



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC.JUDICIAL REVIEW APPLN. NO.73 OF 2017

EVANS OMBATO ONCHWERI.....1ST APPLICANT
JOSEY NJOKI MUKIRI.....2ND APPLICANT
RICHARD ONYINO SIMWA.....3RD APPLICANT
CHRISTINE ARITAH SIMWA.....4TH APPLICANT
MAROA KEGOCHA GATI.....5TH APPLICANT
KEVIN NYAKUNDI.....6TH APPLICANT
JOB MAKORI.....7TH APPLICANT
NAOMI MWENDE KAISHA.....8TH APPLICANT
BHARAT PAREKH.....9TH APPLICANT
BABU VARSANI.....10TH APPLICANT
ANTONY MOSOTI ONG'ONDI.....11TH APPLICANT
ROSE BOSIBORI ONG'ERA.....12TH APPLICANT
HENRY OIRERE ONG'ONDI.....13TH APPLICANT
RODGERS MOTURI ONG'ERA.....14TH APPLICANT
PAARAS VARSANI.....15TH APPLICANT
PRAVINCHANDRA JAMNADAS KAKAD.....16TH APPLICANT
PRANJAL VARSANI.....17TH APPLICANT

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT
CHIEF LAND REGISTRAR2ND RESPONDENT

AND

CHRISTOPHER MUINDI NZIMBA.....1ST INTERESTED PARTY

UNITED INSURANCE COMPANY LTD.....2ND INTERESTED PARTY

HOMEWARD AGENCIES LIMITED.....3RD INTERESTED PARTY

LAMKA PROPERTIES LIMITED.....4TH INTERESTED PARTY

FELIX MANUAL JOSEPH PIO PINTO.....5TH INTERESTED PARTY

JUDGMENT

1. In the Notice of Motion dated 17th August, 2017, the Ex-parte Applicants (*the Applicant*) has sought for the following reliefs:

a. An order of certiorari to bring into this Honourable Court the decision of the Commission to revoke title of the suit property, Land Reference Number 12715/383 and quash it.

b. An order of certiorari to bring into this Honourable Court the decision of the Commission to investigate the title for suit property, Land Reference Number 12715/383.

c. An order of prohibition prohibiting the Chief Land Registrar from reverting the title to Land Reference Number 12715/383 to the 1st Interested Party.

d. An order of prohibition prohibiting the Chief Land Registrar from revoking the Applicants' respective properties being Land Reference Numbers 12715/11104 to 12087 (inclusive) being resultant sub-division of the suit property Land Reference Number 12715/383.

2. The Motion is supported by the Statement of Facts and the Verifying Affidavit of the Applicants who have averred that the Applicants are the registered proprietors of various parcels of land being the resultant sub-titles of Land Reference No. 12715/383 (*the suit land*); that they acquired the said land from the 4th Interested Party for value without notice and that the 1st Respondent, vide Gazette Notice No. 6862, directed the 2nd Respondent to uphold the 1st Interested Party's title.

3. According to the Applicants, the 1st Respondent lacked jurisdiction to deal with the title to the suit property since it is private land; that the 1st Respondent's findings and directions were unlawful, unconstitutional and procedurally flawed and that in any event, they were not given an opportunity to make their representation before the 1st Respondent made its decision.

4. The Applicants finally averred that the 1st Respondent has not availed to them its recommendations and that they had interim orders of injunction against the 1st Interested Party in Machakos ELC. No. 274 of 2017.

5. In response, the 1st Respondent Acting Director of Legal Affairs and Enforcement deponed that the 1st Respondent received a complaint from the 1st Interested Party alleging that the Applicants had illegally acquired the suit land; that the 1st Respondent issued notices to all Interested Parties pursuant to the provision of Section 14 of the National Land Commission Act and that it conducted its hearings on 13th February, 2015, 17th June, 2016, 1st July, 2016, 22nd July 2016, 14th October, 2016, 28th October, 2016, 18th November, 2016 and 2nd December, 2016.

6. According to the 1st Respondent, the 1st Respondent's mandate to review grants and disposition to public land terminated on 2nd May, 2017; that these proceedings were effectively terminated and that following an inadvertent oversight, erroneous information was sent to the Government Press for publication regarding the suit property and the same was published vide Gazette Notice No. 6862 of 2017; that the 1st Respondent caused to be published a corrigenda correcting the erroneous publication in Gazette Notice No. 6862 of 2017 and published the correct status of the determination of the suit land and that there is no determination of the 1st Respondent that is capable of being quashed.

