



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**

**ELC PETITION NO. 1170 OF 2015**

**(FORMERLY HIGH COURT PETITION NO. 275 OF 2015)**

**IN THE MATTER OF: ARTICLE 27(4), 40(3), 47(1) & (2) & 50 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: CONTRAVENTION OF RIGHT TO PROPERTY**

**IN THE MATTER OF: THE PURPORTED REVOCATION OF TITLE TO L.R NO. 209/12760**

**BETWEEN**

**CASTLEROCK HOMES LIMITED.....APPLICANT**

**AND**

**REGISTRAR OF TITLES.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

The Petitioner is the registered proprietor of all that parcel of land known as L.R No. 209/12760 (I.R No. 70001) (hereinafter referred to as “the suit property”). The Petitioner has a leasehold interest in the suit property for a term of 99 years with effect from 1<sup>st</sup> May, 1995. The Petitioner acquired the suit property from one, Gladys Koske on 18<sup>th</sup> December, 2003 at a consideration of Kshs.6,500,000/=. The suit property is developed with a block of apartments which the Petitioner has sold to third parties. The Petitioner holds a reversionary interest in the suit property after the expiry of the leases which have been granted to the said third parties in respect of the said apartments.

On 1<sup>st</sup> April, 2010, the 1<sup>st</sup> Respondent published a Gazette Notice No. 3460 revoking the Petitioner’s title to the suit property on the ground that the suit property was allocated to the Petitioner illegally and unconstitutionally because the property was reserved for public purposes. The Petitioner brought this petition to challenge the said revocation of its title to the suit property.

In its petition dated 2<sup>nd</sup> July, 2015, the Petitioner contended that in revoking its title to the suit property, the Respondents acted arbitrarily and in violation of its right to property guaranteed under Article 40 of the Constitution. The Petitioner contended further that the Respondents also violated its right to fair administrative action guaranteed under Article 47 of the Constitution. In its affidavit in support of the petition, the Petitioner averred that it learnt of the revocation of the said title from its advocates, Buyuka Obonyo Advocates.

The Petitioner sought a declaration that the purported revocation of its title to the suit property was unconstitutional, null and void, a declaration that the Petitioner is the absolute and indefeasible owner of the suit property and that the certificate of title that was issued to it is conclusive evidence of its ownership of the property. The Petitioner also sought damages and costs.

The Respondents opposed the Petition through grounds of opposition dated 28<sup>th</sup> September, 2016 and a replying affidavit sworn on 11<sup>th</sup> December, 2016. The Respondents contended among others that:

- (i) The Petitioner should have filed an appeal or sought review of the decision of the 1<sup>st</sup> Respondent instead of bringing a constitutional petition;
- (ii) That the Petitioner had failed to demonstrate that the 1<sup>st</sup> Respondents had acted illegally and irrationally;
- (iii) That the petition was defective, incompetent, frivolous and an abuse of the process of the court; and

(iv) That the petition was intended to stop the 1<sup>st</sup> Respondent from discharging its mandate.

In the replying affidavit that was sworn by Edwin M. Wafula, a land registrar based at Ardhi House, Nairobi, the Respondents averred that according to the records held at the Lands Registry, the suit property was public land reserved for public purposes and that it was following the discovery of the status of the suit property that the 1<sup>st</sup> Respondent revoked its title through the said Gazette Notice No. 3460 of 1<sup>st</sup> April, 2010. The Respondents averred that the suit property was acquired irregularly and as such the title in respect thereof that was held by the Petitioner was illegal. The Respondents averred that the Petitioner had not tendered evidence as to how it acquired the suit property.

On 21<sup>st</sup> July, 2015, the court directed that the petition be argued by way of written submissions and set timelines within which each party was to file its submissions. The Petitioner filed its submissions on 23<sup>rd</sup> September, 2015. The Respondents did not file their submissions until 6<sup>th</sup> September, 2018. I have considered the petition and the response thereto by the Respondents. I have also considered the submissions on record. It is not disputed that the Petitioner was at all material times registered as the proprietor of the suit property under the Registration of Titles Act, Chapter 281 Laws of Kenya. It is also not disputed that on 1<sup>st</sup> April, 2010, the 1<sup>st</sup> Respondent purported to revoke the Petitioner's title to the suit property through Gazette Notice No. 3460. The purported revocation according to the said Gazette Notice was undertaken under the Constitution of Kenya, the Government Lands Act, Chapter 280 Laws of Kenya (now repealed) and the Trust Land Act, Chapter 288 Laws of Kenya (now repealed). There is no evidence that the Petitioner was given a notice or a hearing before its title was revoked. The Respondents have not persuaded me that the 1<sup>st</sup> Respondent had a right under old Constitution of Kenya then in force or the statutes that I have cited above to revoke a title to land without notice to the registered owner or at all. The Respondents did not also place any evidence before the court showing that the Petitioner acquired the suit property unlawfully or that the suit property had been reserved for public use. The Respondents cannot therefore seek protection under Article 40(6) of the Constitution.

I am in agreement with the Petitioner that the 1<sup>st</sup> Respondent acted arbitrarily and illegally in purporting to revoke the Petitioner's title to the suit property. I am also in agreement that the 1<sup>st</sup> Respondent violated the Petitioner's right to property and fair administrative action. I am totally in agreement with the decisions in the cases of **Power Technics Limited v The Hon. Attorney General & 2 Others (2012) eKLR**, **Satima Enterprises Ltd. v Registrar of Titles & 2 Others (2012) eKLR**, **Kobian (Kenya) Ltd. v Attorney General (2012) eKLR** and **Kuria Green Ltd. v Registrar of Titles and Another eKLR** that were cited by the Petitioner in which the courts unanimously held that revocation of a title to land by the Land Registrar without following the due process is unlawful and unconstitutional. I have found the cases cited by the Respondents in their submissions irrelevant and not helpful to their case.

The upshot of the foregoing is that the petition before me succeeds. I hereby enter judgment for the Petitioner against the Respondents on the following terms:

- (i) I declare that the revocation of the Petitioner's title to L.R No. 209/12760 ( I. R. 70001) through Gazette Notice No. 3460 published on 1<sup>st</sup> April, 2010 was unconstitutional, null and void.
- (ii) Since the dispute was largely over the legality of the process through which the Petitioner's title was revoked rather than the legality of the title held by the Petitioner, I decline to grant prayer (b) in the petition.
- (iii) The Petitioner did not prove that he suffered any damage or loss as a result of the revocation of its title. In the circumstances, the prayer for damages is also refused.
- (iv) The orders issued herein shall not bar the Respondents from seeking the revocation of the Petitioner's title to the suit property through a lawful process if it is of the opinion that the title was issued irregularly.
- (v) The Petitioner shall have the costs of the petition.

**Delivered and Dated at Nairobi this 15<sup>th</sup> day of November 2018**

**S. OKONG'O**

**JUDGE**

**Judgment read in open court in the presence of:**

Ms. Waceke for the Petitioner

Mr. Sekwe for the Respondents

Catherine - Court Assistant