REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC JR. NO. 5 OF 2015

IN THE MATTER OF: AN APPLICATION BY HOLBORN PROPERTIES LIMITED FOR JUDICIAL REVIEW PROCEEDINGS FOR ORDER OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF: THE CONSTITUTION OF THE SOVEREIGN REPUBLIC OF KENYA

AND

IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT, NO. 5 OF 2012

IN THE MATTER OF: THE LAW REFORM ACT, CAP 26 OF THE LAWS OF KENYA

AND

IN THE MATTER OF: THE CIVIL PROCEDURE RULES, 2010

REPUBLIC.....APPLICANT

=VERSUS=

THE NATIONAL LAND COMMISSION.....RESPONDENT

HOLBORN PROPERTIES LIMITED.....EX PARTE APPLICANT

J U D G M E N T

Introduction

1. What is before me is the Ex parte Applicant's Notice of Motion, dated 11th September, 2015. In the Motion, the Ex parte Applicant is seeking for the following reliefs:

(a) An order of certiorari to bring into the Environment and Land court for purposes of quashing the Public Notice, Review of Grants and Disposition of

Public Land in Kilifi Chembe Kibabamshe Settlement Scheme, Kilifi County appearing at pages 23-31 of the Standard Newspaper edition of the 1st day of September, 2015; and the notice titled Public Notice, Kilifi Chembe Kibabamshe Settlement Scheme, Kilifi County appearing at page 27 of the Standard Newspaper edition of the 2nd day of September, 2015 (hereinafter referred to as the Notices).

(b) An order of prohibition to prohibit and restrain the Respondent from in any manner whatsoever investigating and adjudicating on claims arising out of the initial allocation of public land in Kilifi Chembe Kibabamshe Settlement Scheme, Kilifi County and more particularly titles to Plot Nos.396, 637, 638, 401, 423, 425, 428, 394 and 379 situate in Chembe/Kibabamshe, Kilifi.

(c) Such other or further relief as the court shall deem appropriate.

The Ex parte Applicant's case:

2. In her Affidavit, the Ex-parte Applicant's Director deponed that the Applicant is the registered proprietor of parcel of land known as Chembe/Kibabamshe 396, 637, 638, 401, 423, 425, 428, 394 and 379 (the suit properties).
3. It is the Applicant's director's deposition that the Applicant purchased the suit properties for value and that the Applicant was not under any obligation to go behind the Titles of the suit properties to inquire on how the previous registered owners were registered as proprietors thereof.
4. It is the Applicant's case that on 8th May, 2015, this court, in Malindi Petition Number 11 of 2012, in which the Respondent was a party, declared that the Applicant is the legal proprietor of the suit properties; that no appeal has been preferred against the Judgment of this court and that the decree in the said suit has already bee perfected.
5. The Applicant's director has deponed that on 1st and 2nd September, 2015, the Respondent caused to be published in the Standard Newspaper notices informing the public and the Applicant that it shall be reviewing all grants and disposition of public land in the Chembe Kibabamshe Settlement Scheme; that the said notices are ultra vires the powers of the Respondent and that the Respondent is operating in a vacuum.
6. According to the Applicant, the Respondent does not have the legal authority to review or revoke titles relating to private property; that the Respondent is only mandated to review grants and disposition of public land and not private land and that Parliament has not enacted legislation to enable the review of all grants or disposition of public land.
7. The ex-parte Applicant's director finally deponed that no rules have been established to govern its deliberations as envisaged in section 14 of the National Land Commission Act; that the Respondent has abused its powers in publishing notices and conducting hearings and that the Respondent stands to suffer no prejudice should the orders sought be granted.

The Respondent's case

8. In her Replying Affidavit, the Respondent's Director of Legal Services and Enforcement deponed that the Respondent's mandate to review all grants or dispositions of public land is provided for by Section 14 of the National Land Commission Act.
9. According to the Respondent's Director, the Respondent is acting pursuant to numerous complaints that it has received from members of public; that the Applicant has an opportunity to ventilate its position to enable the Respondent reach a decision and that the exercise of reviewing grants and disposition of public land is a Constitutional function of the Respondent. According to the Respondent, it will be discriminatory for the court to exempt a few grants from the scrutiny of the Commission.
10. According to the Respondent's director, the Respondent was not aware of Malindi ELC Petition Number 11 of 2012 and that the Respondent is mandated to establish the process that was used in the conversion of the suit properties from public land to private land and the legality of the tilting process because the suit properties have never been discharged from the Settlement Fund

Trustees.

11. The Respondent's Director finally deponed that the Respondent has not reached any decision capable of being challenged by way of Judicial Review; that the Applicant has not disclosed any cause of action meriting the exercise of prerogative powers of review and that the acts complained of by the Ex-parte Applicant do not meet the threshold of the kind of administrative acts or omissions capable of attack.

The Applicant's Further Affidavit:

12. In her Further Affidavit, the Applicant's Director deponed that the properties within Kilifi Chembe Kibabamshe Settlement Scheme were registered under the repealed Registered Land Act; that the powers of the Commission to review grants cannot go beyond the effective date of the 2010 Constitution and that the Respondent can only review grants and disposition to public land once parliament enacts legislation which it has not done.
13. The Applicant's director further deponed that the Respondent is bound by the Judgment of this Court in Malindi Petition No. 11 of 2012; that the Respondent cannot deal with matters that are already in court and that the suit properties were not allocated to the Ex-parte Applicant but rather he purchased them from the previous owners.

Submissions:

14. The Ex-parte Applicant's counsel submitted that the parcel of land within Kilifi Chembe Kibabamshe Settlement Scheme and the suit properties were registered under the repealed RLA; that all parcels of land which were registered before the promulgation of the Constitution in the year 2010 are private land and cannot be said to be public land and that the Respondent can only review all grants and disposition to public land as defined by the Constitution subject to the enactment of legislation as provided for in Article 68(c)(v) of the Constitution.
15. Counsel submitted that the Respondent does not have the power to deal with private land as defined in Article 64 of the Constitution; that the review of grants by the Respondent cannot be beyond the effective date of the Constitution and that in any event, these proceedings are res judicata Malindi ELC Petition Number 11of 2012.
16. The Petitioner's counsel relied on numerous authorities which I have considered.

The Respondent's submissions:

17. The Respondent's counsel submitted that the Respondent has the power of reviewing grants and disposition of public land pursuant to the provisions of Article 67(3) and Article 68 of the Constitution; that it will be discriminatory for the Court to exempt a few grants from the scrutiny of the Commission and that the suit properties remains the property of the Settlement Fund Trustees.
18. Counsel submitted that the Respondent did not participate in Malindi ELC Petition No. 11 of 2012 and that in any event, the Petition was premised on the issue of whether a Land Registrar had the powers to revoke title to land and not the legality or the propriety of the process.
19. The Respondent's counsel submitted that under Section 14 of the National Land Commission Act, if the Commission finds that a title was acquired in an unlawful manner, it can direct the Registrar to revoke the same.

Analysis and findings:

20. It is not in dispute that vide an advertisement in the Standard Newspaper of 1st and 2nd September, 2015, the Respondent caused to be published a notice for titled: “REVIEW OF GRANTS AND DISPOSITION OF PUBLIC LAND IN KILIFI CHEMBE KIBABAMSHE SETTLEMENT SCHEME, KILIFI COUNTY.” The Notice stated as follows:-

> **“Having received numerous complaints over ownership of various grants and disposition of public land, the commission has in the recent past carried out a**

plot verification exercise in Chembe Kibabamshe Settlement Scheme, Kilifi County to determine the legality and propriety of the allocations and registration. Consequently, the Commission will in line with Section 6 and 14 of the National Land Commission Act, hold public hearings to review the grants below in KILIFI COUNTY on the dates and venue indicated below."

21. The Applicant's parcels of land, to wit, Chembe Kibabamshe/396, 637, 638, 401, 423, 425, 428, 394 and 379 (the suit properties) were amongst the properties that were listed in the said notice. The Applicant was required to appear before the Respondent on diverse dates for the purpose of showing cause why his titles should not be reviewed by the Respondent pursuant to the provisions of Section 6 and 14 of the National Land Commission Act.
22. The anticipated public hearings in respect to the suit properties did not take place because this court stayed those proceedings in this suit.
23. The Applicant is seeking for an order of certiorari to bring to this court for the purpose of quashing the notice that was published by the Respondent in the Standard Newspaper calling upon the Applicant to explain why his title deeds in respect to the suit properties should not be reviewed, if at all.
24. The Applicant is also seeking for an order of prohibition to restrain the Respondent from investigating and adjudicating on claims arising out of he allocation of public land in Kilifi Chembe Kibabamshe Settlement Scheme and in particular the suit properties.
25. The issues that have arisen from the pleadings for determination are as follows:-

(a) Whether or not the Respondent has jurisdiction to review all grants or dispositions within Chembe Kibabamshe settlement Scheme, Kilifi County; and in particular the suit properties.

(b) Whether or not the public hearing by the Respondent for the purpose of reviewing the grants or disposition of the suit properties is res judicata Malindi Petition Number 11 of 2012.

26. It is not in dispute that all the parcels of land within Chembe Kibabamshe Settlement Scheme, including the suit properties, were registered under the repealed Registered Land Act.
27. According to the Ex-parte Applicant's Director's deposition, the Applicant is a bona fide purchaser for value without notice, and as such, the Applicant has a good and indefeasible title to the properties.
28. The Applicant's Application is premised on the ground that pursuant to Section 14 of the National Land Commission Act, the Respondent does not have jurisdiction to investigate private land as defined by the Constitution; that the Respondent is only mandated to review the grants or dispositions of public land and not private land as defined by the Constitution and that the review or dispositions of public land is subject to the enactment by Parliament of a legislation, which has not been done.
29. To buttress the above argument, the Applicant's counsel relied on the case of **R VS National Land Commission & 4 Others ex parte Fulson Company Limited and another (2015) EKLR in which Emukule J** held as follows:

"In this case, Kilifi Beach properties Limited, the ex-parte Applicant is a private limited liability company, Shah Sesa and Edward Mzee Karezi are all private individuals. There is no material from the National Land Commission to rebut the claim that the subject land is private land. How the ex parte Applicant acquired it from the Interested Parties is a matter of claims under private law between those parties. The National Land Commission has neither the legal authority to review and much less to revoke titles relating to private land. On this ground alone, the ex parte applicant succeeds in its application for issue of an order of certiorari to quash the Commission's purported review and revocation of the ex-part Applicant title."

30. The Applicant's advocate has submitted that the above decision should persuade me to hold that once land has been registered, and more so land that was registered before the promulgation of the 2010 Constitution, the Respondent cannot review such a grant or Title Deed.
31. According to the Applicant's counsel, the Respondent does not have the power to deal with private land as defined in Article 64 of the Constitution.
32. The Respondent's counsel did not submit on the issue of whether the Respondent can review grants and dispositions in respect of private land, that is land which has a Title Deed or a Certificate of Lease that was issued before the promulgation of the 2010 Constitution. According to the Respondent's counsel, the Respondent has the mandate of reviewing all grants.
33. The Respondent is an establishment of the 2010 Constitution and the National Land Commission Act, No. 5 of 2012.
34. Under Article 68(c)(v) of the Constitution, Parliament is mandated to enact legislation to enable the review of all grants or dispositions of public land to establish their propriety or legality.
35. The Applicant's counsel submitted that parliament has not enacted legislation to enable the review of all grants or dispositions of public land notwithstanding the fact that Section 14(1) of the National Land Commission Act mandates the Respondent, subject to Article 68 (c)(v) of the Constitution, to review all grants or dispositions of public land within five years of the commencement of the Act.
36. The Applicant's counsel has also submitted that in any event, the Respondent is required by Section 14 (2) of the Act to make rules, which it has not done, for the better carrying out of its functions of reviewing grants or dispositions of public land to establish their propriety or legality.
37. The reading of Section 14 of the National Land Commissions Act shows that Parliament contemplated that it is the Respondent that shall have the jurisdiction to review all grants and disposition of public land notwithstanding the use of the words “subject to Article 68 (c) (v) of the Constitution in Section 14(1) of the Act”.
38. What Parliament had in mind by using the words “subject to Article 68(c)(v) of the Constitution” is that the mandate to review grants or disposition of public land was to be undertaken by the Respondent until such a time that another body will be established by an Act of Parliament, to do so.
39. I say so because Section 14(1) clearly stipulates that the Respondent shall review all grants and disposition of public land while Sections 14 (3), (4), (5), (6), (7), (8) and (9) of the Act gives the procedure that the Respondent ought to follow while conducting the exercise of reviewing grants and disposition of public land.
40. Although the Respondent, in addition to the provisions of the Act, is required to make rules for the better carrying out of its functions of reviewing grants or dispositions of public land, the absence of the rules cannot be sufficient reason to stop it from exercising those functions considering that the Act is clear on how the exercise should be carried out.
41. Indeed, the mandate that Parliament has conferred on the Respondent to review grants or dispositions of public land to establish their propriety or legality emanates from the provisions of Article 67(3) of the Constitution. The said Article provides that National Land Commission may perform any other function that is prescribed by national legislation.
42. I will now deal with the issue of whether the Respondent's mandate is confined to dealings in public land as defined by the Constitution or private land, that is land which has been registered under a freehold or leasehold tenure, and if so, whether the mandate is retrospective the 2010 Constitution.
43. The clamour for the establishment of a body to deal with the illegal or irregular allocation of public land started way before the promulgation of the 2010 Constitution.
44. The “Report” of the Commission of Inquiry into the Illegal/Irregular Allocations of Public Land” (the Ndung'u Commission) that was presented to the former President in June, 2004 proposed for the establishment of a Tribunal with several separate divisions with power to declare any registered title to land either valid, illegal or irregular. The said Tribunal was to be established by amending the then Government Lands Act.
45. In the words of the Ndung'u Commission, the establishment of the Tribunal was meant to address “the urgent need to begin to rectify the tens of thousands of illegal and irregular titles”. This never happened.
46. In the year 2009, the Government came up with Sessional Paper No. 3 of 2009 on the National

Land Policy, which comprises an overall framework and set of principles to guide the Constitutional, sectoral, legislative and institutional reforms in land administration and management.

47. Sessional Paper no. 3 of 2009 at best reflected the social and political consensus which was used by the citizenry, the legislators and the administrators to formulate Chapter five of the Constitution and the new statutes dealing with land and environmental issues.
48. The ideas of Sessional Paper Number 3 of 2009 were indeed embodied in Article 60 of the Constitution thus giving it (the Land Policy) the required recognition, life and force.
49. Clause 41 of the national land policy required the establishment of a National Land Commission, whose mandate was to carry out efficient, equitable and sustainable land administration and management of land, amongst other duties.
50. On the issue of securing of public land, the national land policy at clause 61(e) provided for the establishment of mechanisms for the repossession of any public land acquired illegally or irregularly.
51. The policy went further and recommended for the establishment of a Land Titles Tribunal, which was to be under the National Land Commission, to determine the bona fide ownership of land that was previously public or trust land.
52. It is with the above recommendations in mind that the people of Kenya agreed to the establishment of the Respondent vide the 2010 Constitution and the National Land Commission Act.
53. Although the Land Policy and the Ndung'u Commission had recommended for the establishment of a Tribunal to review grants and dispositions of public land, the legislator opted to give the Respondent the powers of reviewing the grants and disposition of public land subject to the establishment of a Tribunal in future, by enacting section 14 of the National Land Commission Act.
54. It is clear from the history that gave rise to the establishment of the National Land Commission that the Respondent's mandate was not only to review grants or dispositions of public land that were issued after the effective date of the Constitution, but also those allocations over public land that were done even before the promulgation of the Constitution in the year 2010.
55. Although it is true, as submitted by the Applicant's counsel, that for the first time, the 2010, Constitution comprehensively defined at Article 62 what public land entails, the same Constitution recognises the fact that there were other definitions of “public land” even before its promulgation in the year 2010.
56. I say so because the Constitution has defined “public land” in Article 62 (1) (n) (i) as follows:-

“62 (1) Public land is-

(n) any other land declared to be public land by an Act of Parliament-

(i) in force at the effective date;....”

57. Having recognised the fact that even before it defined in detail what “public land” entailed there still existed “public land”, the review of grants or dispositions of public land to establish their property or legality was retrospective.
58. The body that was to be given the mandate to review such grants or dispositions by Parliament was not only supposed to deal with public land that was illegally or irregularly allocated after the promulgation of the Constitution but even before. That is what the Kenyan people wanted as discerned from the Ndung'u Commission Report and the National Land Policy, which preceded the Constitution.
59. Although the Constitution has defined private land to consist land registered under any freehold or leasehold tenure, and whereas Section 14(1) of the National Land Commission Act gives the Respondent the powers to review all grants or disposition of public land, it follows that such a review can only entail land that has been converted from public land to private land.
60. I say so because the Respondent cannot review what is still, according to the records, public land. One must have acquired land that was initially public land and issued with a title document, either as a freehold or leasehold, for a review to be done.

