



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC. PETITION NO.460 OF 2012

DR. JOSHUA KIMANI.....PETITIONER

VERSUS

MINISTER FOR PUBLIC WORKS.....1ST RESPONDENT

MINISTER FOR SPORTS & YOUTH AFFAIRS.....2ND RESPONDENT

TOWN CLERK MUNICIPAL COUNCIL OF MAVOKO...3RD RESPONDENT

JUDGMENT

1. In the Amended Petition of 29th November, 2014, the Petitioner averred that he is the owner of land known as L.R. No. 337/2393 situate in Mavoko Municipality within Machakos County; that he acquired the suit land from the previous owner and that since then, he has been paying the requisite rates to the County Government.
2. The Petitioner has further averred that when he went to check on his land, he found the Respondents had fenced it and that the Respondents should be restrained from developing his land.
3. In response to the Petition, the 3rd Respondent's Town administrator deponed that the suit property is for the public utility purposes, to wit, a stadium and that the land was reserved as such vide development plan reference 8/70/1 of 18th June, 1970.
4. It is the 3rd Respondent's case that vide Part Development Plan number Nairobi/8/92 of 13th March, 1992, part of the land that was reserved for the stadium was allocated to private developers; that the said Part Development Plan is invalid and that the Petitioner knew or ought to have known that the suit land was reserved for a stadium and was not available for allocation.
5. The Petition proceeded by way of written submissions.
6. The Petitioner's advocate submitted that the title issued to the original owner of the suit land was done legally and procedurally; that the documents of title originated from the government and that there are no Minutes from the Respondents declaring the title that was issued to the original owner as null and void.
7. The Petitioner's counsel relied on numerous authorities which I have considered. The Respondents' advocates did not file any submissions.
8. The evidence before this court shows that the suit property was registered in favour of Simon Kilonzo

Kyatha on 12th February, 1997.

9. The title to the suit land was then transferred to the Petitioner on 15th July, 2009.

10. Indeed, before the said land was transferred to the Petitioner, the Petitioner paid to the government the requisite stamp duty, rent and rates. Those documents evidencing the said payments, including the Grant have been annexed on the Petition.

11. The 3rd Respondent's case is that the suit land forms part of the land that was reserved for public use and a stadium.

12. Although the 3rd Respondent has exhibited a Part Development Plan that was prepared and approved in the year 1992 reserving land measuring 3.6Ha for "*proposed Industrial Development*", there is no approved Part Development Plan which has been exhibited to show that the suit land formed part of the land that was reserved for a stadium.

13. Indeed, the approved Part Development Plan dated 13th March, 1992 does not support the 3rd Respondent's deposition that the suit land was ever reserved for public purpose.

14. Considering that the Petitioner is in possession of a Grant, and in the absence of evidence to show that the said title was obtained unlawfully, the Petitioner's right to own the suit land is protected by Article 40 of the Constitution.

15. For those reasons, I allow the Amended Petition dated 29th November, 2014 in the following terms:

a. A declaration be and is hereby issued that land known as L.R. No. 337/2393 situate in Mavoko within Machakos County belongs to the Petitioner.

b. A declaration be and is hereby issued that the Respondents acts of fencing off and developing L.R No. 337/2393 are unconstitutional and amounts to breach of the Petitioner's constitutional rights to own property.

c. A permanent injunction be and is hereby issued restraining the Respondents either by themselves or through their agents, servants, employees, proxies or anyone acting on their behalf from entering, acquiring, developing, trespassing or in any other manner interfering with the Petitioner's quiet possession of L.R. No. 337/2393.

d. An order be and is hereby made directing the Respondents to demolish the fence, buildings or structures standing on L.R. No. 337/2393 within sixty(60) days of this Judgment.

e. The Respondents to pay the costs of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE