



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC PETITION NO. E026 OF 2025**

**IN THE MATTER OF ARTICLES 19, 22, 23, 40, 47, 50, 64 & 162(2) OF  
THE CONSTITUTION OF KENYA**

**IN THE MATTER OF THE GOVERNMENT LANDS ACT (REPEALED)**

**IN THE MATTER OF THE TRUST LAND ACT (REPEALED)**

**IN THE MATTER OF THE REGISTRATION OF TITLES ACT (REPEALED)**

**IN THE MATTER OF THE LAND REGISTRATION ACT, 2012**

**AND**

**IN THE MATTER OF THE PURPORTED REVOCATION OF TITLE  
NUMBERS**

**NAIROBI/BLOCK 92/293, 92/294 AND 92/296**

**VIDE GAZETTE NOTICE NO. 6335 DATED 6<sup>th</sup> JUNE 2011**

**BETWEEN**

**JITESH  
SHAH .....1<sup>ST</sup> PETITIONER** **JAYANTILAL**

**HIMANSHU  
SHAH .....2<sup>ND</sup> PETITIONER** **JAYANTILAL**

**AND**

**THE DISTRICT LAND REGISTRAR,  
NAIROBI .....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY  
GENERAL .....2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND  
COMMISSION .....3<sup>RD</sup> RESPONDENT**

## **JUDGMENT**

### **A. INTRODUCTION**

1. This Petition was instituted by the Petitioners, vide a Petition dated 14<sup>th</sup> April 2025, seeking reliefs against the Respondents arising from the purported revocation of titles to parcels of land known as Nairobi/Block 92/299, 92/300, 92/301, 92/302, 92/303 and 92/304, situated within Lake View Estate, Nairobi City County.
2. The Petition is premised on alleged violations of the Petitioners' constitutional rights under **Articles 40, 47, 50 and 64 of the Constitution of Kenya**, following the publication of **Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011** by the 1<sup>st</sup> Respondent, which purported to revoke the mother titles from which the Petitioners' properties were derived. The Petitioners contend that the impugned Gazette Notice was unlawful, unconstitutional, and issued without notice or due process.

### **B. THE PETITIONERS' CASE**

3. The Petitioners' case is that they are the lawful, registered and indefeasible proprietors of the suit properties, having acquired the same through a chain of valid transactions originating from lawful allotments issued by the Commissioner of Lands in 1995.
4. They aver that they were innocent purchasers for value, having acquired the mother titles after conducting due diligence, payment of valuable consideration, and subsequent issuance of 99-year leases by the Commissioner of Lands. The Petitioners further state that the mother

titles were lawfully amalgamated and subdivided with the requisite approvals, culminating in the issuance of Certificates of Lease in their favour by the Nairobi District Land Registrar in 1998.

5. It is the Petitioners' case that they have at all material times remained in lawful possession of the suit properties and have continued to meet their statutory obligations, including the payment of land rent and rates. They further aver that the suit properties have been geo-referenced and ownership verified on the ArdhiSasa platform, which is controlled and managed by the Respondents, thereby confirming the legitimacy of their titles. According to the Petitioners, there existed no impediment, restriction, or adverse claim communicated to them prior to the discovery of the impugned Gazette Notice.
6. The Petitioners contend that the publication of **Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011** was undertaken without notice, without affording them an opportunity to be heard, and without any court order, thereby violating the rules of natural justice and their constitutional rights to property, fair administrative action, and a fair hearing as guaranteed under **Articles 40, 47 and 50 of the Constitution**. They assert that the 1<sup>st</sup> Respondent acted ultra vires, as there is no statutory mandate permitting the unilateral revocation of registered titles through a Gazette Notice. Consequently, the Petitioners seek declaratory reliefs, orders of certiorari, mandamus and prohibition, damages, and costs.

### **C. THE RESPONDENTS' CASE**

7. The Respondents oppose the Petition and rely on their Grounds of Opposition filed dated 5<sup>th</sup> December 2025. Their case is that the 1<sup>st</sup> Respondent acted within the law and pursuant to statutory authority conferred **under Section 79 of the Land Registration Act**, which

empowers the Land Registrar to rectify the land register and cancel titles that were irregularly or unprocedurally issued. They contend that the impugned titles were issued over public land reserved for public purposes within Lake View Estate and were therefore not available for allocation to private individuals.

8. The Respondents further argue that investigations were conducted prior to the issuance of the Gazette Notice and that the findings revealed that the suit land had been allocated contrary to planning regulations, zoning requirements, and approved development plans. They maintain that the revocation of the titles was necessary to safeguard public land and protect public interest, which they argue outweighs the Petitioners' private proprietary claims.
9. It is also the Respondents' position that the Petition has been overtaken by events, as the Gazette Notice dated 6<sup>th</sup> June 2011 was issued and implemented long before the filing of the present Petition. They submit that there is no subsisting decision capable of being quashed and pray that the Petition be dismissed with costs.

#### **D. SUBMISSIONS**

##### **SUBMISSIONS ON BEHALF OF THE PETITIONERS**

10. The Petitioners submit that the core issues for determination are:
  - (i) whether the 1<sup>st</sup> Respondent had legal authority to revoke registered titles through a Gazette Notice, and
  - (ii) whether the revocation violated the Petitioners' constitutional rights under **Articles 40, 47 and 50 of the Constitution**. It is their submission that once a title is duly issued and registered, it becomes indefeasible unless impeached through fraud or misrepresentation proved

against the proprietor and only by a court of law.

11. They contend that neither the Registration of Titles Act (repealed) nor the **Land Registration Act, 2012** confers power upon a Land Registrar to revoke titles by administrative fiat. Reliance is placed on **Kuria Greens Limited -Vs- Registrar of Titles & Another [2011] eKLR**, where the Court held that there exists no statutory basis for revocation of a registered title by Gazette Notice, and **Kongowea Market Estate Ltd -Vs- Registrar of Titles [2011] eKLR**, which affirmed that such revocations are ultra vires, unlawful and unconstitutional.
12. The Petitioners further submit that the impugned revocation was effected without notice, hearing, or written reasons, in violation of **Article 47 (fair administrative action)** and **Article 50 (right to be heard)**. They argue that even where land is alleged to be public, due process cannot be sacrificed, and affected parties must be accorded an opportunity to be heard. They rely on **Isaac Gathungu Wanjohi & Another -Vs- Attorney General & 6 Others [2012] eKLR** and **Republic -Vs- National Land Commission & 2 Others ex parte Airways Holdings Limited [2015] eKLR**, which emphasized that due process is mandatory even in matters touching on public land. Consequently, the Petitioners submit that the Gazette Notice is null and void ab initio, and they are entitled to the reliefs sought.

## **RESPONDENTS SUBMISSIONS**

13. The Respondents submit that the issues for determination are:
  - (i) whether the suit titles were issued over public land reserved for public use, and
  - (ii) whether the Land Registrar lawfully exercised powers of rectification under Section 79 of the Land Registration Act. It is their position that the suit parcels were open spaces within Lake View Estate, hence alienated

public land not available for allocation, rendering the titles void ab initio.

