



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**JR CASE NO. 37 OF 2017**

**REPUBLIC.....APPLICANT**

**VERSUS**

**NATIONAL LAND COMMISSION.....1ST RESPONDENT**

**BERNARD K NJAU and GODFREY J MUGO (Sued on behalf of KIMATHI ESTATE**

**WELFARE ASSOCIATION).....2ND RESPONDENT**

**COUNTY GOVERNMENT OF NAIROBI.....1ST INTERESTED PARTY**

**CHIEF LAND REGISTRAR.....2ND INTERESTED PARTY**

**COMMISSIONER OF LANDS.....3RD INTERESTED PARTY**

**REGISTERED TRUSTEES FELLOWSHIP OF BELIEVERS.....EX-PARTE APPLICANT**

**JUDGMENT**

**Background**

1. On 4/10/2017, the *ex-parte* applicant in this suit, Registered Trustees Fellowship of Believers, was granted leave to bring a judicial review motion for orders of certiorari and prohibition directed at the National Land Commission (**the Commission**) and against the Commission’s determination made on 12/4/2017 in relation to Land Reference Number 209/7383/223 (**the suit property**). The impugned determination was made by the Commission within the framework of Articles 67(2) (e) and 68(c) (v) of the Constitution (**the Constitution**) and Section 14 of the National Land Commission Act (**the Act**) which empowered the Commission to review all grants or dispositions of public land to establish their propriety or legality. In the impugned determination , the Commission found that the suit property together with several other plots itemized in the determination were public purpose plots within Kimathi Estate and were not available for allocation to private individuals. It directed the Chief Land Registrar to revoke the lease titles relating to the said plots. It is not clear why the *ex-parte* applicant elected not to pursue the appeal avenue provided under Regulation 30 of the National Land Commission (Review of Grants and Dispositions of Public Land) Regulations 2017.

2. Aggrieved by the determination, the *ex-parte* applicant brought a judicial review motion dated 13/10/2017 seeking the following verbatim orders:

*a) An order for certiorari to remove for the purposes of being quashed the summary decision of the 1st respondent made on 12th April, 2017 determining Title No LR.209/7383/223 under Nairobi Block 51 registered in the name of the exparte applicant as unlawful and ordering and publishing its revocation vide the Kenya Gazette Notice No 6862 of 17/7/2017.*

*b) An order for prohibition to remove to this honourable court for the purpose of prohibiting the Chief Land Registrar and/or his servants and/or agents in any manner whatsoever from revoking Title No LR.209/7383/223 under Nairobi Block 51 and or in any manner whatsoever from implementing enforcing or effecting the summary decision of the 1st respondent made on 12th April, 2017 and published in the Kenya Gazette Notice No 6862 of 17/7/2017.*

*c) An order for prohibition to remove for the purpose of prohibiting the County Government of Nairobi and the Commissioner for Lands, their servants and/or agents in any manner whatsoever from evicting the exparte applicant from Title No LR.209/7383/22 under Nairobi Block 51, and/or in any manner whatsoever from implementing, enforcing or otherwise effecting*

*the summary decision of the 1st respondent made on 12th April, 2017 and published in the Kenya Gazette Notice No 6862 of 17/7/2017.*

**d) Costs of this motion be borne by the respondents.**

### **Ex-parte Applicant's Case**

3. The motion was supported by the *ex-parte* applicant's statement of facts dated 3/10/2017, verifying affidavit sworn by Muthui Kisau on 3/10/2017 and further affidavit by the same deponent sworn on 7/1/2019. The case of the *ex-parte* applicant was that it was allocated the suit property by the City Council of Nairobi in 1979 and the Council issued it with a lease for the residue of 99 years reckoned from 1/4/1979. It developed the suit property and it has been utilizing it in tandem with the user set out in the lease. The 1st respondent placed a notice in the Daily Nation of 5/8/2014 inviting presentations and/or objections into its inquiry into the propriety or legality of Title Number LR. 209/7383/223 situated in Kimathi Estate, following complaints of illegal allocation of the parcel of land. The 1st respondent commenced the review following complaints from the 2nd respondent. The *ex-parte* applicant duly instructed M/S L G Kimani & Co Advocates who duly filed written submissions in support of the legality of its title and annexed a list of documents supporting the legality of the title and demonstrating the user of the suit property. The 1st respondent duly stamped on the face of the written submissions in acknowledgement of service.

4. The *ex-parte* applicant contended that the 1st respondent acted illegally in arriving at the impugned decision because: (i) it failed to give the *ex-parte* applicant a fair hearing and made a determination without any reference to the *ex-parte* applicant's written submissions and documentary evidence; (ii) it made a summary decision without any regard to the mandatory requirements of Article 47(2) of the Constitution which required the 1st respondent to give written reasons for its decision; (iii) it admitted and adjudicated upon a dispute which was pending in a court of competent jurisdiction contrary to the requirements of Section 15(3) (b) of the Act; and (iv) it failed to identify the element of illegality or irregularity in the title held by the *ex-parte* applicant.

### **Case of the 1st Respondent**

5. The 1st respondent responded to the motion through a replying affidavit sworn on 16/10/2018 by Brian Ikol. Its case was that Article 67(2) (f) and Article 68(c) (v) of the Constitution empowered the Commission to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress. He added that Section 14 of the Act empowered the Commission to review all grants and dispositions relating to public land, on its own motion or upon receipt of complaints, with a view to establishing the propriety or legality of the grants or dispositions. The review of grants and dispositions of public land entailed the 1st respondent analysing the process under which public land was converted into private land and making a determination on the legality of the grant or disposition in question.

6. Mr. Ikol added that at all material times, the 1st respondent received a complaint from Kimathi Estate Welfare Association that fifteen (15) parcels of land falling within Kimathi Estate Housing Scheme, among them, Land Reference Number 209/7383/223, which were reserved for public purposes, had been, in unknown circumstances, allocated to private individuals, among them, the *ex-parte* applicant herein. The Commission admitted the complaint and duly notified all the affected parties in tandem with the requirements of Section 14(3) of the Act, and granted them the opportunity to appear before it and inspect all relevant documents. Despite the *ex-parte* applicant being notified, it failed to furnish the Commission with any documents that would assist the Commission to reach an informed decision. The 1st respondent contended that it duly complied with the requirements of the Constitution and the Act. It added that Article 40(1) of the Constitution did not protect unlawfully acquired property.

### **Case of the 2nd Respondent**

7. The 2nd respondent responded to the motion through a replying affidavit sworn on 24/10/2017 by Bernard Njau and a supporting affidavit sworn on 29/1/2018 by the same deponent. The case of the 2nd respondent was that Nairobi ELC No 474 of 2008 (OS) and Nairobi ELC No 1207 of 2013 were withdrawn several years ago and therefore the *ex-parte* applicant's contention that the proceedings before the Commission were subjudice was without basis. The 2nd respondent set out a historical background relating to the establishment of Kimathi Estate. The estate was developed in the 1970s on Land Reference Number 209/1383 measuring 18.45 hectares. The estate comprised of 359 housing units and five public utility lands and open spaces, among them children's playground and public day nursery plot which were not available for sale or allocation to private developers. The estate was developed as a tenant-purchase housing scheme and the tenant purchasers paid the loan between 1970 and 1990. The *ex-parte* applicant was not a party to the tenant purchase housing scheme and did not therefore participate in the purchase of the estate.

8. The 2nd respondent added that during the public land grabbing mania of the 1980s and 1990s, the 1st interested party illegally and fraudulently alienated all the five (5) public utility lands in Kimathi Estate, including Land Reference 209/7383/223 which had been set aside for development of a public day nursery school. Following the illegal allocation, the *ex-parte* applicant established a private commercial school known as Twinbird Academy, effectively denying children of Kimathi Estate the opportunity to acquire free education within the estate. The residents challenged the alienation through the Ndungu Commission of Inquiry and through various court cases. The Ndungu Commission of Inquiry directed the Director of Surveys to restore the public utility lands through an amendment to the Registry Index Map (RIM) and this was done. The role played by the National Land Commission was merely to direct the Chief Land Registrar to cancel the registers relating to the public purpose lands and bring them in tandem with the Registry Index Map. The 2nd respondent added that the impugned alienation of public purpose plots in Kimathi Estate was the subject of **Nairobi Civil Appeal No. 8 of 2004** in which the Court of Appeal adjudged that upon selling Land Reference Number 209/7383 and the developments thereon to the estate owners of Kimathi Estate, the City Council of Nairobi reserved no land for itself which it could sell or allocate to any person without consultation and consent of the landowners of Kimathi Estate.

9. The interested parties did not file replying affidavits. The 1st interested party only filed written submissions.

## Submissions by the Ex-Parte Applicant

10. The *ex-parte* applicant submitted that despite appearing before the Commission and filing written submissions, the Commission did not give its submissions a cursory glance. It was the *ex-parte* applicant's contention that the Commission failed to give it a fair hearing because it did not consider its submissions. In this regard, the *ex-parte* applicant contended that the requirements of Article 47 (1) (a) and Section 6 (3) (b) of the Act were violated.

11. Secondly, the *ex-parte* applicant submitted that the Commission acted in contravention of the rule against subjudice in that there subsisted Nairobi HC (E&L) Case No 474 of 2008 and Nairobi High Court ( E & L Divison) Case No 1207 of 2013, both relating to the same suit property. It was contended that by admitting and adjudicating on the claim, the Commission had acted *ultra vires*. Thirdly, the *ex-parte* applicant submitted that its title was still intact and the orders of certiorari and prohibition would properly be issued. Fourthly, the *ex-parte* applicant submitted that it was utilizing the suit property for the intended purpose and had this fact been taken into account, the Commission would have arrived at a different outcome, one that would have vindicated the *ex-parte* applicant. Lastly, it was submitted that the 2nd respondent's replying affidavit was fatally defective and offended Order 1 rule 13(1) and (2) of the Civil Procedure Rules because the deponent did not attach any form of authority empowering him to swear the replying affidavit on his own behalf and on behalf of the other respondents. Counsel for the *ex-parte* applicant urged the Court to allow the application.

## Submissions by the 1st Respondent

12. The 1st respondent submitted that Article 68 (c) (v) of the Constitution and Section 14 of the Act mandated the Commission to review grants and dispositions of public land with a view to establishing their propriety and legality and the review jurisdiction was exclusive to the Commission. It was further submitted that the Commission did not commit any breach of the *ex-parte* applicant's rights under Article 47 of the Constitution and the framework in the Fair Administrative Action Act, the National Land Commission Act and the National Land Commission (Review of Grants and Dispositions of Public Land) Regulations 2017. Reliance was placed on the decision in **Kenya Revenue Authority v Menginya Salim Mungani (2010) eKLR** where it was held that decision making bodies are masters of their own procedures and are only required to achieve some degree of fairness appropriate to their task. Further reliance was placed on the decision in **Diana Kethi Kilonzo & Another v Independent Electoral and Boundaries Commission and 10 others (2013) eKLR** where it was held that the court would only intervene if the respondents had failed to do that which was demanded of them by the Constitution.

13. The 1st respondent further submitted that although it was not bound by the strict rules of evidence, it had afforded the *ex-parte* applicant and all the other interested parties the opportunity to make representations and it took into account those representations while arriving at the impugned decision. Reliance was placed on the decision in **Russel v Duke of Norfolk (1949) I All ER**. The 1st respondent urged the court to dismiss the application.

14. The 2nd respondent submitted that alienation of the public purpose plots in Kimathi Estate was illegal, irregular and fraudulent and the Court of Appeal had held in Nairobi Civil Appeal No 8 of 2008, which related to a similar public utility plot alienated alongside the suit property, that the public purpose plots were not available for alienation by the City Council. Secondly, the 2nd respondent submitted that Mr Muthui Kisau who had sworn the affidavits on behalf of the *ex-parte* applicant purporting to be a trustee of Fellowship of Believers had not exhibited evidence to show that he was indeed a trustee. It was contended that none of the persons appearing in the certificate of registration had sworn an affidavit. It was the 2nd respondent's submission that Muthui Kisau did not have the *locus standi* to bring the present petition. The 2nd respondent contended that the suit herein was incompetent and lacked merit. They urged the court to dismiss the suit.

15. The 1st interested party submitted that its position regarding this suit was as per the determination and gazettelement by the National Land Commission to the effect that the title to the suit property was to vest in the County Government of Nairobi City to hold the same in trust for the residents of Kimathi Estate for public use.

## Analysis & Determination

16. I have considered the judicial review motion together with the parties' respective affidavits. I have also considered the parties' respective submissions, the relevant constitutional and legislative frameworks and the applicable jurisprudential principles. Four key issues fall for determination in this motion. The first issue is whether the Commission failed to give the *ex-parte* applicant a fair hearing. The second issue is whether the Commission violated the requirements of Article 47(2) of the Constitution in the impugned decision. The third issue is whether the Commission acted in violation of the requirements of Section 15(3) (b) of the National Land Commission Act which sets out the criteria for admission of historical land claims. The fourth issue is whether the impugned determination failed to identify the element of impropriety or illegality in the title held by the *ex-parte* applicant. I will make brief pronouncements on the four issues sequentially in the order in which they have been itemized. Before I make the pronouncements, I will set out a brief background to the Commission's jurisdiction to review grants and dispositions relating to public land.

17. The National Land Commission is a creature of the Constitution of Kenya 2010. Its creation as an independent Commission mandated to, *inter-alia*, manage public land on behalf of the National and County Government was informed by the blatant abuse which had been witnessed in the pre-2010 period. Among the constitutional responsibilities vested in the Commission was the duty to initiate investigations on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

18. To actualize the Commission's constitutional obligations, Article 68(c)(v) of the Constitution commanded Parliament to enact legislation to enable the review of all grants or dispositions of public land to establish their propriety or legality. It was within this constitutional context that the statutory framework in Sections 14 and 15 of the National Land Commission Act was enacted. To operationalize the statutory framework, the National Land Commission (Review of Grants and Dispositions of Public Land) Regulations 2017 were promulgated. Of significance to the motion under consideration is the fact that Section 14 of the Act set out a strict time-frame within which the Commission's review jurisdiction was to be exercised and completed. The strict time line has since lapsed and there is the legal thinking that the Commission no longer has the statutory mandate to exercise the review jurisdiction.

19. The impugned determination was made by the Commission while exercising its review jurisdiction under Articles 67(1) (e) and 68 (c) (v) as read together with Sections 14 and 15 of the National Land Commission Act. The first issue for determination is whether the Commission failed to give the *ex-parte* applicant a fair hearing prior to reaching the decision it reached. There is no gainsaying that the right to a fair hearing is a cardinal constitutional and statutory requirement under Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act. Article 47 of the Constitution provides thus:

**Article 47. Fair Administrative Action**

- 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 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 the 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**

20. Section 4 of the Fair Administrative Action Act provides thus:

**4. Administrative action to be taken expeditiously, efficiently, lawfully etc.**

- 1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.**
- 2) Every person has the right to be given written reasons for any administrative action that is taken against him.**
- 3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-**
  - a) prior and adequate notice of the nature and reasons for the proposed administrative action;**
  - b) an opportunity to be heard and to make representations in that regard;**
  - c) notice of a right to a review or internal appeal against an administrative decision, where applicable;**
  - d) a statement of reasons pursuant to section 6;**
  - e) a notice of the right to legal representation, where applicable;**
  - f) notice of the right to cross-examine or where applicable; or**
  - g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.**
- 4) The administrator shall accord the person against whom administrative action is taken an opportunity to-**
  - a) attend proceedings, in person or in the company of an expert of his choice;**
  - b) be heard;**
  - c) cross-examine persons who give adverse evidence against him; and**
  - d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing**
- 5) Nothing in this Section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.**
- 6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with the different procedure.**

21. The board framework in Sections 14 and 15 of the National Land Commission Act too contain ingredients of fair hearing.

