



**REPUBLIC OF KENYA**

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

**ELC PET 8 OF 2016**

**IN THE MATTER OF CANCELLATION OF TITLE NO. NYERI/NGARINGIRO/357**

**AND**

**IN THE MATTER OF VIOLATION OF**

**ARTICLE 40 OF THE CONSTITUTION RELATING TO PROTECTION OF RIGHT TO PROPERTY**

**AND**

**IN THE MATTER OF ARTICLE 22 AND 23 OF THE CONSTITUTION**

**AND IN THE MATTER OF NULLIFICATION OF**

**GAZETTE NOTICE NO. 8145 OF 15<sup>TH</sup> OCTOBER, 2004**

**LAWRENCE MURIITHI MBABU.....PETITION ER**

**-VERSUS-**

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

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

**AND**

**JOHN GITHUI KINYUA.....INTERESTED PARTY**

**JUDGEMENT**

1. On the 23<sup>rd</sup> December 2016, the Petition er herein filed his Petition dated the 22<sup>nd</sup> December 2016 seeking for the following declarations and orders:

- i. This honorable Court do declare that Gazette Notice No. 8145 of 15<sup>th</sup> October 2004 issued by the Land Registrar Nyeri and subsequent cancellation of his title to land parcel No. LR Nyeri/Nyarengiro/357 to be a nullity, invalid and of no legal effect whatsoever.
- ii. This honorable Court be further pleased to declare that the Petition er is still the lawful owner of the said land parcel No. LR Nyeri/Nyarengiro/357.
- iii. Order that the Register of land parcel No. LR Nyeri/Nyarengiro/357 be rectified so as to restore the Petition er as the registered proprietor of the said land.
- iv. IN ALTERATIVE to the above prayers this honorable Court do order the Respondents to compensate the Petition er for loss of his land valued at current market rate.
- v. Costs of the suit be award to the Petition er.

vi. Any further or better relief this Honorable Court may deem fit to grant.

2. Alongside the said Petition, he also filed his Notice of Motion of the same date under certificate of Urgency wherein he sought for conservatory orders of injunction against the Respondents herein from dealing with Land parcel No. LR Nyeri/Nyarengiro/357.

3. On the 29<sup>th</sup> December 2016, interim orders were granted pending the hearing and determination of the said application interparty. However upon the mention and extension of the interim orders on several occasions, on the 23<sup>rd</sup> November 2017, the interim orders were not extended for the reason that the Petitioners had not been keen on setting down the application for hearing upon obtaining the interim orders.

4. On the 1<sup>st</sup> October 2018, by consent the application dated the 22<sup>nd</sup> December, 2016 was marked as withdrawn with no orders as to costs. Parties were granted leave of 14 days to file their response to the Petition whereas corresponding leave was granted to the Petitioner to respond.

5. Directions on how to proceed with the Petition were taken on the 13<sup>th</sup> February 2019 that the Petition be disposed of by way of written submissions. Parties complied and filed their submissions to the Petition.

#### **Petitioner's Submission**

6. The Petitioner's submission was that he was the proprietor of suit land No. LR Nyeri/Nyarengiro/357 as at the 29<sup>th</sup> July 1997 when he obtained a title deed to the same.

7. That sometime in December 2016, while he was goggling through the internet, he was shocked to see his name in Gazettes notice No. 8145 of 15<sup>th</sup> October 2004 where the 1<sup>st</sup> Respondent had issued him a 60 days' notice for cancellation of his title.

8. That when he carried out an inspection of the Land Register, he discovered that his name had been unlawfully removed from the Register of LR Nyeri/Nyarengiro/357 on the 14<sup>th</sup> April 2005 and the land reinstated to the name of the Settlement Fund Trustee. Later, other unknown person's name had been substituted as the proprietors of the suit property.

9. That he had been denied his Constitutional and Administrative right to a fair hearing in that no notice of the intention to conceal his title or an invitation to a hearing had ever been issued to him prior to the said cancellation.

