



REPUBLIC OF KENYA
IN THE ENVEIROMENT AND LAND COURT
AT MILIMANI
ELC PETITION NO.175 OF 2016

IN THE MATTER OF VIOLATION OF THE PETITIONER’S FUNDAMENTAL CONSTITUTIONAL RIGHTS AND FREEDOMS UNDER SECTION 23 OF THE REGISTRATION OF TITLES ACT (NOW REPEALED) SECTION 14(7) OF THE NATIONAL LAND ACT,2012 & ARTICLES 40 OF THE CONSTITUTION OF KENYA,2010 BY WAY OF AN UNCONSTITUTIONAL TAKING AND THE CONSEQUENCES RESULTING THEREFROM UNDER PART VIII OF THE LAND ACT 2012.

=AND=

IN THE MATTER OF PROTECTION AND/OR ENFORCEMENT OF THE OETITIONER’S CONSTITUTIONAL RIGHTS AND FREEDOMS UNDER ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)PRACTICE AND PROCEDURE RULES, 2012

=AND=

IN THE MATTER OF A DETERMINATION BY THE NATIONAL LAND COMMISSION UNDER SECTION 14 OF THE NATIONAL LAND COMMISSION ACT,2012 RECOMMEDNING THE REVOCATION OF TITLE TO L.R NO.209/11314/4(PRESENTLY REGISTERED AS L.R NO.209/19461) AND THE CONSEQUENCES RESULTING THEREFROM UNDER PART VIII OF THE LAND ACT 2012

=BETWEEN=

REGNOL OIL(K) LIMITED.....PETITIONER

=AND=

NATIONAL LAND COMMISSION.....1ST RESPONDENT

KENYA URBAN ROADS AUTHORITY.....2ND RESPONDENT

JUDGEMENT

INTRODUCTION

1. The Petitioner, *Regnoil Oil (K) Limited* hereinafter referred to as “*Regnol*” is a limited liability company duly registered under the Companies Act Cap 486 Laws of Kenya. The first Respondent,

National Land Commission (NLC) is an Independent Commission established by Article 67 of the Constitution and its mandate is set out under the National Land Commission Act. The second Respondent, Kenya Urban Roads Authority (KURA) is a State Corporation whose responsibility is *Management, Development, Rehabilitation, and Maintenance of Public Roads* within cities and municipalities. The interested party, National Social Security Fund (NSSF) is a statutory body founded under an Act of Parliament and is managed by a board of trustees.

2. This petition was brought by Regnol which was the registered owner of LR No.209/19461 (*Original number 209/11314/4*) which was a sub-division of LR No. 209/11314. The title to land owned by Regnol has since been recommended for revocation by NLC following review of the grant. This is what prompted Regnol to file this Petition in which it seeks the following reliefs:-

a. A declaration that NLC abused and/or exceeded its constitutional mandate and as a result violated Regnol's rights under Article 40 of the Constitution , by declaring that the title to LR No. 209/19461(Original number 209/11314/4) ought to be cancelled.

b. A declaration that NLC and KURA abused /and or exceeded their respective constitutional mandates and as a result, violated Regnol's rights to full compensation of the land and developments thereon under Article 40 of the Constitution, by failing to make a full award and thereafter pay for both the land and developments on LR No. 209/19461 (original number LR No. 209/11314/4) when compulsorily acquiring the same for the road expansion project.

c. An order of certiorari do issue bringing into this court and quashing that part of NLC's determination made and/or issued on 27th October 2015, purporting to revoke or recommending revocation of title to LR No.209/19461(original number LR No. 209/11314/4).

d. An order of certiorari do issue bringing into this court and quashing any revocation and/or cancellation of title to LR No.209/19461 (original LR No. 209/11314/4) if at all implemented.

e. The NLC shall within such time as the court may deem fit to make a supplementary compensation award to Regnol for the value of the land comprised in title LR No. 209/19461 (Original number LR No. 209/11314/4) in addition to the award for the developments thereon, and the same shall be paid by either the NLC or KURA or their successors in title and the full compensation payable shall accrue interest at court rates from the date of filing the petition until payment in full.

f. The costs of and/or incidental to these proceedings be borne by the Respondents whether jointly and/or severally.

REGNOL'S CASE

3. Regnol contends that it purchased LR No. 209/19461 (Original number LR No.209/11314/4) which I shall hereinafter refer to as ***"the suitland"*** from NSSF on 25th October 2005. The suitland was transferred into its name on 26th April 2013. Regnol took possession and constructed two fully fledged petrol stations , a garage, carwash , a double storey building and a parking lot all valued at ***Kshs.800,000,000/=***.

4. When KURA started the expansion of Outering Road project, Regnol saw a press advert indicating that NLC was in the process of compulsorily acquiring some 19 parcels of land for purposes of the road expansion. Regnol's directors were concerned that the suit land was not among the properties which the NLC intended to acquire. It later turned out that KURA had petitioned NLC to review grants with a view to determining their propriety or legality. The suitland was among those whose grants were to be reviewed by NLC.

5. Regnol was invited to make its presentation in the process of review of the grant. After the process or review by NLC was completed, a determination was made that the title to the suit land among other

parcels were unlawfully acquired and their titles were recommended for renovation. However the NLC valued the developments on the suit land and made a determination that Regnol was entitled to compensation for the developments on the land but not for the land itself as it had been found to have been unlawfully acquired.

6. It is Regnol's contention that it was an innocent purchaser for value and that NLC should pay it for not only the developments on the suitland but the suitland itself. Regnol contends that it did due diligence before purchasing the property from NSSF.

NSSF'S CASE.

7. NSSF has supported Regnol's case contending that it is the one which sold the suitland to Regnol. NSSF itself had purchased the original land being LR No. 209/11314 from Endesha Multipurpose co-operative society Limited. It embarked on the process of subdivision of the land. After the subdivision was completed, it sold one of the subdivisions to Regnol through one of its directors Mohamoud Khalif Ali. All the required approvals were obtained and the subdivisions were registered in the year 2012. A transfer to Regnol was then effected. NSSF contends that Regnol should be paid full compensation for the developments on its land as well as the suitland itself.

NLC AND KURA'S CASE

8. NLC contends that it received a letter of complaint from KURA to the effect that it had countered difficulties in expanding Outering Road as it emerged that a number of property owners had encroached on to the road reserve and some land owners had taken land meant for transport corridor. KURA required the NLC to commence investigations as to the propriety and legality of some titles as, mandated under the National Land Commissions Act.

9. Before the NLC commenced the investigations, it did its own check and thereafter invited the owners of grants which were due for review. One of the owners of the affected grants which were to be reviewed was Regnol. The affected parties' were invited to make their representations in respect of the affected grants. Regnol was represented by the firm of Wetangula Adan & Makokha Advocates. The Advocates made representations on behalf of their client. After the process of review of grants was completed, NLC made a recommendation that the title held by Regnol be revoked for having been unlawfully obtained.

10. NLC traced records dating back to the 1980's which showed that the suitland was part of land which had been reserved for the future expansion of Outering Road and Jogoo Road. NLC further found out that the allocation of that land to private entities was done through collusion of public servants. There was even conflict of interest in that the Director of Physical Planning one John Ohas who was instrumental in the Planning of the affected area was an official of Endesha Multipurpose co-operative Society Limited who were finally allocated the land in issue. Correspondence attached to the further affidavit of KURA show that the then Nairobi City Commission protested at the allocation of the land which had been reserved for expansion of Outering Road and Jogoo Road. The protest is contained in a letter dated 7th April 1988 "**AIJ 2**".

11. Further correspondence show that the said John Ohas even went ahead to convince Kenya Power and Lighting Company to re-locate their power lines from the said land. The Original Part Development Plan (PDP) was amended and it paved way to the allocation of the said land to an entity where John Ohas who was director of Physical Planning was secretary . After the land had been re-planned and the original PDP changed, the land was allocated to Endesha Multipurpose co-operative Society limited which then sold the land to NSSF.

ANALYSIS

12. I have carefully gone through Regnol's case as supported by NSSF as well as the opposition to the same by NLC and KURA. I have also considered the submissions filed by the parties to this Petition. The issues which emerge for determination are as follows:-

i. Whether NLC exceeded its mandate by recommending revocation of Regnol's title.

ii. Should the NLC's decision to revoke title to the suitland be quashed.

iii. Whether Regnol is entitled to compensation in respect of the suitland.

iv. Who is to pay costs of this Petition?

13. The first and second issues in paragraph 12 hereinabove are interrelated and can be dealt with together. Regnol is contending that NLC exceeded its mandate in recommending revocation of the title held by it. NLC on the other hand contends that it reviewed the grant and reached a finding that the title to the land which resulted in the suitland had been unlawfully acquired. Section 14(1) of the National Land Commission Act provides as follows:-

“Subject to Article 68(1) (v) of the Constitution, the Commission shall , within five years of the commencement of this Act, on its own motion or upon a complaint by the National or a county government a community or an individual , review all grants or dispositions of public land to establish their propriety or legality”.

Section 14(5) provides as follows:-

“ where the commission finds that the title was acquired in an unlawful manner, the commission shall direct that the Registrar to revoke the title”.

