



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC JR. NO. 560 OF 2016**  
**REPUBLIC.....APPLICANT**  
**VERSUS**  
**THE NATIONAL LAND COMMISSION.....RESPONDENT**  
**AND**  
**THE KENYA NATIONAL CHAMBER OF COMMERCE AND**  
**INDUSTRY.....EX-PARTE APPLICANT**

**JUDGMENT**

Pursuant to the leave that was granted herein on 23<sup>rd</sup> May 2016, the ex-parte applicant filed the Notice of Motion dated 25<sup>th</sup> May 2016 seeking the following orders:-

1. That the court be pleased to issue an order of certiorari to remove into this court for purposes of quashing the respondent's decision of 12<sup>th</sup> April, 2016 revoking or cancelling the letter of allotment dated 28<sup>th</sup> April, 1995 that had been issued to the applicant in respect of the parcel of land known as Thika Municipality Block 9/1014.
2. That the court be pleased to issue an order of prohibition directed at the respondent prohibiting it from revoking, cancelling, issuing or re-issuing the letter of allotment in respect of the parcel of land known as Thika Municipality Block 9/1014, stopping the registration of the grant in favour of the applicant and/ or evicting or otherwise interfering with the applicant's quiet possession thereof without following the due procedure.
3. That costs of the application be in the cause.

The application was supported by a verifying affidavit sworn on 23<sup>rd</sup> May 2016 by James Ndungu Mureu, a director of the ex-parte applicant and a statutory statement of the same date. The applicant's case is that it is an allottee and a lessee of all that parcel of land known as Thika Municipality Block 9/1014 situated at Thika in Kiambu County (hereinafter referred to as "the suit property") having been issued with a letter of allotment in respect thereof dated 28<sup>th</sup> April, 1995 and a lease dated 5<sup>th</sup> October, 2011. The applicant has annexed to the verifying affidavit in support of the application, a copy of the said lease that was issued in its favour by the Commissioner of Lands. The applicant has contended that it has been in possession of the suit property since the same was allotted to it. The applicant has contended that on 13<sup>th</sup> May, 2016, it received a notice from the respondent informing it that its letter of allotment dated 28<sup>th</sup>

April, 1995 in respect of the suit property had been revoked and that he was required to vacate the suit property. The applicant has contended that in the said letter, the respondent intimated that it had carried out investigations before making the decision to revoke the said letter of allotment.

The applicant has contended that the respondent did not disclose in the said letter the nature of the complaint that led to the alleged investigations and the reason why it was not called upon to respond to the complaint if there was any. The applicant has contended that it continued to hold the said letter of allotment and lease over the suit property under legitimate expectation that a grant would eventually be issued and registered in its favour in respect of the property and that no action would be taken in respect of the suit property without notice and without it being given an opportunity to be heard.

The applicant has contended that the decision by the respondent to revoke its letter of allotment in respect of the suit property is unlawful, irregular, ultra vires and un-procedural in that the same was arrived at in breach of the rules of natural justice and section 14 of the National Land Commission Act, 2012. The applicant has contended that it was not served with any notice by the respondent in respect of the purported review the allotment of the suit property. The applicant has contended further that the decision is unconstitutional, arbitrary and in breach of the principles of just and fair administrative action under Articles 40 and 47 of the Constitution of Kenya and the Fair Administrative Actions Act, 2015. The applicant has contended that it was not notified of the complaint that had been raised against it and was also not afforded an opportunity to be heard before the decision was made.

The applicant has contended that unless the court intervenes to protect its rights and interest in the suit property, there is an imminent risk that it would be evicted from the suit property. The Applicant has contended further that, the tenants and licensees on the suit property also stand to be gravely affected by the decision and conduct of the respondent. The applicant has contended that unless the orders sought are issued, there is a likelihood of the respondent allocating the suit property to other persons thereby occasioning prejudice to the applicant.

The application is not opposed. The application was argued before me on 4<sup>th</sup> April, 2017. Mr. Munawa advocate who appeared for the applicant submitted that applicant was never heard before its letter of allotment was revoked. He submitted that the respondent's action was arbitrary and against the rules of natural justice and urged the court to allow the application. The issue for determination by the court is whether the applicant is entitled to the reliefs sought. In the case of **OJSC Power Machines Limited, Trans Century Limited, and Civicon Limited (Consortium) vs. Public Procurement Administrative Review Board Kenya & 2 others NRB CA 28 of 2016 (2017) eKLR**, the Court of Appeal stated as follows:

*“The law on the jurisdiction of the High Court to entertain judicial review proceedings are encapsulated in several decisions, some of which were cited before us while the learned Judge applied others in his judgment. The law, from these decisions is to the following effect;*

*That the purpose of judicial review is to ensure that a party receives fair treatment in the hands of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceedings. Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision being challenged had the jurisdiction, whether the persons affected by the decision were heard before the decision was made and whether in making the decision, the public body took into account irrelevant matters or did not take into account relevant matters”.*

The applicant has sought an order of certiorari and prohibition. Certiorari, Prohibition and Mandamus are public law remedies which are available to persons whose legally recognized interests have been infringed by public bodies or officers exercising statutory powers. In, Halsbury's Laws of England, 4<sup>th</sup> Edition at paragraph 46, the authors have stated as follows;

*“the courts have inherent jurisdiction to review the exercise by public bodies or officers of statutory powers impinging on legally recognized interests. Powers must not be exceeded or abused”.*

In the book, H.W.R Wade & C.F. Forsyth, Administrative Law, 10<sup>th</sup> Edition the authors have stated as follows at page 509 on the remedies of Certiorari and Prohibition:

*“the quashing order and prohibiting order are complementary remedies, based upon common principles.....A quashing order issues to quash a decision which is ultra vires. A prohibiting order issues to forbid some act or decision which will be ultra vires. A quashing order looks to the past, a prohibiting order to the future.”*

In the case of Kenya National Examination council –vs- Republic, Exparte Geoffrey Gathenji Njoroge & 9 others [1997] e KLR the court did to set out the scope and efficacy of the remedies of certiorari, mandamus and prohibition. In that case the court described the remedies of prohibition and certiorari as follows:

*“.....prohibition is an order from the High Court directed to an inferior tribunal or body which prohibits that tribunal or body to continue proceedings in excess of its jurisdiction or in contravention of the laws of the land.....Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with or for such like reasons...”*

The respondent had power to review grants or dispositions of public land to establish their propriety or legality. The power is contained in section 14 of the National Land Commission Act, 2012 which provides as follows:-

*“14. (1) Subject to Article 68 (c)(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.*

*(2) Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection (1).*

*(3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.*

*(4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.*

*(5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.*

*(6)Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.*

*(7) No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.*

*(8) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of the Constitution.”*

The applicant’s case is that it was not afforded an opportunity to be heard before a decision to revoke its letter of allotment was made. Section 14 of the National Land Commission Act, 2012 enjoins the

respondent to give every person who appears to have an interest in a grant or disposition under review, a notice of such review and an opportunity to appear before the respondent and to inspect any relevant documents. There is no evidence that the applicant was accorded due process as provided for under section 14 of the National Land Commission Act. I am in agreement with the applicant that in addition to section 14 of the National Land Commission Act, 2012, the decision of the respondent violated the provisions of Articles 40 and 47 of the Constitution of Kenya and section 4 of Fair Administrative Action Act, 2015.

By proceeding to make a decision adverse to the applicant in relation to the suit property without notifying the applicant of the complaint that had been made against it and affording it an opportunity to respond to the same, the respondent acted in breach of the rules of natural justice. Any decision which is arrived at by a public authority or body in excess of or without jurisdiction and/or in breach of the rules of natural justice is null and void. It follows therefore that the purported cancellation of applicant's letter of allotment is a nullity and as such liable to be quashed by this court.

The applicant's apprehension that the respondent may alienate the suit property to third parties without following the due process is also well founded. The respondent has acted illegally and if not restrained may proceed to alienate the suit property again without following the due process. The suit property has already been allocated to the applicant. The respondent has no jurisdiction to alienate the property to a third party while the allotment to the applicant is still subsisting. As I have stated above, the court has jurisdiction to prohibit the respondent from proceeding with actions which are in excess of its jurisdiction.

I am however alive to the fact that the legality or otherwise of the allocation of the suit property to the applicant remains unresolved. In these proceedings the court is only concerned with the process through which the applicant's letter of allotment was revoked. The court is in no way saying that the applicant has a valid title to the suit property or that the property was allocated to it regularly. As I have stated above, the respondent had jurisdiction to review and cancel the allocation of the suit property to the applicant. The court cannot therefore prohibit the applicant generally from questioning the legality of the process through which the suit property was allocated to the applicant.

For the foregoing reasons, I am satisfied that the Notice of Motion application dated 25<sup>th</sup> May, 2016 has merit. The application is allowed on the following terms:

1. The decision of the respondent made on 12<sup>th</sup> April, 2016 cancelling or revoking the applicant's letter of allotment dated 28<sup>th</sup> April, 1995 in respect of THIKA MUNICIPALITY BLOCK 9/1014 is hereby brought to this court and quashed.
2. The respondent is prohibited from cancelling or revoking the applicant's letter of allotment dated 28<sup>th</sup> April, 1995 in respect of THIKA MUNICIPALITY BLOCK 9/1014 without following the due process.
3. Each party shall bear its own cost of the application.

**Delivered and Dated at Nairobi this 10<sup>th</sup> day of November 2017**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of:**

Mr. Munaawa for the Ex-parte Applicant

No appearance for the Respondent