10. The Petitioner framed his issue for determination as follows;

i. Whether the 1<sup>st</sup> Respondent has power to cancel the Petitioner's (sic) by way of a Gazette Notice 8145 of 15<sup>th</sup> October 2004 under the law.

ii. Whether the cancellation of the Petitioner's title was illegal and the subsequent entries unlawful.

iii. Whether the title of the interested party was obtained through the due process set out by the law.

iv. Whether the Petitioner's Constitutional rights were violated by the Constitution (sic) of his title to the suit property vide Gazette Notice No. 8145 of 15<sup>th</sup> October 2004.

v. Whether the Petitioner should be reinstated as the owner of the suit property.

11. On the first issue for determination, it was the Petitioner's submission that Section 14 of the Land Registration Act 2012, which outlines the powers of the Land Registrars did not give the 1<sup>st</sup> Respondent powers to revoke a title. That the Courts in numerous occasions have laid down the procedure to be followed in cancellation of title. They relied on the decided case **of Charles Malenya & 22 Others vs Registrar of Titles Nairobi & Another [2012] e KLR** to submit that since the Petitioner was the proprietor of the suit land, it was incumbent of the 1<sup>st</sup> Respondent to notify him (Petitioner) of his intention to cancel his title and accord him an opportunity to be heard. Failure by the 1<sup>st</sup> Respondent to accord the Petitioner an opportunity not to be condemned unheard was blatant disrespect to the provisions of Article 50 of the Constitution and a derogation from the principles of natural justice.

12. That Section 27 of Registered Land Act provided that the registration of a person as proprietor of land vested in him absolute ownership of that land together with all rights and privileges appurtenant thereto. To that, Section 28 of the Act also provided for the rights of a proprietor acquired on the first registration, subsequent registration or by an order of the Court would not be defeated except as provided under the said Act.

13. That Article 47 of the Constitution grants the right to fair administrative action whereas Article 50 guarantees the right to a fair hearing. The 1<sup>st</sup> Respondent ought to have given the Petitioner an opportunity to state his case before reaching the decision that had such far reaching ramifications.

14. That the impugned decision by the first Respondent not only violated the Petitioner's Constitutional rights but was also unreasonable and contrary to his legitimate expectation. In so submitting the Petitioner relied on the decided case of **R vs Devon County Council ex parte P. Baker [1995] 1 ALL ER** as referred to in **Kuria Greens Ltd vs Registrar of Titles & Another [2011] eKLR**.

15. The Petitioner further submitted that the 1<sup>st</sup> Respondent acted ultra vires in cancelling his title since he overstepped its mandate as outlined under Section 14 of the Land Registration Act.

16. On the second issue for determination on whether the cancellation of the Petitioner's title and subsequent transfer was illegal, it was the Petitioner's submission that having been registered as the absolute proprietor of the suit property on the 29<sup>th</sup> July 1997, there was absolutely no legal justification to cancel his title vide a Gazette Notice No. 8145 of 15<sup>th</sup> October 2004, on the 14<sup>th</sup> April 2005, after a period of 8 (eight) years of his registration as the absolute proprietor of the suit property and without any notice or Court order.

17. That he was not aware of a restriction registered against his title on the 4<sup>th</sup> May 1998 alluding to a case before the CID- Nairobi where investigations had been conducted to establish the real owner of the suit property. He was never served with notice to appear before the CID and neither had he been involved in a suit over the suit property with a person known as Elton Odongo. There was no suit filed in Court to challenge his ownership of the suit property prior to cancellation of his title.

18. That entry No. 6 of 14<sup>th</sup> April 2005 on the green card that purported to reinstate the suit property to the Settlement Fund Trustee was unlawful and as the land had been transferred to the Petitioner on the 29<sup>th</sup> July 1997 by the said Settlement Fund Trustee they had no further interests in the suit property or claim against him. The reinstatement of the suit property to the Settlement Fund Trustee exposed the Petitioner's property to fraudulent dealings which happened on the 15<sup>th</sup> May 2007 when the suit property was unlawfully registered in the name of Elton Odongo and on the 4<sup>th</sup> July 2007 in the name of the interested party herein, the 3<sup>rd</sup> Respondent.