14. They submit that **Section 79 of the Land Registration Act, 2012** empowers the Land Registrar to rectify registers where titles have been issued unprocedurally or by mistake, particularly where public interest is at stake. Reliance is placed on **Republic -Vs- Land Registrar Thika & Another ex parte Gathoni Kariuki [2016] eKLR**, which affirmed that rectification may be undertaken to correct erroneous entries, and **Esther Ndegi Njiru & Another -Vs- Leonard Gatei [2014] eKLR**, where the Court upheld rectification where titles were improperly issued.
15. The Respondents further submit that land reserved **as public open space is incapable of lawful allocation**, and any title issued thereon is void without the need for prior judicial intervention. They rely on **Kipsirgoi Investments Ltd. -Vs- Kenya Anti-Corruption Commission, Eldoret Civil Appeal No. 288 of 2010**, where the Court of Appeal held that land reserved for public use is beyond the reach of allocation, and **Chemey Investment Limited -Vs- Attorney General & 2 Others [2018] eKLR**, which reaffirmed that public-purpose land is not available for private ownership. The Respondents also invoke **Macfoy - Vs- United Africa Co. Ltd [1961] 3 All ER 1169**, submitting that a void act is a nullity from inception. Accordingly, they urge the Court to find that the Gazette Notice was lawfully issued in protection of public interest and to dismiss the Petition with costs.

## **E. ISSUES FOR DETERMINATION**

- a) Whether the 1<sup>st</sup> Respondent had the legal and statutory authority to revoke registered land titles through Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011.

b) Whether the Petitioners' Constitutional Rights under Articles 40, 47 and 50 of the Constitution were Violated.

c) Whether the Petitioners are entitled to the reliefs sought.

## **F. ANALYSIS AND DETERMINATION**

### **ISSUE NO: 1 Whether the 1<sup>st</sup> Respondent had the legal and statutory authority to revoke registered land titles through Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011.**

16. The starting point is examining Section 79 of the LRA which governs rectification of land register by the Registrar. It provides, inter alia, that the Registrar may rectify the register or instrument presented for registration in formal matters and in the case of errors or mistakes and for purposes of updating the register. Sub-sections 2, 3A and 4 of the said Section read:

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless—

- a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or
- b) it would for any other reason be unjust for the alteration not to be made.

Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

(3A) A person aggrieved by the decision of the Registrar under this section may apply to the court for any necessary orders.

(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under this

section and without prejudice to the generality of the foregoing, the regulations may provide for—

- a) the process of investigation including notification of affected parties;
- b) hearing of the matters raised; and
- c) the criteria to be followed in coming up with the decision.

In addition, Rule 92 (2) and (3) as pointed out at paragraph 12 hereinabove, stipulates that;

- a) *The Registrar shall issue a notice of intention to rectify the register under 79(2) of the Act, in Form LRA 91 set out in the Sixth schedule.*
- b) An order by a Registrar issued under section 79 of the Act shall be in Form LRA 92 set out in the Sixth Schedule. (Emphasis added)

17. These provisions clearly establish that the power of the Registrar to rectify the register is administrative and limited. The Registrar may correct typographical errors, misdescriptions, or non-material discrepancies. However, where the rectification would affect the ownership or title of a registered proprietor, such action cannot be taken administratively and requires the intervention of the Court under Section 80 of the [Land Registration Act](#), 2012. Section 80(1) of the same Act provides that: "Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake."

18. The provision further limits rectification affecting a registered proprietor's title unless it is shown that the proprietor had knowledge of or

substantially contributed to the omission, fraud, or mistake. It therefore follows that the distinction between Sections 79 and 80 is crucial: Section 79 governs administrative corrections by the Registrar, while Section 80 vests the power to cancel or amend a title in the Court upon proof of fraud or mistake.

19. The term “rectification of register” is defined in Black’s Law Dictionary, 10<sup>th</sup> Edition, page 1467 as “a process by which a person whose name was wrongly entered in or omitted from the record can compel the recorder to correct the error.” This definition reinforces the legal principle that rectification may involve correcting clerical or administrative errors but does not extend to substantive alteration of ownership unless by judicial sanction.
20. In the present case, the evidence placed before this Court demonstrates that the 1<sup>st</sup> Respondent did not comply with the statutory and constitutional requirements governing rectification of the land register. At the time the impugned **Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011** was published, the Petitioners were the registered proprietors of the suit properties, their titles having been lawfully issued and duly entered in the land register. The Gazette Notice did not merely correct a clerical or administrative error; rather, it purported to revoke the Mother Titles in their entirety, an action whose inevitable legal consequence was the extinguishment of the Petitioners’ proprietary interests.
21. Such an action squarely falls outside the limited administrative powers conferred upon the Registrar under Section 79 of the Land Registration Act. The statute is explicit that where a proposed rectification affects the title of a registered proprietor, the Registrar must first comply with strict

procedural safeguards. These safeguards include the issuance of a written notice of intention to rectify, a minimum ninety-day notice period, notification of all affected parties, and the provision of an opportunity to be heard. These requirements are not discretionary; they are mandatory and go to the root of the Registrar's jurisdiction.

22. No evidence was produced before this Court to show that any notice of intention to rectify was ever issued to the Petitioners. There is no indication that the Petitioners were informed, in writing or otherwise, of the allegations forming the basis of the intended revocation. There is equally no evidence that any inquiry, investigation, or hearing was conducted in which the Petitioners were invited to participate or to present their position. Instead, the revocation was effected unilaterally and retrospectively through publication of a Gazette Notice, without affording the registered proprietors an opportunity to be heard.
23. This failure strikes at the heart of procedural fairness. Administrative power, however well intentioned, must be exercised within the confines of the law. The requirement of notice and hearing is not a technicality to be dispensed with in the name of expediency or public interest. It is a fundamental component of due process, particularly where the consequence of the administrative action is the deprivation of property rights that have already crystallised in law.
24. The Court further notes that even if the Respondents' assertion that the land was reserved for public use were to be accepted, such a determination could not lawfully be made through an administrative sanction. Where the validity of a registered title is in question, the Land Registration Act draws a clear line between administrative correction and judicial intervention. The Registrar's role is limited to rectifying non-

material errors; the power to cancel or amend title on grounds of fraud, illegality, or mistake lies exclusively with the Court under Section 80 of the Act. By purporting to revoke the titles through a Gazette Notice, the 1<sup>st</sup> Respondent effectively assumed a judicial function without jurisdiction.

25. The absence of due process is further compounded by the Respondents' own conduct subsequent to the Gazette Notice. The Petitioners placed before the Court correspondence from both the 1<sup>st</sup> Respondent and the Interested Party confirming, years after the publication of the Gazette Notice, that the Petitioners were the legitimate and registered proprietors of the suit properties. This inconsistency underscores the procedural irregularity of the revocation and reinforces the conclusion that the Petitioners were never afforded a lawful forum in which the status of their titles was conclusively determined.
26. In the circumstances, this Court is satisfied that the impugned Gazette Notice was issued in blatant disregard of the procedural framework set out in **Section 79 of the Land Registration Act**, the accompanying regulations, and the constitutional guarantees of fair administrative action. The revocation was not preceded by notice, inquiry, hearing, or a judicial determination. It was therefore procedurally unfair, ultra vires, and legally untenable.

**Issue 2: Whether the Petitioners' Constitutional Rights under Articles 40, 47 and 50 of the Constitution were Violated**

27. Having found under Issue 1 that the 1<sup>st</sup> Respondent acted outside the scope of the statutory powers conferred under **Section 79 of the Land Registration Act**, this Court now turns to the question whether the impugned actions also violated the Petitioners' constitutional rights as

alleged.

28. Article 47 of the Constitution guarantees every person the right to administrative action that is lawful, reasonable and procedurally fair. Where an administrative action is likely to adversely affect a person's rights or fundamental freedoms, Article 47(2) further entitles such person to written reasons for the action. These constitutional safeguards are not abstract principles; they are intended to restrain the exercise of public power and to ensure that administrative authorities act transparently, accountably, and within the law.
29. In the present case, the revocation of the Mother Titles through Gazette Notice No. 6335 was undoubtedly an administrative action. The effect of that action was to extinguish registered proprietary interests that had subsisted for many years. Such an action plainly and directly affected the Petitioners' rights and interests in land. It therefore triggered the full application of **Article 47 of the Constitution and the Fair Administrative Action Act.**
30. The record before this Court reveals that the Petitioners were not notified of any investigation into the status of the suit land prior to the publication of the Gazette Notice. They were not furnished with any allegations, reports, or findings upon which the revocation was premised. They were not invited to make representations, to respond to the claim that the land was public or reserved for public use, or to present documentation demonstrating the history and legality of their titles. Indeed, the first time the Petitioners became aware of the existence of the Gazette Notice was many years later, during a transaction involving one of the properties.

31. This manner of decision-making falls far short of the constitutional threshold of procedural fairness. Administrative action that is taken secretly, without notice, and without affording the affected party an opportunity to be heard cannot be said to be lawful or reasonable. The right to be heard is not dependent on the merits of the case against a person; it is triggered by the fact that a decision is likely to adversely affect their rights. Even where public interest is invoked, the Constitution does not permit the State to bypass due process.
32. Closely related to **Article 47 is Article 50(1) of the Constitution**, which guarantees every person the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing. The determination of whether registered land is public or private, whether titles were lawfully issued, and whether such titles should be cancelled are matters that involve the application of law to contested facts. Such questions are inherently justiciable and cannot be conclusively resolved through unilateral administrative action.
33. By revoking the titles without affording the Petitioners an opportunity to challenge the allegations or to defend the legality of their ownership, the 1st Respondent effectively condemned the Petitioners unheard. This Court is unable to reconcile such conduct with the constitutional imperative of fairness embedded in Article 50(1).
34. As regards Article 40 of the Constitution, it is not in dispute that the right to property does not extend to property that has been unlawfully acquired. However, the Constitution does not authorise the arbitrary deprivation of property on the mere assertion of illegality. Where the State alleges that property was unlawfully acquired, it bears the burden of establishing that fact through a process that complies with the law and

respects due process. Until such a determination is made in accordance with the law, registered proprietors are entitled to the protection of Article 40.

35. In this case, no court of law had declared the Petitioners' titles unlawful at the time of the revocation. No finding of fraud, misrepresentation, or illegality attributable to the Petitioners had been made. The administrative action taken by the 1st Respondent therefore resulted in the deprivation of property without the procedural and substantive safeguards required by the Constitution.

36. The cumulative effect of these failures leads this Court to the conclusion that the Petitioners' rights under Articles 47 and 50 of the Constitution were violated. Consequently, and in the absence of a lawful process establishing that the property was unlawfully acquired, the Petitioners were also entitled to the protection afforded by Article 40 of the Constitution.

### **Issue 3: Whether the Petitioners are Entitled to the Reliefs Sought**

37. Having found that the 1<sup>st</sup> Respondent acted outside the scope of the powers conferred under Section 79 of the Land Registration Act, and further that the impugned administrative action violated the Petitioners' constitutional rights under Articles 40, 47 and 50 of the Constitution, this Court now considers whether the Petitioners are entitled to the reliefs sought in the Petition.

38. The primary relief sought is an order of certiorari to quash Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011 insofar as it purports to revoke the Mother Titles and, by extension, the Petitioners' current titles. Certiorari issues to quash a decision made without jurisdiction, in excess of jurisdiction, or in breach of the rules of natural justice. As demonstrated in the preceding issues, the Gazette Notice was issued without statutory authority, without

adherence to mandatory procedural safeguards, and without affording the Petitioners an opportunity to be heard. In those circumstances, the decision-making process was fundamentally flawed, rendering the Gazette Notice amenable to an order of certiorari.

39. The Petitioners also seek declaratory relief affirming that the Certificates of Lease issued in respect of the suit properties constitute conclusive evidence of ownership. Declaratory orders are discretionary and issue where the Court is satisfied that a legal right has been infringed or is threatened. In the present case, the Petitioners' titles were lawfully issued, remained on the register for many years, and were never invalidated through a judicial process. In the absence of a court order cancelling or amending the register under Section 80 of the Land Registration Act, the Petitioners' titles remain valid and deserving of protection. A declaration is therefore appropriate to clarify the legal position and to forestall further administrative interference founded on the impugned Gazette Notice.
40. With respect to the orders of mandamus and prohibition sought, this Court is mindful that such remedies are intended to ensure lawful administration and to restrain future unlawful conduct. Given the history of the dispute and the manner in which the revocation was effected, there exists a real risk of continued or repeated interference with the Petitioners' proprietary interests unless restrained by the Court. An order of mandamus compelling the removal of entries made pursuant to the impugned Gazette Notice, and an order of prohibition restraining further alienation or interference founded on the same, are therefore justified in order to give full effect to the Court's findings.

41. As regards damages, the award of damages for violation of constitutional rights is discretionary and depends on the circumstances of each case. While the Petitioners have demonstrated infringement of their rights, the primary prejudice arose from uncertainty and interference with their proprietary interests rather than proven pecuniary loss quantified before the Court. In the circumstances, and noting that the principal reliefs sought are declaratory and restorative in nature, this Court is of the view that the ends of justice are sufficiently met by the grant of the substantive orders sought, without an additional award of damages.
42. On costs, it is a settled principle that costs follow the event unless the Court, for good reason, orders otherwise. The Petitioners have substantially succeeded in their claim. No sufficient reason has been advanced to deny them the costs of the Petition. Accordingly, this Court finds that the Petitioners are entitled to the reliefs sought, save as otherwise indicated.

### **Final Orders**

In light of the findings made by this Court on the issues for determination, and for the reasons set out hereinabove, the Court makes the following orders:

- a) A declaration is hereby issued that the Certificates of Lease issued in respect of Title Numbers Nairobi/Block 92/299, 92/300, 92/301, 92/302, 92/303 and 92/304, situated within Lake View Estate, Nairobi City County, constitute valid and lawful evidence of proprietorship, and that the Petitioners are the registered proprietors thereof, unless and until the same are lawfully challenged and cancelled in accordance with the

law.

- b) An order of certiorari is hereby issued quashing Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011, insofar as it purports to revoke Title Numbers Nairobi/Block 92/293, 92/294 and 92/296, and in effect revokes or otherwise interferes with the Petitioners' titles to Nairobi/Block 92/299, 92/300, 92/301, 92/302, 92/303 and 92/304.
- c) An order of mandamus is hereby issued compelling the 1<sup>st</sup> Respondent, whether by himself, servants, agents or officers, to remove, delete, or expunge from the land register any entry, restriction, notation, or record made pursuant to or in furtherance of Gazette Notice No. 6335 dated 6<sup>th</sup> June 2011 in respect of the Petitioners' titles.
- d) An order of prohibition is hereby issued restraining the 1st Respondent, whether by himself, servants, agents or officers, from alienating, allocating, transferring, registering, or in any manner dealing with the Petitioners' parcels of land comprised in Title Numbers Nairobi/Block 92/299, 92/300, 92/301, 92/302, 92/303 and 92/304, otherwise than in accordance with the law.
- e) An order of prohibition is hereby issued restraining the Respondents from issuing any title, licence, lease, or other proprietary interest, or from registering any encumbrance, in respect of the Petitioners' parcels of land founded upon or arising from Gazette Notice No. 6335 dated 6th June 2011.
- f) The claim for damages is declined.

g) On the issue of costs, and having regard to the circumstances of this case, the Court directs that each party shall bear its own costs.

**It is so ordered!**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **9<sup>TH</sup>** day of **FEBRUARY, 2026.**

**MOHAMMED N. KULLOW**  
**JUDGE**

**Judgment delivered in the presence of: -**

**Joram Omondi**... for the Petitioner

**No appearance**... for the Respondents

**Philomena W.**... Court Assistant