminished through an administrative action anchored on a void decree.
23. In circumstances where the substratum of a subdivision is legally indefensible, the Court retains the inherent and statutory jurisdiction to reverse the effects of such administrative error and restore the registration regime to the status that lawfully prevailed before the infringement.
24. The Petitioners also sought declaratory reliefs relating to the violation of their rights to fair administrative action and fair hearing under Articles 47 and 50 of the Constitution. Considering that they were neither notified nor afforded a hearing before the impugned subdivision and transfers were effected, and given that the 3rd Respondent relied on a decree that had no legal force, the breach of fair administrative procedures is evident. The Petitioners were deprived of a portion of their land without due process, contrary to the dictates of transparent, reasonable and lawful administrative action that Article 47 demands.
25. On the question of the appropriate remedy, this Court is guided by its constitutional mandate under Articles 23 and 162(2)(b), as well as the statutory framework under the Environment and Land Court Act, which empowers it to issue orders necessary to correct unlawful dealings with land and restore the integrity of registered titles.

26. Where a title is founded on a process that is void ab initio, the Court has jurisdiction to cancel it and to direct the restoration of the rightful proprietor's interest. In this instance, the Petitioners have demonstrated that the impugned titles were created without lawful authority. The justice of the case therefore requires that they be cancelled and that the original parcel number and acreage be reinstated.
27. Concerning general damages, the Petitioners did not place before the Court material on quantifiable loss or personal injury beyond the unlawful interference with their property. While the Court acknowledges the infringement of their constitutional rights, it considers that the primary and most effective remedy in the circumstances is the restoration of their proprietary interest and the issuance of appropriate declaratory reliefs.

Final Orders

28. In light of the findings above, and having held that the subdivision and transfer of a portion of L.R. No. KANYAMKAGO/KAWERE II/1198 were unlawful and undertaken without jurisdiction, the Court makes the following orders:
- a) A declaration is issued that the subdivision and transfer of the Petitioners' land, resulting in the creation of L.R. Nos. KANYAMKAGO/KAWERE II/6708 and 6709, violated Articles 40 and 47 of the Constitution.
 - b) A declaration is issued that the 3rd Respondent acted without lawful authority in relying on a decree that had been quashed in Kisii High Court Misc. Application (JR) No. 13 of 2008.

- c) Titles L.R. Nos. KANYAMKAGO/KAWERE II/6708 and 6709 are hereby cancelled.
- d) The Migori County Land Registrar shall forthwith restore L.R. No. KANYAMKAGO/KAWERE II/1198 in its original acreage and in the names of the Petitioners.
- e) Each party shall bear their own costs.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at NAIROBI on this 27th day of November, 2025.

MOHAMMED N. KULLOW
JUDGE

Judgment delivered in the presence of: -

..... for the 1st Petitioner
..... for the 2nd Petitioner
..... for the 3rd Petitioner
..... for the 1st Respondent
..... for the 2nd Respondent
..... for the 3rd Respondent
Philomena W...... Court Assistant