



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

CIVIL MISC. APPLICATION NO. 130 OF 2011

**IN THE MATTER OF ARTICLE 64 (b) AS READ WITH ARTICLE 20, 21, 22, 23, ARTICLE 43
OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AND

**IN THE MATTER OF KENYA GAZETTE NOTICE NO. 15573 DATED 26TH DAY OF
NOVEMBER, 2010 AND ENTITLED “REVOCATION OF LAND TITLES”**

AND

**IN THE MATTER OF THE CONSTITUTION AND THE RIGHTS OF OWNERSHIP TO
PROPERTY AS ENSHRINED IN THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

JOHN WABOI MWANGI1ST EX PARTE APPLICANT

MARTHA WANJUMBI WABOI2ND EX PARTE APPLICANT

GEOFFREY KIMANI KIRIHA3RD EX PARTE APPLICANT

DAMARIES MURINGI GATHITI4TH EX PARTE APPLICANT

ROSE MWONGELI MUSYOKI5TH EX PARTE APPLICANT

MARK M. MAUNDU6TH EX PARTE APPLICANT

MONICA PAUL MUTHOKA7TH EX PARTE APPLICANT

REUBEN MUSEMBI MUANGE8TH EX PARTE APPLICANT

FRANCIS MWANZIA NATHAN.....9TH EX PARTE APPLICANT
JOSEPH MUTUKU10TH EX PARTE APPLICANT
JOSEPH YUSUF KATHULI11TH EX PARTE APPLICANT
JOHN MASAI12TH EX PARTE APPLICANT
JONES KAVIVYA NZAU13TH EX PARTE APPLICANT
SHASHIKANT JAGJIVAN KHATRI14TH EX PARTE APPLICANT
NAVINCHANDUA JAGJIRAN KHATRI.....15TH EX PARTE APPLICANT
JOHN MUTUKU16TH EX PARTE APPLICANT
JANNICE KAMENE MASIKA17TH EX PARTE APPLICANT

AND

THE CHIEF LAND REGISTRAR1ST RESPONDENT
THE MINISTER FOR LANDS & SETTLEMENT2ND RESPONDENT
THE COMMISSIONER OF LANDS3RD RESPONDENT
THE DISTRICT LAND REGISTRAR4TH RESPONDENT

AND

THE CLERK MUNICIPAL COUNCIL
OF MACHAKOS1ST INTERESTED PARTY
THE PERMANENT SECRETARY
MINISTRY OF HOME AFFAIRS2ND INTERESTED PARTY
ETHICS AND ANTI-CORRUPTION COMMISSION.....3RD INTERESTED PARTY

JUDGMENT

1. In the Notice of Motion dated 17th May, 2012, the Ex-parte Applicants are seeking for the following orders:

a. *An order of certiorari do issue calling into this court the Notice of Revocation of Title Deeds namely:-*

- *Machakos Municipality Block 1/611*
- *Machakos Municipality Block 1/635*
- *Machakos Municipality Block 1/639*
- *Machakos Municipality Block 1/644*
- *Machakos Municipality Block 1/646*

- ***Machakos Municipality Block 1/648***
- ***Machakos Municipality Block 1/654***
- ***Machakos Municipality Block 1/664***
- ***Machakos Municipality Block 1/666***
- ***Machakos Municipality Block 1/668***
- ***Machakos Municipality Block 1/712***
- ***Machakos Municipality Block 1/717***
- ***Machakos Municipality Block 1/609 for purposes of being quashed and/or declared null and void for being ultra vires the Constitution of Kenya and the Registered Land Act Cap 300 Laws of Kenya.***

b. That, orders of prohibition stopping the Respondents to stop from in any manner implementing the publication in Gazette Notice No. 15573 for being null and void.

c. The orders of prohibition do operate as a stay of implementation of any order flowing from the said Gazette Notice.

d. That, the costs of this Application be provided for in any event.

2. According to the Affidavit of the 1st Ex-parte Applicant, the Ex-parte Applicants (Applicants) are the registered proprietors of several parcels of land; that the Applicants have complied with the terms of the Leaseholds and that on or about 8th September, 2006, the Machakos Prison Authorities entered into parcels of land known as Machakos Block 1/664 and 665 and started developing the same.

3. The 1st Applicant has deponed that despite there being orders restraining the Respondents from trespassing on the suit properties, in Machakos High Court Miscellaneous Application No. 144 of 2006, the Respondents proceeded to develop the suit property.

4. It is the Applicants' case that in the year 2008, the Kenya Anti-Corruption Commission instituted Machakos HCCC Nos. 14-32 of 2008 seeking cancellation of the Applicants' titles and that those suits are still pending.

5. The 1st Applicant has deponed that while those suits were pending in this court, the Respondents vide a Gazette Notice dated 26th November, 2010 proceeded to revoke the Applicants' titles; that the Respondents' unilateral action of revoking the Applicants' titles is unprocedural, illegal and against the rules of natural justice and that the purported cancellation of the Applicants' titles is *ultra vires* and amounts to denial of justice.

6. In response, the 3rd Interested Party's investigator deponed that in exercise of its mandate, the then Kenya Anti-Corruption Commission carried out investigations into the allegations that through corrupt conduct, various parcels of land were illegally excised and alienated to private individuals from land reserved for the Prisons department and the Administration Police within Machakos.

7. The said investigator deponed that after investigations, the 3rd Interested Party filed Machakos HCCC Nos. 14-33 of 2008 seeking to recover the suit properties; that subsequently, the Land Registrar, vide Gazette Notice No. 15573 indiscriminately revoked all the titles over the parcels of land that were illegally exercised from the Machakos G.K. Prison, alongside other public land required for public purpose and that this court should uphold the public interest in the prison as a corrective facility which outweighs private interests of the Ex-parte Applicants.

8. In response to the 3rd Interested Partys' Affidavit, the 1st Applicant deponed that Machakos HCCC Nos. 14-33 of 2008 are still pending; that it is only a Minister in charge of prisons who can by notice in the Gazette declare any building enclosure to be a prison and that the actions of the Land Registrar of revoking the Applicants' Title Deeds is *ultra vires*.

9. In their submissions, the Ex-parte Applicants' advocate submitted that the 3rd Interested Party is not a party in these proceedings; that the 3rd Interested Party did not seek the leave of the court to be enjoined in these proceedings and that the pleadings of the 3rd Interested Party should be struck out of record.
10. The Applicants' counsel submitted that the provisions of the then Registered Land Act did not confer upon the Land Registrar powers to revoke a title; that the 4th Respondent overstepped its jurisdiction and acted *ultra vires* and that any administrative act or order which is *ultra vires* is void.
11. Counsel submitted that the Applicants' titles were revoked by the 4th Respondent without according the Applicants an opportunity to be heard and that having acquired title documents, the Ex-parte Applicants have a right over the same.
12. The Applicants' counsel relied on numerous authorities which I have considered.
13. The 3rd Interested Party's advocate submitted that one of the functions of the 3rd Interested Party is to investigate the extent of liability for loss or damage to any public property and to institute civil proceedings for the recovery of such property or for compensation.
14. Counsel submitted that the suit properties were reserved for Machakos Prison Land pursuant to a Gazette Notice No. 397 of 1928; that the 3rd Interested Party joined in the proceedings to urge the public interest in the matter and that under Order 53 of the Civil Procedure Rules, the court has the discretion to allow a person who ought to have been served with the Application for judicial review to join the proceedings as an Interested Party.
15. The Interested Party's advocate submitted that the court can find in these proceedings that the suit property was illegally alienated to the Ex-parte Applicants as envisaged under Article 40(6) of the Constitution; that by doing so, the court will avoid a multiplicity of suits and that the court has a role to protect public interest.
16. The 3rd Interested Party's advocate relied on the case of ***Cinnamond vs. British Airports Authority (1980) 1 WLR 582*** where it was held that there are instances when it is not necessary to give a hearing to those who may be affected by a decision and further that the need for a hearing only applies when there is a legitimate expectation of being heard.
17. Counsel submitted that the Applicants need not have been given a hearing before their titles over the suit land were revoked; that the Applicants knew that the suit property formed part of the Machakos Prison Land and that the nature of harm and injury that might be done to the Prisoners lawfully held at the Machakos Prison would be so grave if the private interests of the Ex-parte Applicants were allowed to prevail.
18. Counsel relied on numerous authorities which I have considered.
19. The Applicants' counsel filed further submissions which I have also considered.
20. It is not in dispute that on 26th November, 2010, the 1st Respondent, vide a Gazette Notice dated 26th November, 2010 revoked the Applicants' title documents in respect to parcels of land known as Machakos Municipality Block 1/611, 635, 639, 644, 646, 648, 654, 664, 666, 668, 712, 717 and 609.
21. According to Gazette Notice No. 15573 dated 26th November, 2010, the Machakos District Land Registrar revoked the titles to the suit properties because the said parcels of land were reserved for public purpose under the relevant provisions of the Constitution, the Government Lands Act and the Trust Land Act.
22. The 3rd Interested Party has not disputed the fact that it filed a total of nineteen (19) suits being

Machakos HCCC Nos. 14-32 of 2008 in which it sought to have the Title Deeds in respect to the suit properties cancelled.

23. The Plaints and the Defences in respect to the said suits have been annexed on the Applicants' Supporting Affidavit.

24. In the Plaints, the 3rd Interested Party alleged that in breach of the law, the Defendants (*the Applicants herein*) fraudulently, unlawfully and/or illegally alienated part of the parcels of land reserved or set aside for the Administration Police and or Prison. The particulars of fraud and illegality have been particularized in the Plaints.

25. The Applicants herein filed their respective Defences and denied the allegations that they obtained the titles to the suit properties fraudulently.

26. While the said suits were awaiting hearing and determination, the 1st Respondent, through the Machakos District Land Registrar, proceeded to have the Applicants' title documents cancelled.

27. The 1st Respondent and the Interested Parties have not denied that indeed the Applicants were not called upon to explain how they obtained the Certificates of Leases in respect to the suit properties before the said Certificates of Leases were revoked by way of a Gazette notice.

28. The Respondents and the Interested Parties have also not pointed out to the court the provisions of the law that allows the District Land Registrar to revoke a Certificate of Lease, and moreso before inviting the registered owner to make representation in respect to his title.

29. Considering that the 3rd Interested Party had already filed suits challenging the validity of the Certificates of Leases that were issued to the Applicants, evidence should have been called in those suits to enable the court make a determination on the legality or otherwise of the titles.

30. Considering that it is only the court that has the mandate to cancel a title document issued under the provisions of the Registered Land Act (*repealed*), I find and hold that the Machakos District Land Registrar did not have the authority to revoke the Applicants' titles by way of a Gazette Notice in the manner that he did.

31. As was held in the case of ***Livingstone Kunini Ntutu vs. Minister for Lands & 4 others (2014) eKLR***, such a revocation is a breach of Article 40 of the Constitution because it constitutes an arbitrary acquisition of property and is also a breach of Article 47(1) of the Constitution.

32. Although the issue raised by the Interested Party viz-a-viz the Applicants title documents may be classified as one of public interest, the process of achieving the said public interest should be within the confines of the law.

33. Having found that the District Land Registrar was not clothed with the power and mandate to revoke the titles to the suit property, he cannot claim that he was acting in the public interest.

34. For those reasons, I allow the Ex-parte Applicants' Notice of Motion dated 17th May, 2012 as follows;

a. ***An order of certiorari do issue calling into this court the Notice of Revocation of Title Deeds namely:-***

- ***Machakos Municipality Block 1/611***
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- *Machakos Municipality Block 1/717*
- *Machakos Municipality Block 1/609 for purposes of being quashed and/or declared null and void for being ultra vires the Constitution of Kenya and the Registered Land Act Cap 300 Laws of Kenya.*

b. Each party to bear his/its own costs.

DATED AND DELIVERED AT MACHAKOS THIS 24TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE