



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 73 OF 2014

(FORMERLY NYERI HCCC NO. 60 OF 2014)

JOHN WAWERU GAKURU 1ST APPELLANT

PETER MURAGE KAMANJA 2ND APPELLANT

-VERSUS-

DAVID MULWA MALAMU RESPONDENT

FINAL ORDERS

1. Vide the judgment of this court delivered on **30th June, 2015**, this court *inter alia* held:

- a. That the procedure used in conferring rights to the respondent was wanting (paragraph 39 of the judgment);
- b. That the person who sold the suit property to the respondent did not have a good title to pass to the respondent and that the person who sold the suit property to the respondent did not follow the right legal processes in passing his alleged rights in the suit property to the respondent. (paragraph 40 of the judgment);
- c. The Trial Magistrate was not justified in declaring the respondent the legal owner of the suit property.
- d. That it was not possible to verify the allegations made by the appellants concerning how they gained rights over the suit property. The court also doubted whether the property can lawfully be transferred to the appellants without involvement of the administrator of the estate of John Lebo, (deceased). The court opined that the actions of the appellants of asserting their claim to the suit property, an estate of a deceased person, is tantamount to intermeddling with the estate of a deceased person. (paragraph 44 of the judgment).
- e. Despite the evidence of D.W.1 to the effect that if a certificate of lease is to be issued in respect of the suit property, it will issue in favour of the appellants, this court was of the view that that can only be done with the involvement of the administrator or trustee of the estate of the deceased person herein. (paragraph 45 of the judgment).
- f. That the Trial Magistrate was right in holding that the appellants lacked *locus standi* to sue in relation to the suit property.

g. That neither the respondent nor the appellant proved their claim to the suit property to the required standard of proof.

2. In essence, this court held that none of the parties to the appeal proved that they were entitled to the suit property. The respondent for reason that the law was not complied with in transferring the property to him and the appellants for the reason that they lacked the *locus standi* to sue and/or defend the suit on behalf of the deceased.

3. Cognisant of the fact that the suit property related to disposition of public land, I directed that the question concerning the disposition of the suit property be referred to the National Land Commission (the Commission) for further review of the grant. The court also directed the Commission to, upon review of the grant, make a report to this court for further orders.

4. In compliance with the order of the court, the Commission filed its report dated 7th June, 2017.

5. The report is to the effect that the title held by the respondent is forged.

6. The report also recommended that the appellants be issued with a title to the suit property.

7. When the report of the Commission was presented in court, counsel for the respondent challenged it on the ground that it contradicted an earlier report filed by the Commission to the effect that the title held by the respondent was valid.

8. Based on the observation of this court contained in paragraphs 45, 46, 47 and 48 of the judgment referred to in paragraph 1 above, counsel for the respondent submitted that it will be illegal to adopt the report of the Commission.

9. I have considered the report of the Commission and the sentiments of the respondent's counsel concerning the judgment of this court and the report of the Commission.

10. Concerning the issues raised by the respondent's counsel on the report of the Commission vis-a-vis the judgment of this court, I wish to point out that the report of the Commission was not meant to change the decision of this court on the parties entitlement to the suit property, which issue had already been settled vide the finding that none of the parties had proved their claim to the suit property to the required standard of proof.

11. As pointed out in the judgment, the report of the Commission was meant to help the court make further orders regarding the suit property. Unfortunately, the Commission and parties to the appeal appear to have construed the directions to mean that the court was seeking for evidence to help it determine which party to the appeal to award the property to, a thing the court would not lawfully do, as its mandate was limited to determining the appeal on the basis of the evidence adduced by the parties during hearing of the case presented before the lower court.

12. Having found that none of the parties had proved their claim to the suit property, it was anticipated that the report of the Commission would assist the court to make the appropriate orders concerning the ownership of the suit property.

13. As the report of the Commission fell short of that expectation and instead recommended that the suit property be issued to the appellants yet the appellants had not made up a case for issuance of any orders in their favour, I disregard the report and instead reiterate my finding that neither the respondent nor the appellants has proved that they are entitled to the suit property.

14. Having found the title issued to the respondent to have been unprocedurally issued, in exercise of the powers conferred on this court under **Section 80** of the Land Registration Act 2012, I cancel the certificate of title issued to the respondent but decline to issue any orders in favour of the appellants for the reasons stated herein above.

15. For avoidance of doubt, the effect of this judgment is to revert the suit property to the status which obtained before the suit property was unprocedurally transferred to the respondent.

16. Any person with interest in the suit property may pursue its interest with the right government identities and in accordance with the applicable laws and regulations.

17. As none of the parties has succeeded in the appeal, I order that parties bear their costs of the appeal and those of the case preferred before the lower court.

Orders accordingly.

Dated, signed and delivered at Nyeri this 19th day of December, 2017.

L N WAITHAKA

JUDGE

Coram:

Nderitu for the appellants

Ms Ndegwa h/b for Mr. Mwangi for the respondents

Court assistant - Esther