14. In the instant case there is evidence that even before a complaint was made by KURA, the commission on its own motion had commenced investigations to investigate grants to ascertain their propriety or legality. All the procedures required were complied with. These procedures included publication in the press calling for affected person to come and be heard. Regnol was given that opportunity and it presented its submissions through their Advocates Messers Wetang'ula Adan & Makokha Advocates. After full consideration, the commission found that the title to the land which resulted in the suitland had been unlawfully acquired hence their recommendation that it be revoked. I have looked at the determination by the NLC . They state that the title to the suitland is revoked. Though this is the NLC's verdict, I find that there is nothing wrong in this. The fact is that the NLC is supposed to direct the Registrar to revoke the title. That is the clear position in law as per section 14(5) of the National Land Commission Act. There is no need for one to come to Court to ask for revocation. That duty is given to NLC and the implementation of that is done by the Registrar.

15. There was a clear intention to convert land reserved for public use into private use. When the then Nairobi City Commission raised the issue of allocation of land meant for expansion of Outer Ring Road and Jogoo Road, the Commissioner of Lands in his letter of 15th November 1988 tried to justify the allocation on the ground that the allocation was done after a part development plan had been circulated and approved in the usual manner. The Commissioner of Lands went ahead to state that the allocation had been made following exhaustive consultation with the city Engineer and enclosed a letter dated 16th September 1988 from the director of Physical Planning.

16. The exhaustive consultations were being engineered by the Director of physical Planning who had interest in the allocation. The Director was an official of the entity which was finally allocated the land. Kenya Power & Lighting Company Limited had to be requested to re-locate their high voltage power lines. They agreed to do this after, promise to be paid re-location charges. The KPLC would not have asked for re-location fees if they were moving out of land which was not Government Land.

17. The Director of Physical Planning had already made up his mind to take that land and that is why he was the person behind the request to KPLC to re-locate their power lines and he was the one who re-planned the area and gave an amended part Development Plan. All these were being done with a view to having the plot allocated to a company where he was a Secretary. The Director of Physical Planning even went ahead to seek approval for an informal transfer from Multi-purpose Co-operative Development

Centre Limited to Endesha Multi-purpose Co-operative Society Limited. The indicated intention was to build a complex in that area of Nairobi but once the allocation was granted, the property was quickly sold to NSSF which was then a convenient dumping ground for land with suspect acquisition documents or land subject to squatter problems or even land with less value.

18. The person who was charged with the task of ensuring that land for future use was guarded turned out to be the one who was taking the same land. He was working in cahoots with other influential personalities close to the then Nairobi City Commission if the list of officials of the co-operative Society which acquired the land is anything to go by. The land in issue having been earmarked for the Jogoo Road and Outering Road expansion was not available for allocation to private individuals or entities.

19. NLC acted within its mandate and arrived at sound findings that the land in issue which resulted in the suitland had been unlawfully acquired. This being the case, the only option for NLC was to recommend for revocation of the titles to the unlawfully acquired titles inclusive of the one to the suitland. Regnol was given a hearing, and it made its representations which were duly considered. Regnol cannot therefore be heard to complain that there was no evidence that the land in issue had been unlawfully acquired. Public land includes land reserved for roads as the one which was the subject of the review. In fact the land in issue is sandwiched between Outering Road, Jogoo Road and the land reserve for Kenya railways. Whoever allocated it to a private entity could have easily done the same to the Globe Cinema round about something which should not be done even on common sense. I therefore find that NLC acted in accordance with its constitutional mandate and the decision to have the title to the suitland revoked cannot be quashed.

20. NLC found that Regnol had indeed put up developments on the suitland . These developments were valued at **Kshs.269,675,000/=**. Regnol is to be paid this amount but they argue that they are also entitled to compensation for the land itself. Already the land in issue has been found to have been unlawfully acquired. It was public land meant for expansion of two crucial roads in the city of Nairobi. Article 40(6) of the Constitution does not afford any protection to land which is found to have been unlawfully acquired. Article 40(6) of the Constitution does not exclude innocent purchasers of land which is found to have been unlawfully acquired. This is so because someone who has acquired land unlawfully has no good title to pass because that title is void ab initio. If it was the intention of the constitution to protect such innocent purchasers of unlawfully acquired land, then there will be chaos because people would unlawfully acquire land and quickly sell the same to innocent purchasers who would then retain it. I therefore find that Regnol is not entitled to compensation for the land.

CONCLUSION

21. From the analysis hereinabove, it is clear that none of Regnol's prayers can be granted. I proceed to dismiss Regnol's Petition with costs to the first and second Respondents.

Dated, Signed and Delivered at **Nairobi on** this **31st** day of **July 2017**.

E. O. OBAGA

JUDGE

In the Presence of :-

Mr Njenga for Mr Akelo for Interested Party

Mr Kuria for M/s Masinde for 1st Respondent

Court Assistant: Hilda

E. O. OBAGA

JUDGE