



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. J. R. NO. 6 OF 2017 (FORMERLY J.R. NO. 115/2017)

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS IN THE NATURE OF MANDAMUS

AND

IN THE MATTER OF GAZETTE NOTICE NO. 3460 OF 1ST APRIL 2010 CANCELLING THE TITLE OVER L.R. NO. 209/13337 WESTLANDS

AND

IN THE MATTER OF THE PROTECTION OF THE RIGHT TO OWN PROPERTY UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA

AND

REPUBLIC.....APPLICANT

VERSUS

DISTRICT LAND REGISTRAR, NAIROBI.....1ST RESPONDENT

HON. ATTORNEY GENERAL OF KENYA.....2ND RESPONDENT

AND

KIRICHWA REST-ROOMS LIMITED.....EX-PARTE APPLICANT

JUDGEMENT

1. Through the Notice of Motion dated 17/3/2017, the Ex-parte Applicant seeks an order of mandamus directed to the 1st Respondent commanding him to reinstate the *Ex parte* Applicant's title over the land known as L.R. No. 209/13337 (I.R. No. 100410) by reinstating the Applicant's name in the certificate of title as the proprietor and to revoke, withdraw or cancel entry no. 2 in the certificate of title of this property and any other dealing pursuant to the revocation of the Applicant's title.

2. The Applicant claims that it carried out a search on 20/1/2017 and learnt that the 1st Respondent had registered an entry against its title showing that its title was revoked by Gazette Notice No. 3460 of 1/4/2010. The Applicant maintains that it has never been received any notice of the intended cancellation of its title.

3. The Ex parte Applicant contends that the orders issued in Milimani High Court Petition No. 178 of 2011 which cancelled gazette notice no. 3460 of 1/4/2010 should have been applied to all the titles revoked in that gazette notice and not only the titles in respect of the 19 petitions which were consolidated in that matter.

4. The Applicant claims that following that order of the court, the 1st Respondent issued gazette notice no. 915 of 3/7/2012 which cancelled and withdrew gazette notice no. 3460 of 1/4/2010. Gazette notice no. 915 of 3/7/2012 was amended by a colligenda gazette notice of 18/12/2015. However, the Applicant contends that the 1st Respondent selectively applied the gazette notice to the parcels of land which were the subject of the 19 consolidated petitions instead of applying it to all the parcels of land whose titles were revoked by gazette notice no. 3460 of 1/4/2010.

5. The court has considered the application, the supporting affidavit and the submissions of the Ex parte Applicant.

6. The Ex parte Applicant relied on the case of **Sky Africa Holdings Limited v Registrar of Titles & Attorney General, Ex parte Sky Africa Holdings Limited** [2016] eKLR in which Odunga J. stated that the decision of Majanja J. in quashing Gazette Notices Numbers 9230, 7751, 3640 and 13104 was not restricted to the parties who were before him but that the decision applied to all persons who were affected by the Gazette Notices indicated.

7. The Applicant's title was revoked vide Gazette Notice No. 3460 of 1/4/2010, which is one of the gazette notices quashed by Majanja J. This court agrees with the finding of Odunga J. that the effect of the decision of Majanja J. in **Milimani High Court Petition No. 178 of 2011** which quashed Gazette Notice No. 3640 benefited all persons affected by that gazette notice including the Applicant in this matter.

8. The court finds that application has merit. It is allowed as prayed with costs.

Dated and delivered at Nairobi this 30th day of May 2018.

K. BOR

JUDGE

In the presence of: -

Ms Nyaanga the Ex parte Applicant

Mr. V. Owuor- Court Assistant

No appearance for the Respondents