22. The tenor and import of the above constitutional and statutory frameworks is that any public body making a decision in violation of the requirement for fair hearing exposes that decision to judicial quashing by the courts. It was with this in mind that Githinji JA rendered

himself as follows in **Judicial Service Commission v Mbalu Mutava & another (2015) eKLR**:

**“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”**

23. I have perused all the materials placed before the court. It is common ground that all the parties knew and appreciated the fact that the Commission was discharging its constitutional mandate in relation to review of grants and dispositions relating to public land within the framework of Articles 67 and 68 of the Constitution and Sections 14 and 15 of the Act. Secondly, it is common ground that the Commission published appropriate notices and the *ex-parte* applicant came across the public notices prior to the commencement of the hearing of the complaint lodged to the Commission by the residents of Kimathi Estate. The complaint related to dispositions of public purpose plots within Kimathi Estate to private entities and persons. It is clear from the Commission’s proceedings which the *ex-parte* applicant annexed to the affidavit sworn in support of the application that counsel for the *ex-parte* applicant attended and participated in the proceedings on behalf of the *ex-parte* applicant. Indeed, Mrs Kimani, counsel for the *ex-parte* applicant made the following representations to the Commission on 11/2/2015.

**“Honourable Commission, my name is Mrs Kimani, one of the Fellowship Believers, one the holders of title and we have filed our response. We filed the same on the 15th of August. However, when we were before the Commission last, you directed that we be given copies of the complaints. We were given one set of the complaint. However, the same mentions a lot of documents and the documents were not supplied to us. The complainants had also indicated that they had filed a supplementary list of documents. That supplementary list was not supplied to us. So, we are still in the dark concerning a lot of the documents that being relied on” sic**

24. The response to Mrs Kimani’s concern was as follows:

**“Commissioner Dr Muhammed Swazuri: Can we dispense with these, have we received (sic) documents that were listed in the complainants?(sic).**

**Mr Brian Ikol: There are two sets of complaints and we will probably seek your leave so that we can agree with the counsel, which ones they are. However, we will also request that the interested parties, they share with the counsel, the documents they are replying to.**

**Commissioner Dr Muhammed Swazuri: Okay. That will make the matters move faster, so that we are talking from the same script all of us, when we come here. Yes Counsel”.**

25. The above excerpts from the proceedings clearly indicate that the *ex-parte* applicant was furnished with the complaint. Secondly, the Commission made available the documents which Mrs Kimani had indicated were not attached to the complaint.

26. The *ex-parte* applicant contends that because the Commission did not expressly analyse its submissions, it failed to give them a fair hearing. I do not agree with that contention. The Commission was reviewing dispositions relating to public purpose plots within Kimathi Estate. In my view, it was not necessary that the Commission analyses each and every submission made in relation to each public purpose plot. Having been presented with evidence to demonstrate that all the titles under review related to public purpose plots and the said plots were not available for alienation by the Council to private developers, the Commission properly dealt with the matter by making a determination that all the parcels were reserved for public purposes and were not available for allocation to private individuals. It is therefore my finding that the Commission did not deny the *ex-parte* applicant the right to a fair hearing.

27. The second issue is whether the Commission violated the requirements of Article 47(2) of the Constitution in its determination. Article 47(2) states that if a right or fundamental freedom of a person has been or is likely to be adversely affected by an administrative action, the person has the right to be given written reasons for the action. From the materials placed before court by the *ex-parte* applicant, the Commission specified what the review was about and rendered to all the parties a written notice inviting them to participate in the proceedings and make representations. The Commission thereafter rendered a determination duly signed by the Commission’s Chairman, Dr Muhammed Swazuri. The decision of the Commission is exhibited as Annexure “MK5” to the supporting affidavit sworn by Muthui Kisau in support of the application. The evidence on record demonstrates that there was no breach of Article 47(2) of the Constitution. In light of the evidential materials before court, it is my finding that the Commission did not violate Article 47(2) of the Constitution.

28. The third issue is whether the Commission acted in violation of Section 15(3) (b) of the National Land Commission Act which sets out the criteria for admission of a historical land claim. Section 15(3) provides thus:

**(3) A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria-**

**a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;**

**b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that-**

*i) the claim contradicts a law that was in force at the time when the injustice began; or*

*ii) the claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;*

*c) the claimant was either a proprietor or occupant of the land upon which the claim is based;*

*d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and(e)it is brought within five years from the date of commencement of this Act*

29. The *ex-parte* applicant contends that it made representations to the Commission to the effect that the complaint by the 2nd respondent was inadmissible on account of subsisting court cases. The *ex-parte* applicant's submissions to the Commission are exhibited as annexure "MK4" to Muthui Kisau's affidavit. Firstly the *ex-parte* applicant's written submissions to the Commission did not contain any annexure. It was a two page document, which did not make any reference to any annexure to the document. Although reference was made to the two cases in the second last paragraph of the written submissions, copies of pleadings were not annexed. The 2nd respondent's evidence before the Commission was that they had withdrawn all the cases which they had lodged. That evidence was not controverted by the *ex-parte* applicant.

30. My perusal of the original record relating to Nairobi High Court ( E&L Division) Case No 474 of 2008 reveals that on 18/9/2009 the firm of Julius Nyakiangana & Co Advocates filed a notice of withdrawal of suit and on 23/9/2009 Nairobi HCC No 474 of 2008 was marked by the Deputy Registrar as withdrawn. It is therefore apparent that the *ex-parte* applicant is faulting the Commission yet it did not demonstrate to the Commission a proper basis upon which the Commission would lay down its tools. Secondly, the *ex-parte* applicant's contention that Nairobi High Court ( E&L Division) Case No 474 of 2008 subsisted at the time the Commission admitted the complaint is not *bonafide* because the court record in relation to the said case indicates that the suit was withdrawn in 2009. I am therefore not persuaded that the Commission should have declined to admit the complaint in the circumstances. Accordingly, it is my finding that the Commission properly exercised review jurisdiction in the circumstances.

31. The last issue is whether the Commission's determination failed to identify the elements of impropriety or illegality in the title held by the *ex-parte* applicant. The suit property was one of fifteen titles which were under review. The Commission made a determination that all the fifteen plots were reserved for various public purposes and were not available for allocation to private developers. It further made a finding that Kenya Power was a state agency that had powers to hold public purpose plots in pursuance of its functions of providing electricity to members of the public. In my view, the illegality impropriety in the *ex-parte* applicant's title is clearly captured in paragraph 5 on page 4 of the Commission's determination which reads thus;

***"We also find that all the other parcels were reserved for various public purposes and were not available for allocation to private individuals"***

32. I do not therefore agree with the *ex-parte* applicant's view that the Commission failed to identify the impropriety or illegality in the *ex-parte* applicant's title. The totality of the above findings is that there is no proper basis for disturbing the determination of the Commission.

33. Lastly, from the materials presented to the court in this suit, it has emerged that the City Council's disposition of public purpose plots in Kimathi Estate was the subject of litigation in the Court of Appeal in **Kepha Maobe & 365 others v Benson I Mwangi & another (2015) eKLR**. The Court of Appeal in its judgment rendered on 6/11/2015 was clear on the legal status of land dispositions made in Kimathi Estate in relation to public purpose plots. The judicial review motion under consideration is certainly not the platform for overturning the findings of the Court of Appeal in relation to the said dispositions.

#### **Disposal Order**

34. The net result is that the *ex-parte* applicant's notice of motion dated 13/10/2017 seeking orders of certiorari and prohibition is dismissed for lack of merit. The *ex-parte* applicant shall bear costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 8TH DAY OF OCTOBER 2019.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Ms Mburu Advocate for the *ex- parte* applicant

Mr Wambugu Advocate for the respondents

Court Clerk - June Nafula