7. The 1st Respondent's officer finally deponed that the Application was prematurely filed; that the 1st Respondent has not heard all the parties to the dispute and that the Applicants have other remedies in law. According to the 1st Respondent's Legal Officer, the suit land is a Grant from the Government of Kenya and therefore public land within the meaning of Article 62(1) (n) of the Constitution.

8. The 1st Interested Party deponed that he is the lawful owner of the suit land; that the suit land was transferred to him by Syokimau Farm Limited on 25th October, 1989 and that the said land was fraudulent transferred to United Insurance Company, then Home Ward Agencies Limited and that an unknown fraudster impersonated him after he misplaced his Grant in respect to the suit land.

9. According to the 1st Interested Party, after reporting the issue of the fraudulent transaction to the CID, he also made a complaint to the 1st Respondent who took up the matter and that upon hearing all the parties, it gazetted its decision on 17th July, 2017 vide Gazette Notice Number 6862.

10. The Managing Director of the 3rd Interested Party deponed that in the year 2006, the Statutory Manager of United Insurance Company Limited advertised for sale several parcels of land belonging to the company; that the suit land was amongst the suit properties that were advertised for sale and that the 3rd Interested Party offered to buy the suit land on 24th February, 2006.

11. It is the 3rd Interested Party's case that after its advocate conducted an official search, it purchased the land and thereafter sold the land to the 5th Interested Party. The 5th Interested Party then sold the land to the 4th Interested Party who subsequently sub-divided the land and sold the sub-divisions thereof to the Applicants for value.

12. According to the 3rd Interested Party's Director, he was not aware of the proceedings before the 1st Respondent; that the suit land is private property and not public land and that the 1st Respondent did not afford them an opportunity to be heard.

13. The Director of the 4th Interested Party deponed that on 2nd August, 2017, the 4th Interested Party commenced Judicial Review proceedings in ELC. J.R. Misc. Application No. 72 of 2017; that the said Application was allowed and that the same land in J.R. Misc. Application No. 72 of 2017 is the subject of this suit.

14. The 5th Interested Party deponed that he sold the suit land to the 4th Interested Party after obtaining the requisite consents; that the suit land has exchanged hands since the year 1996 and that the National Land Commission does not have jurisdiction to deal with the dispute.

15. The advocates for all the parties filed written submissions and authorities which I have considered. Indeed, the said submissions repeated the parties' depositions which I have already summarized.

16. The Notice of Motion that is before me is seeking for an order of certiorari quashing the decision of the 1st Respondent to revoke the title of the suit land and to prohibit the Chief Land Registrar from reverting the title of L.R. No. 12715/385 to the 1st Interested Party.

17. According to the Applicants, they are the *bona fide* registered proprietors of the suit land and that in any event, the 1st Respondent cannot deal with the suit land because the land in question is private land.

18. Although the Applicants are seeking for the quashing of the decision of the Commission, the said decision has not been annexed on their Affidavit. Instead, the Applicants have made reference to the Gazette Notice No. 6862 of 17th July, 2017 which directed the 2nd Respondent to uphold the title to the 1st Interested Party of the suit land.

19. The 1st Respondent has owned up and stated that the Gazette Notice of 17th July, 2007 was cancelled by way of corrigenda correcting the erroneous publication of Gazette Notice No. 6862 of 17th July, 2017. The copy of the corrigenda has been annexed on the 1st Respondent's Replying Affidavit.

20. Considering that the impugned gazette notice number 6862 of 17th July, 2017 was in respect of numerous sub-divisions of L.R. No. 12715/383, which included the Applicants' parcels of land, and the 1st Respondent having admitted that it has never given the Applicants and the Interested Parties an opportunity to be heard, the said gazette notice number 6862 should be quashed.

21. For those reasons, I allow the Applicants' Notice of Motion dated 17th August, 2017 in the following terms:

a. An order of certiorari be and is hereby issued quashing gazette notice number 6862 of 17th July, 2017 which purported to recommend the revocation of Land Reference number 12715/383 and the sub-divisions thereof being L.R. No. 12715/11104 to 12087.

b. An order of Prohibition be and is hereby issued prohibiting the Land Registrar from revocating the Applicants' title documents and or reverting the said title(s) to the 1st Interested Party.

c. The 1st Respondent to pay to the Applicants the cost of the suit.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28TH DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE