



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

**AT NAKURU**

**MISC APP NO. 81 OF 2012**

**REPUBLIC.....APPLICANT**

**VERSUS**

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

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

**EX-PARTE**

**MICHAEL KIMANI KARIUKI**

**JUDGMENT**

***(Judicial review motion inter alia to quash a gazette notice by the Registrar of Titles purporting to cancel the ex-parte applicant's title on reason that the land is public land; no response filed by the respondents; applicant having title to the land; there having been a previous suit on whether the land was public land which was decided in favour of the ex-parte applicant; no appeal against the said decree; following the decree, the land is the private land of the ex-parte applicant; no basis upon which the Registrar could cancel the title of the ex-parte applicant; motion succeeds with costs)***

1. This is a judicial review motion for the following orders which I have paraphrased :

*(i) An order of certiorari to bring to this court and quash the decision of the Registrar of Titles, named as the 1st respondent, which purported to cancel and revoke the title of the ex-parte applicant to the land parcel Molo Township 533/676 also known as Molo Township Block 2/462.*

*(ii) An order of mandamus to compel the Registrar of Titles to reinstate the land records of the cancelled title.*

*(iii) An order of prohibition to prohibit the Registrar of Titles from interfering with the applicant's ownership, occupation, use, proprietorship and enjoyment of the subject land.*

2. This suit was prompted by the action of the Registrar of Titles, who on 29 June 2012, published a notice in the Kenya Gazette being No. 8653 Vol. CXIV No. 58 purporting to revoke several titles including the title of the ex-parte applicant to the land registration No. 533/676 Molo Township also known as Molo Township Block 2/462 (hereinafter, "the suit property"). It is the contention of the ex-parte applicant that no notice was ever issued to him prior to the publication of the notice; that he is a first

registered owner of the property; that the Registrar of Titles (1st respondent) did not have jurisdiction to purport to cancel the subject title deed; that the cancellation offends the provisions of the Constitution; and that there is already a court decree issued in *Nakuru CMCC No. 2198 of 2004, Michael Kimani Kariuki vs The Commissioner of Police and the Attorney General* which declared that the land in issue is not public land.

3. To his supporting affidavit, the ex-parte applicant has explained that he was issued with an allotment letter to the suit property. He was required to pay a sum of Kshs. 29,165/= which he duly paid and was issued with a receipt. He then paid Kshs. 8,000/= for the survey of the land and a receipt was issued. On 19 February 2002, he was issued with a Certificate of Lease. On 12 November 2003, he sought planning approval and paid Kshs. 6,850/=. On 27 November 2002, his building plans were approved. He then embarked on fencing the land and building on it. Before he could finish construction, he was served with a letter dated 14 July 2004, from the Molo Town Council, prohibiting him from continuing with developments. He then filed the suit, Nakuru CMCC No. 2198 of 2004 in the Chief Magistrate's Court at Nakuru against the Molo Town Council, The Commissioner of Police and the Attorney General. The matter was heard and the court ruled that the plaintiff's land is not public land. On the strength of the decree, he proceeded with construction but was impeded by several arrests. He then filed a contempt application being *Nakuru High Court, Misc. Application No. 504 of 2006 Republic vs Molo Town Council and 3 Others* which was again decided in his favour. He has now been taken aback that despite all the above, the Registrar of Titles has moved to gazette his title for cancellation. He has averred that he was never consulted before the gazettement.

4. Despite being served, the respondents only filed a Memorandum of Appearance on 2 October 2013. The only material that I have is therefore that tendered by the ex-parte applicant.

5. I have gone through the material. I have seen that the plaintiff holds title to the suit property. It does appear that he was at some point impeded from developing the same which made him file the case Nakuru CMCC No. 2198 of 2004. I have seen the decree issued on 22 March 2006 after the case was heard. In the decree, it is stated inter alia, that the plaintiff's residential house is not situated on public land and that he is entitled to quiet possession of the plot No. 533/676. That is the same plot which comprises the suit land herein. I have not been given any material that the said decree has been reversed or that there is any appeal against the said decree. It therefore does appear to me that the question of ownership of the suit property has already been determined by a court of law.

6. In the impugned Gazette Notice, I have seen that the Registrar of Titles purported to cancel the title of the ex-parte applicant on the basis that the suit property is reserved for public land, specifically the Molo Police Station. However, it does appear to me that the question whether the plaintiff's land is on public property was resolved in the case Nakuru CMCC No. 2198 of 2004. If the State was aggrieved by the said decision, they had the option of appealing the same. I have not been shown any evidence that there has ever been an appeal filed or any evidence that the decree has been set aside. I wonder on what basis the Registrar of Titles would go against an order of court and purport to cancel the title of the ex-parte applicant.

7. I have already stated that no response was ever filed to oppose this motion and the Registrar of Titles has not justified his actions. On my part, I see no reason as to why this motion cannot succeed. I do hereby allow it as prayed.

8. The ex-parte applicant shall also have costs of this suit.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 2<sup>nd</sup> day of March 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

Mrs. Murande holding brief or Mrs. Mukira for the ex-parte applicant

No appearance for the respondents

Court Assistant : Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**