



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC PETITION NO. 776 OF 2017**

**(FORMELY NAIROBI HIGH COURT PETITION NO. 414 OF 2013)**

**JULIET WAMAITHA WAINAINA.....PETITIONER**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE COMMISSIONER OF LANDS.....2<sup>ND</sup> RESPONDENT**

**GITHUNGURI CONSTITUENCY RANCHING CO. LTD....3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....4<sup>TH</sup> RESPNDENT**

**JUDGMENT**

1. In this Petition dated 30<sup>th</sup> July, 2013 and filed on 19<sup>th</sup> August, 2013, the Petitioner who is represented by Simba and Simba Advocates has sought the following orders:-

- a. A declaration upholding the petitioner's right of ownership and entitlement of property known as Title No. Ruiru/Ruiru East Block 1/2626. Title No. Ruiru/Ruiru East block 1/2626.*
- b. An order for the immediate degazettement of the 3<sup>rd</sup> respondent as registered owner of plot Title No. Ruiru/Ruiru East Block 1/2626 and a further order directing 1<sup>st</sup> and 2<sup>nd</sup> respondent to gazette the petitioner as the registered owner of plot Title No. Ruiru/Ruiru East Block 1/2626.*
- c. An order directed to the 1<sup>st</sup> and 2<sup>nd</sup> respondent to compensate the petitioner for her plot Title No. Ruiru/Ruiru East Block 1/2626 at a just valuation and such amount arrived at do attract interest at 6% per annum in accordance with the law.*
- d. Other orders and directions as the Honourable Court may deem just and appropriate in the circumstances of this case, bearing in mind the 3<sup>rd</sup> respondent is a public land buying company and not a private company.*
- e. An order directing the respondents to pay damages to the petitioner for violating the petitioner's constitutional rights enumerated hereinabove.*

*f. The costs of this petition awarded to the petitioner.*

2. The gist of the petition is that she is the registered proprietor of the suit land, **L.R. No. Ruiru/Ruiru East Block 1/2626** having purchased the same for value from James Kamau Njoroge (the seller). That by a Kenya gazette **Notice No. 16188** issue of **23<sup>rd</sup> December, 2011**, the 2<sup>nd</sup> respondent compulsorily acquired various parcels of land including the suit land for the construction of Thika Highway. That the acquisition was done by the 2<sup>nd</sup> defendant in collusion with the 3<sup>rd</sup> defendant without the knowledge of the petitioner to deny her constitutional right to compensation.

3. The Petition is anchored on the petitioner's supporting affidavit shown on **30<sup>th</sup> July 2013** and document **marked JWW I**, She has outlined constitutional foundation, the relevant registration, the facts of the petition and that were Constitutional right have been contravened by the respondent. She cited, inter alia, Articles **22, 23, 40(3), 47(1) and 165(3) (b) and (6)** of the constitution of Kenya, 2010.

4. The Petition is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents who sought its dismissal in their grounds of opposition dated **3<sup>rd</sup> August, 2016**. The grounds include:-

*a. That the Petitioner has not demonstrated before the Honourable court how the 1<sup>st</sup> and 2<sup>nd</sup> respondents have violated her constitutional Rights.*

*b. That similarly the Office of the Attorney General and Department of Justice has the mandate to promote, protect and uphold the rule of law and defend the public interest under Article 156 of the constitution of Kenya.*

*c. That the 2<sup>nd</sup> Respondent therefore did due diligence as required to compensate the persons with interest in the suit parcel of land.*

5. The 3<sup>rd</sup> and 4<sup>th</sup> respondents were duly served. They did not respond to the Petition.

6. This Petition was transferred to this court on **3<sup>rd</sup> October, 2017**. The petition came up for Notice to show cause issued on **29<sup>th</sup> October, 2018** on **5<sup>th</sup> November 2018**. The parties agreed and it was directed and ordered that the petition be argued by written submissions. The parties failed to adhere to the Court orders as at today **29<sup>th</sup> November, 2018** when the petition is fixed for mention to confirm compliance by the parties.

7. Ms Chibole for the 1<sup>st</sup> and 2<sup>nd</sup> respondents has sought dismissal of the petition. The reasons given are that the petitioner's counsel was duly served on **28<sup>th</sup> November, 2018** as shown on affidavit of service sworn on **29<sup>th</sup> November, 2018** and that the petition lacks merit.

8. I have carefully studied the entire petition, the 1<sup>st</sup> and 2<sup>nd</sup> respondent grounds of opposition to the petition and the request by the 1<sup>st</sup> and 2<sup>nd</sup> respondents counsel to have the petition dismissed. Therefore, has the petitioner demonstrated that her constitutional rights have been violated as alleged in the petition?. Is the petitioner entitled to the reliefs sought in the petition?.

9. The Petitioner alleges that the respondents have violated her rights to property as detailed under **Article 40(3)** of the Constitutional of Kenya, **2010**. That the respondents have failed to uphold the national values and principles of governance under **Article 10** of the said constitution.

10. The 1<sup>st</sup> and 2<sup>nd</sup> respondents stated that the Petition does, not raise violation of the petitioner's fundamental rights and freedoms. The right to fair hearing under **article 50(1)** of the constitution was accorded to the Petitioner on **26<sup>th</sup> November 2018**. She did not argue or submit on the petition.

11. Be that as it may, I am guided by the following authorities:-

*a. Articles 24(1), 25 of the Constitution of Kenya, 2010.*

*b. Articles 40, 35, 47 and other articles and sections of the constitution and the law cited in the petition.*

*c. The case of Onyango & others –Vs- Town Council of Awendo (2010)1EA of 321 that compulsory acquisition of property must be in strict conformity with Constitutional provisions and be carried out in good faith.*

12. The material presented before this Court does not prove the allegations contained in the petition. I find no merit in the petition.

13. Accordingly, I ***dismiss*** the Petition with no Order as to Costs.

**G.M.A ONG'ONDO**

**JUDGE**

Dated, signed and delivered at Thika this **29<sup>th</sup>** day of **November, 2018**.

**Present:**

Ms Chibole learned Counsel for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Court Clerk: Tom

**G.M.A ONG'ONDO**

**JUDGE**