



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC. PETITION NO. 8 OF 2016

IN THE MATTER OF PLOT NO. MN/111/533 TITLE NUMBER CR 14272

AND

IN THE MATTER OF ARTICLES 35, 40, 47, 50 AND 67 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 14 OF THE NATIONAL LAND COMMISSION ACT

CAROLINE M. MWANDIKU.....PETITIONER

VERSUS

THE NATIONAL LAND COMMISSION.....RESPONDENT

RULING

1. In the Application dated 18th May, 2016, the Petitioner is seeking for the following orders:

a. That pending hearing and determination of this Petition, a conservatory order be issued restraining the Respondent from hearing, deliberating, reviewing, investigating, recommending for cancellation, interfering or cancelling title number C.R 14272 plot number 533 Section III/MN situated in Kikambala in Kilifi County.

b. That the Respondent do pay costs of this Application.

2. The Application is based on the grounds that the Respondent has no jurisdiction to review title to the land complained of; that the Respondent has acted beyond its mandate and that the Respondent has acted *ultra vires* and unconstitutionally because there is a pending suit involving the same land.

3. The Petitioner deponed that on the land, she has put up a permanent house and that she resides on the said land with her children.

4. It is the Petitioner's case that on 8th November, 2013, she filed an Originating Summons vide Mombasa HCCC No. 251 of 2013 seeking to be declared the owner of the land; that when the Respondent was requested to be supplied with the particulars of the complaint lodged against her, the Respondent declined to give them to her and that even after his advocate informed the Respondent that the matter was before the court, they proceeded to hear the complaint.

5. The Petitioner has deponed that the Respondent breached her constitutional rights because she was not made aware of the nature of the complaint; that she was not given adequate opportunity to be heard in defence; that she was denied her right to representation and that the act of the Commissioners was not a fair administrative action.
6. According to the Petitioner, the Respondent has been acting illegally and unconstitutionally because it has failed to inform the public about its procedure and rules of investigations; that it has been conducting hearings and investigations of dispositions of titles without having made any rules contrary to the express provisions of Section 14(2) of the National Land Commission Act and that it has failed to inform the public of its decision.
7. In response, the Respondent's Deputy Director, Legal Affairs and Enforcement, deponed that the suit land is public land because the Government remains the lead lessor; that the Respondent can only fulfill its mandate of reviewing public land by probing the process under which public land was converted to private land and that the Respondent received a complaint to the effect that there was a scheme by the Petitioner to fraudulently acquire the suit land.
8. It is the Respondent's deposition that the Respondent caused to be published a notice in the daily newspapers inviting the Petitioner to attend a public hearing and ventilate how she acquired the suit property; that the Petitioner appeared before the Commission and that it was apparent that the Petitioner did not have any documents in respect to the suit property.
9. It is the Respondent's case that the court will be aiding the violation of the law and abetting an illegality by exempting the grant to the suit land from the requirements of Section 14 of the National Land Commission Act and that the Commission is not bound by the strict rules of evidence.
10. The Petitioner's counsel submitted that pursuant to Article 35(1) (b) of the Constitution, the Petitioner is entitled to information held by the Respondent; that the Petitioner has the right to be heard which includes giving the affected person not only an opportunity and time but reasonable resources or materials to defend himself and that the Petitioner was denied the details of the complaint.
11. The Petitioner's advocate finally submitted that the Respondent does not have the jurisdiction to deal with the subject suit land.
12. The Respondent's counsel did not file submissions.
13. The evidence before this court shows that the Petitioner filed a suit being Mombasa HCCC No. 251 of 2013(O.S) claiming to be declared the owner of the suit property by way of adverse possession. In that suit, the Petitioner sued the registered proprietor of the suit land.
14. While that suit was pending, the Petitioner received a letter dated 22nd December, 2015 informing her that the Respondent had received a complaint from Joseph Malindi Lengurie & Monika Behrmann regarding "*alleged attempts to fraudulently misappropriate the above property.*"
15. In the said letter, the Respondent did not expound on the details of the "*alleged attempts to fraudulently misappropriate the property*", or whether the investigations were due to a complaint that the land in question was meant for public purpose.
16. The Respondent then published in the Daily Nation newspaper of 14th January, 2016 an advertisement to the effect that the "*Commission will conduct public hearings in Nairobi and Kilifi Counties for the affected plots*" and all the interested parties were to avail themselves on the dates indicated in the advertisement. One of the plots that was to be investigated was the suit property.
17. On 18th January, 2016, the Petitioner's counsel informed the Respondent that the advertisement did not specify the complaint in respect to the Petitioner or the suit property. The advocate then sought to be supplied with the particulars of the complaint to enable the Petitioner prepare for the hearing.

18. It will appear that no detail on the alleged complaint was ever supplied to the Petitioner or her advocate. It would also appear that when the Respondent met in Malindi to investigate the complaint, all it did was to ask the Respondent to defend herself.

19. It is trite that one can only defend himself or herself once he knows what the complaint or allegations that he/she is facing.

20. The Petitioner herein is not the registered proprietor of the suitproperty. Indeed, the Petitioner is only seeking to be registered as the proprietor of the land by virtue of the doctrine of adverse possession.

21. In the circumstances, she ought to have been given the details of the complaint as against her to enable her know the queries she was supposed to answer.

22. Considering that the Commission can only inquire into allegations of grants or disposition of public land to establish their legality and propriety, it is imperative for the Respondent to supply information in its custody in respect to a particular parcel of land to the person who is said to be an interested party in the land before hearing that person. That is what is meant by “*giving a person a fair hearing*” or a “*fair administrative action*” contemplated under Articles 50(2) and 47 of the Constitution.

23. The trial court will therefore interrogate whether indeed this mandatory pre-requisite of supplying the Petitioner with full information on the case against her was ever complied with by the Respondent. However, in the absence of evidence to show that the Applicant was informed in detail the nature of the complaint against her, and in the absence of evidence to show the kind of information or documents that were supplied to the Petitioner before the public hearing of 2nd February, 2016, I find and hold that the Petitioner has a *prima facie* case with chances of success.

24. For those reasons, I allow the Petitioner’s Application dated 18th May, 2016 in the following terms;

a. That pending the hearing and determination of this Petition, a conservatory order be and is hereby issued restraining the Respondent from hearing, deliberating, reviewing, investigating, recommending for cancellation, interfering or cancelling title number C.R 14272 plot number 533 Section III/MN situated in Kikambala in Kilifi County.

b. That the Respondent do pay the costs of this Application.

DATED AND SIGNED AT MACHAKOS THIS 2nd DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12th DAY OF MAY, 2017.

J.O. OLOLA

JUDGE