



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC PETITION NO. 20 OF 2015

**IN THE MATTER OF: THE ILLEGAL AND UNCONSTITUTIONAL REVOCATION OF
TITLE TO THE**

**PROPERTY KNOWN AS L.R. NO. 28101 SITUATED IN MOKOWE LAMU, BY THE
REGISTRAR**

OF TITLES VIDE GAZETTE NOTICE NO. 15445 OF 7TH DECEMBER, 2011

AND

IN THE MATTER OF: VIOLATION OF FUNDAMENTAL CONSTITUTIONAL RIGHTS

AND FREEDOMS UNDER SECTION 23 OF THE REGISTRATION OF TITLES

ACT, AND ARTICLES 40 & 47 OF THE CONSTITUTION

AND

IN THE MATTER OF: A PETITION FOR REDRESS UNDER ARTICLE 162(B) OF THE

CONSTITUTION OF KENYA, THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS

AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND SECTION 13(1) OF THE ENVIRONMENT AND LAND COURT ACT

BETWEEN

NIGHTSHADE PROPERTIES LIMITED.....PETITIONER

VERSUS

REGISTRAR OF TITLES, MOMBASA.....1ST RESPONDENT

CHIEF LANDS REGISTRAR.....2ND RESPONDENT

JUDGMENT

1. In his Petition dated 30th November, 2015, the Petitioner has averred that at all material times, it was the registered proprietor of land known as L.R No. 28101; that the Petitioner acquired the land by way of allotment by the Government and that in the year 2015, the petitioner was shocked to discover that a Gazette Notice No. 15445 dated 7th December, 2011 had been published by the Registrar of Titles purporting to revoke its title.
2. The Petitioner's case is that the purported revocation of the title to its property was in violation of Article 40 and 47 of the Constitution; that the said title was revoked without any notice to the Petitioner and that the Registrar of Titles in any event lacked the jurisdiction to revoke the said title.
3. The Petitioner is seeking for a declaration that the cancellation of its title was unconstitutional for want of jurisdiction and for being in violation of due process as stipulated under Article 40 and 47 of the Constitution; an order of certiorari to quash the gazette notice and general damages.
4. In response, the Land Registrar deponed that the suit property was revoked by the Registrar of Titles because the title fell within the proposed new Lamu Port site.
5. In his submissions, the Petitioner's advocate submitted that it is not in dispute that the Petitioner was the registered proprietor of the suit property; that there is a long line of binding case law to the effect that the 1st Respondent did not have power to revoke a Certificate of Title and that the Registrar of Titles acted *ultra vires* in purporting to revoke the Petitioner's title.
6. Counsel submitted that under Article 47(1) of the Constitution, every person is guaranteed a right to a fair administrative action; that under Article 40(3) of the Constitution, the state is restrained from depriving a person of his property and that under section 23 of the Registration of Titles Act, the Petitioner held an absolute and indefeasible title.
7. The Respondents' counsel submitted that under Article 40(6) of the Constitution, the right to property does not extend to any property that has been found to have been unlawfully acquired.
8. The Respondents' counsel submitted that the National Land Commission has the mandate to review grants; that under Section 14 of the National Land Commission Act, the commission may recommend appropriate redress mechanism and may revoke to the Registrar to recommend a title that has been acquired unlawfully.
9. It is not in dispute that the Petitioner's title in respect to the suit property was revoked by the Registrar of Titles vide Gazette Notice No. 15445 dated 7th December, 2011.
10. According to the Petitioner, it was not until the year 2015 that he came across the said notice. It is the Petitioner's case that the actions of the Respondents in revoking his title were unconstitutional, null and void.
11. The Respondents have not denied that the Registrar of Titles indeed revoked the said title. According to the Respondents, the Petitioner's title was revoked because it "*fell*" within an area reserved for the Lamu Port.
12. Although the Respondents' counsel submitted that the Registrar of Titles revoked the Petitioner's title pursuant to the powers donated to him by Section 14 of the National Land Commission Act, the Respondents have not annexed any evidence to show that before the said revocation of the Petitioner's title, due process was followed.
13. Section 14 of the National Land Commission has an elaborate procedure that must be complied with by the National Land Commission before the Commission can direct the Registrar to revoke a title.
14. The elaborate procedure that must be complied with under the Act includes giving the registered

proprietor of land a notice to show cause why the said title should not be revoked. That notice was never issued to the Petitioner.

15. The actions of the Registrar of Titles to revoke the Petitioner's title without giving the Petitioner a chance to explain how he acquired the same is therefore contrary, not only to Section 14 of the National Land Commission Act, but also Article 47(1) and 40(3) of the Constitution.

16. Article 47(1) of the Constitution guarantees every person a right to a fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

17. Having failed to give the Petitioner an opportunity to state its case, the Respondents acted unconstitutionally in revoking the Petitioner's title.

18. I however decline to award to the Petitioner general damages as claimed.

19. In the circumstances, I allow the Petitioner's Petition dated 30th November, 2015 in the following terms:

a. A declaration be and is hereby issued that Gazette Notice No. 15445 of 7th December, 2011 purporting to revoke the Petitioner's title to L.R. No. 28101 Mokowe Lamu is unconstitutional for want of jurisdiction and also for being in violation of Articles 40 and 47 of the Constitution.

b. An order of certiorari do issue to bring to this court and quash Gazette Notice No. 15445 dated 7th December, 2011 to the extent that it relates to L.R. No. 28101 Mokowe Lamu.

c. An order be and is hereby issued directed to the Registrar of Titles, Mombasa and the Chief Land Registrar to immediately reinstate the records of the cancelled and revoked titles of L.R. No. 28100 Mokowe Lamu, and delete any entry made on the Petitioner's Certificate of Title as a consequence to or in furtherance of the revocation notice appearing in Gazette Notice No. 15445 of 7th December, 2011.

d. There shall be no orders as to costs.

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