19. On the third issue for determination, the Petitioner submitted that the purported agreement dated 11<sup>th</sup> July 2007 was neither signed by the interested party Mr. John Githui nor attested to and does not comply with the provisions of the Law of Contract Act. That the person who had purported to attest to the execution, one Elton Odongo was not identified, which then led to only one conclusion, that the said agreement was a forgery aimed to defraud the Petitioner of his property.

20. The Petitioner also took issue with the anomaly of interested party's application to the Land Control Board for consent which was done on the 5<sup>th</sup> December 2007 in comparison with the transfer of the suit property from Elton Odongo to the interested party which was effected on the 14<sup>th</sup> July 2007, approximately five months prior to the application and payment for consent to transfer. That this meant that the transfer to the interested party was effected before a consent to transfer was obtained. This was a clear anomaly and against the provisions of Section 8 of the Land Control Act to which the transfer ought to have been nullified.

21. The interested party could therefore not have obtained a good title to the Petitioner's property. The Petitioner's title to the suit property was irregularly and unlawfully canceled as there was no Court order directing the Land Registrar to cancel his title. The cancellation of the Petitioner's title was unlawfully initiated by the interested party and Elton Odongo and therefore the Petitioner's title ought to be reinstated to him and the interested party ordered to vacate the suit land immediately.

22. That since the Land Board Consent was obtained after the transfer had been obtained, the purported transfer from Elton Odongo to the interested party ought to be nullified as the legal process in acquisition of the suit property was flawed.

23. The Petitioner placed a reliance on Section 75 of the repealed Constitution, which provided for sanctity of title, to submit that his Constitutional rights were violated by the constitution of his title to the suit property vide gazette notice No 8145 of 15<sup>th</sup> of October 2004. There was no provision for annulment his title through a Gazette Notice.

24. That Article 40 of the Constitution acknowledges the right of persons whether individually or in association with others to own a property in any part of the country. That the Petitioner followed the due process in the acquisition of his property and as such it is deserving of him to enjoy his rights as protected by Article 40 of the Constitution. The sanctity of titles has to be protected and the Land Registrar therefore cannot decide to put up a Gazette Notice revoking ones title in a society such as ours that is underpinned by strong democratic values. The Petitioner therefore ought to be reinstated as the proprietor of the suit property.

25. In closing submission, it was the Petitioner's prayer that the Court issues an order of mandamus directing the 1<sup>st</sup> Respondent to reinstate the Petitioner's title on parcel of land No. Nyeri/Ngarengiro/357 to him and further direct that all other entries subsequent to the issuance of the Petitioner's title on 29<sup>th</sup> July 1997 be cancelled forthwith.

26. Although both the Respondents and the interested party did not file their submissions to the Petition, yet the 1<sup>st</sup> Respondent herein vide their Replying Affidavit dated the 6<sup>th</sup> February 2019 averred that the suit land herein had been Registered to the Settlement Fund Trustee on the 20<sup>th</sup> May 1987 wherein on the 29<sup>th</sup> July 1987 it had been transferred to the Petitioner herein. That following a complaint, a Gazette Notice No. 8145 was issued on the 15<sup>th</sup> October 2004 wherein the Petitioner's title was cancelled and the same reverted back to the Settlement Fund Trustee wherein a transfer was subsequently effected to the interested party herein.

27. Vide his response dated 21<sup>st</sup> February 2018 to the Petition and filed on the 28<sup>th</sup> February 2018, the interested party averred that as per the Gazette Notice No. 8145 of 15<sup>th</sup> October 2004, the said land No. Nyeri/Ngarengiro/357 had been enormously and illegally registered in the name of the Petitioner.

28. That the removal of the Petitioner's name from the register was lawful in view of the said Gazette Notice and that persons who were said to be unknown on the register was the legitimate owner of the property who later transferred it lawfully to the interested party who then acquired title and has been in occupation since its acquisition.

29. That the Petitioner having been given 60 days' notice of cancellation of his title since 15 October 2004, needed not to consent or be

granted any other notice for his name to be removed from the register on the grounds that his registration was erroneous and illegal.

30. That since the 1<sup>st</sup> Respondent had found that the acquisition of the property by the Petitioner was fraudulent, erroneous and illegal, the Petitioner could not be held to state that his right under Article 40 of the Constitution was violated.

31. The interested party put the Petitioner to strict proof particularly on documentation of acquisition of the property from the Settlement Fund Trustee as well as any receipts in payment to the Government during the acquisition of the parcel of land from the Settlement Fund Trustee.

32. I have considered the entries made by the 1<sup>st</sup> Respondent against land parcel No. Nyeri/Ngarengiro/357 (1<sup>st</sup> Respondents replying affidavit, Green card annexed as SMM1) which I herein produce as follows;

- i. Entry No. 1-Settlement Fund Trustees- registered on 20<sup>th</sup> May 1987
- ii. Entry No. 2 – Transfer to Lawrence Muriithi Mbabu on 29<sup>th</sup> July 1997
- iii. Entry No 3 – Title deed issued in the name of Lawrence Muriithi Mbabu on 29<sup>th</sup> July 1997.
- iv. Entry No. 4 –Restriction placed on 4<sup>th</sup> May 1998 pending a case before the CID to establish the real owner.
- v. Entry No 5- on 14<sup>th</sup> April 2005-Cancellation of entry No 2 & 3 vide registration of instrument Gazette Notice No 8145 of 25<sup>th</sup> October 2004.
- vi. Entry No. 6-Entry No 1 Reinstated on the 14<sup>th</sup> April 2005
- vii. Entry No. 7- Transfer to Elton Odongo on 15<sup>th</sup> May 2007
- viii. Entry No. 8 –Title deed issued on 15<sup>th</sup> May 2007
- ix. Entry No. 9-Transfer to John Githui Kinyua on 4<sup>th</sup> July 2007
- x. Entry No. 10 –Title issued on the 10<sup>th</sup> July 2007

#### **Analyses and Determination.**

33. I have carefully considered the content of the Petitioner's Petition as well as the supporting affidavit. I have also considered the Respondents' replying affidavits and the submissions by the Petitioner herein as well as the relevant provisions of the law and Authorities herein cited. I find the issues arising for determination are as follows:-

- i. Whether the Petition discloses a legal interest capable of protection under the law.
- ii. Whether the 1<sup>st</sup> Respondent's action of cancelling the Petitioner's title contravened Article 47 of the Constitution.
- iii. Whether the Petitioner is entitled to the orders sought in the Petition?

34. For the Petitioner to seek redress on a matter that involved a reference to the Constitution, it was important to not only clearly identify the relevant and specific Articles of the Constitution but avail evidence, through affidavit or otherwise of such violation as per the required standard set out in respect of the Constitutional Petition as set out in the case of **Anarita Karimi Njeru vs The Republic (196-1980) KLR 1272** where it was held, in the words of the Justices Trevelyan and Hancox that ;

*We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.*

35. From the above captioned Petition, the Petitioner has alleged, by setting out with a reasonable degree of precision that his Constitutional rights envisaged under Articles 40, and 47 of the Constitution had been violated by the Respondents herein.

36. On the first second issue for determination as to whether Article 40 of the Constitution was violated, the provisions of the said Article more so Article 40(3) are to the effect that:

***40 (3) The state shall not deprive a person of property of any description, or of any interest in, or right over property of any description, unless the deprivation-***

***(a) Results from an acquisition of land or an interest in land or a conversion of an interest in land or title to land, in accordance***

with Chapter five; or

**(b) Is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-**

**(i) Requires prompt payment in full, of first compensation to the person; and**

**(ii) Allows any person who has an interest in, or right over, that property a right of access to a Court of law.**

**(4) .....**

**(5) .....**

**(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.**

37. It is trite law that the Torrens System is applicable in Kenya to the effect that the title of a bonafide purchaser for value without notice of fraud cannot not be impeached. The Court of Appeal in the case of **Charles Karathe Kiarie & 2 Others –vs- Administrators of Estate of John Wallance Muthare (deceased) & 5 others [2013] eKLR**, held as follows:

*‘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*

38. The Petitioner has averred that he acquired the suit land Parcel No. Nyeri/Ngarengiro/357 for valuable consideration from the previous proprietor who was the Settlement Fund Trustee and was duly issued with a title deed on the 29<sup>th</sup> July 1997 thereby making him a bonafide purchaser for value without any notice of any defect in the title. His title was, in terms of Section 23 (1) of the Registration of Titles Act, (now repealed) but adopted under the new Section 26 (1) of the Land Registration Act, absolute and indefeasible, unless it is shown that it was obtained through fraud or misrepresentation to which the title holder is proved to have been a party to.

39. Section 23 (1) of the Registration of Titles Act provides as follows:-

*(1) The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all Courts as conclusive of evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.*

40. Section 26 (1) of the Land Registration Act provides:-

*(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 a corrupt scheme.*

41. From the above provisions it is clear that a title can only be challenged on grounds of fraud or misrepresentation in obtaining the same and in such case, the registered proprietor has to be shown to have been a party to the fraudulent or illegal activities that led to him being registered as owner.

42. Fraud is a serious matter which must be proved to the required standard. In **R.G Patel vs Lalji Makanji 1957 E.A 314**, the Court of Appeal stated as follows:

*“Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.*

43. In the present case I find that the Respondents herein did not tender any evidence to show that the Petitioner acquired the subject suit from the Settlement Fund Trustees fraudulently so that it can be said that he had knowledge of the fraud so as to loose protection of the Constitution.

44. In the present case, the Petitioner has demonstrated that he was a bonafide purchaser without any notice of any fraud which assertion has not been controverted by either the Respondents or the Interested Party herein.

45. On the second issue for determination, Article 47 of the Constitution is specific as it provides that:

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

46. From the pleadings and documents filed in this Petition, it is clear that the Petitioner is challenging the publication of Gazettes Notice No. 8145 of 15<sup>th</sup> October 2004 where the 1<sup>st</sup> Respondent cancelled his title to land parcel No. Nyeri/Ngarengiro/357 without notice or according him a hearing, land which was subsequently registered to the 3<sup>rd</sup> Respondent/interested party. All these actions amounted to the deprivation of his Constitutional rights as guaranteed under Articles 40 and 47 of the Constitution.

47. The Petition was opposed by the Respondents who contended that the suit property had been enormously and illegally registered in the name of the Petitioner and therefore the same had been reverted back to the Settlement Fund Trustee.

48. From the Petitioner's annexure herein marked as LMM1, the 1<sup>st</sup> Respondent issued a Notice in the Kenya Gazette Notice No. 8145 of the 15<sup>th</sup> October 2004 titled, "*Issue of New Land Title*," wherein he purported to cancel the Petitioners' title on the basis that it had been issued erroneously and/or illegally and the Petitioner had refused and/or failed to surrender the same. Notice was therefore given that after the expiry of 60 days from the date thereof, the title stood cancelled and reverted to the original owner, the Settlement Fund Trustees.

49. A reading of the Petitioner's Petition, his grievance is clear to the effect that he was affected adversely by the 1<sup>st</sup> Respondents' actions of cancelling his title since he had acquired the rights and interests in the suit property by virtue of its registration on the 29<sup>th</sup> July 1997. In terms of Article 47 (1) and (2) of the Constitution, the 1<sup>st</sup> Respondent was under an obligation to ensure that the Petitioner was given an opportunity to be heard before any action that was adverse to his rights over the suit property was taken away from him.

50. The Petitioner pointed out that prior to the cancellation of his title, he had neither received any notice or communication from the County Land Registrar Nyeri, the 1<sup>st</sup> Respondent herein, that his title was in the process of being cancelled nor was he accorded a hearing before the decision was made, a fact which was not disputed by either the 1<sup>st</sup> or the 2<sup>nd</sup> Respondents herein.

51. Under Section 60 of the Registration of Titles Act, Cap 281, Laws of Kenya (now repealed) the Registrar is required to summon the holder of a title in respect of which an erroneous entry has been made or a fraudulent title has been issued to deliver the title for correction failing which the Registrar has to apply to the Court for such person to be summoned. The Registrar can only cancel or correct a title pursuant to an order of the Court under Section 61 of the Registration of Titles Act (repealed).

52. Although the Registration of Titles Act together with other Acts were repealed following the enactment of the Land Registration Act No. 3 of 2012, Section 107 of the Land Registration Act, 2012 provides that any right, interest, title, power or obligation acquired, accrued or established under the repealed Acts would continue to be governed by the law applicable to it immediately prior to the commencement of the new Act. The Petitioner's rights and interests to the suit property having been acquired before the coming into force of the Land Registration Act would therefore stand to be construed under the provisions of the Registration of Titles Act.

53. By virtue of Section 107 of the Land Registration Act, 2012 thereof, the Registrar of Titles had no power to cancel the entries against the title of the suit property as he did.

54. The Petitioner herein contends that his rights over the ownership of parcel No. Nyeri/Ngarengiro/357 have been contravened through the unlawful and arbitrarily cancellation of his title by the 1<sup>st</sup> Respondent.

55. The issue of the constitutionality of the revocation of titles by the Registrar was decided in the cases of **Kuria Greens Ltd –vs- Registrar of Titles & Another [2011] eKLR** and **Isaac Gathungu Wanjohi & Another –vs- Attorney General & 6 Others [2012] eKLR**, where it is now settled law that a Registrar has no power to cancel title.

56. In **Chemei Investments Limited v The Attorney General & Others Nairobi Petition No. 94 of 2005 (Unreported)** the Court emphasized that even where property is acquired unlawfully, the finding of "*unlawful acquisition*" contemplated in **Article 40(6) of the Constitution** must be through a legally established process and not by whim or revocation by Gazette Notice.

57. Having regard to the Petitioner's Petition herein, I find that the 1<sup>st</sup> Respondent's action of cancelling the Petitioner's title denied the Petitioner a fair chance to defend his title thereby contravening the provisions of Article 47 (1) and (2) of the Constitution of failing to afford the Petitioner fair administrative action. Consequently the same cannot stand.

58. The 1<sup>st</sup> Respondent ought to have given the Petitioner an opportunity to state his case before reaching the decision that had such far reaching ramifications. The Petitioner ought to have been called upon to explain how he had acquired the suit land considering that the 1<sup>st</sup> Respondent had himself issued a Certificate of Title to the Petitioner. I also find that the 1<sup>st</sup> Respondent did not follow due process of affording the Petitioner a fair hearing pursuant to Article 50 (1) of the Constitution which stipulates as follows;

***(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court or; if appropriate, another independent and impartial tribunal or body.***

59. In the result therefore I find the Petitioner has proved his case on a balance of probabilities as against the Respondents and I enter judgment for the Petitioner in the following terms:-

i. The cancellation of the Petitioner's registration as the proprietor of title No. Nyeri/Ngarengiro/357 on the 14<sup>th</sup> April 2005 is hereby declared constitutionally invalid, null and void.

ii. The Registrar of Titles is hereby directed to reverse the entry effected on the 14<sup>th</sup> April 2005 cancelling entries number 2, and 3, on the register of No. Nyeri/Ngarengiro/357 and is ordered to re-instate the Petitioner's registration as proprietor of title No. Nyeri/Ngarengiro/357 forthwith.

iii. IN ALTERNATIVE to the above prayers the Respondents herein to compensate the Petitioner for loss of his land valued at current market rate.

iv. The Petitioner be and is hereby awarded costs of the Petition.

v. The Registrar of Titles is directed to publish these orders in the Kenya Gazette within 21 days from the date hereof.

**Dated and delivered at Nyeri this 23<sup>rd</sup> day of October 2019.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**