61. It is therefore not true that once land falls under the purview of the definition of "private land", the same cannot be reviewed. Indeed, it is only such parcels of land that can be reviewed by the Respondent with a view of recommending to the Registrar to revoke the title.
62. The recommendation to the Registrar by the Respondent to revoke title which it finds was illegally issued is only in respect to the initial allottee. However, where the initial allottee of public land has transferred land to a bona fide purchaser for value without notice of defect in the title, the Registrar does not have the jurisdiction to revoke such a title **(see Section 14(7) of the National Land Commission Act).**
63. The issue of whether the parcel of land under review by the Commission was initially public land has to be established first by the Respondent before it can make a recommendation for or against revocation.
64. It is trite law that before the promulgation of the the Constitution, the country had three different legal categories of land, that is, Government land, Trust land and Private land.
65. It is also trite law that all private land was at some particular point in time either Government land or Trust land.
66. "Government land" was land that was vested in the Government by virtue of Section 204 and 205 of the Constitution that was contained in schedule 2 of the Kenya Independence Order in Council, 1963 and Sections 21, 22, 25 and 26 of the Constitution of Kenya (Amendment) Act, 1964.
67. The Government land that was subsequently alienated to private persons or state organs came to be known as "alienated Government land" while what remained is what the Government Lands Act referred to as "unalienated Government land."
68. On the promulgation of the Constitution in 2010, the unalienated Government land was defined as public land.
69. "Trust land" on the other hand is the land that was declared as such by Section 114 of the repealed Constitution. Under both the repealed Constitution and the Trust Land Act, Trust lands were neither owned by the Government nor by the County Council, unless such land was set apart pursuant to the provisions of Sections 117 and 118 of the repealed Constitution.
70. The County Councils held Trust land on behalf of the local inhabitants of the area. For as long as Trust land remained unadjudicated and unregistered, it belonged to the local communities, groups, families and individuals in accordance with the applicable African customary law.
71. The unadjudicated and unregistered Trust land is what is known as "Community land" in the current Constitution.
72. According to Article 63(3) of the Constitution any unregistered community land is to be held in trust by the County Government on behalf of the communities for which it is held such land is not "public land".
73. The mandate of the Respondent to review grants or disposition does not involve land which was initially Trust land, (or community land as currently defined) unless it is shown that the said land was set apart by the Government or by the County Councils.
74. The Constitution and the National Land Commission Act restricts the Respondent's mandate to reviewing of grants or dispositions of public land, which includes land that was known as Government land under the repealed Constitution and the Government Lands Act. Government land, or public land, includes settlement schemes.
75. It is not clear if the suit properties herein fall within a settlement scheme or Trust land. However, that is an issue that the Commission has to deal with while reviewing the grants or dispositions within Chembe Kibabamshe Section.
76. If the Respondent finds that the Chembe Kibabamshe Section was Trust land, and the said section went through the adjudication process,then it would not have the jurisdiction to review the documents that emanated from the adjudication process.
77. However, if the Respondent finds as a fact that Government either acquired or set apart land within Chembe Kibabamshe Section and designated it as a settlement scheme, it follows that the Respondent will have the mandate of reviewing the grants or dispositions of the land to establish the propriety of the allocations.
78. It is because of the above Constitutional and statutory provisions in mind that I find and hold that the Respondent has jurisdiction to review the grants or dispositions within Chembe Kibabamshe Section if it finds as a fact that indeed that area was declared by the government to be a settlement scheme and the same is not Trust land.

79. I will now deal with the final issue of whether the notice that was published by the Respondent viz-a-viz the suit properties is res judicata Malindi Petition Number 11 of 2012.
80. The Ex parte Applicant filed Malindi Petition number 11 of 2012 (the Petition) in which it sued the Commissioner of Lands, the Chief Land Registrar, the District Land Registrar, Kilifi, Hon. Gideon M. Mung'aro, the Ministerial Task Force on Land Issues in Coast, the Attorney General, the National Land Commission, the Ethics and Anti-corruption Commissions and others.
81. In the Petition, the Petitioner's case was that it purchased the suit properties for value; that it was subsequently registered as the proprietor of the suit properties after paying the requisite stamp duty and other fees and that the cancellation of its title deeds by the Respondents was unlawful, null and void.
82. On the other hand, the Respondents' case (the Attorney Genera1) was that the registration of the suit properties to the Petition was illegal, null and void for lack of documents.
83. After hearing the Petition, this court framed the issues in the Petition as follows:-

> **(a) Whether the Petitioners are and or were the registered proprietors of the suit properties.**
>
> **(b) Whether the Interested Parties are or were the proprietors of the suit properties.**
>
> **(c) Whether the Petitioner's right to own land and the right to fair administrative actions have been or are likely to be violated or infringed.**
>
> **(d) Whether the Report of the "Special Task Force" on Kilifi Jimba and Chembe Kibabamshe dated June 2010 should be quashed and**
>
> **(e) Whether Judicial Review Orders can be granted in this Petition**

84. In the Judgment of this court dated 8th May, 2015, this court held as follows:-

> **"167.....The 1st – 4th Petitioners are the registered proprietors of the suit properties and their rights to own property in any part of the county is protected by Article 40 of the Constitution.**
>
> **168. The Respondents and the Interested Parties have not presented any evidence before me to show that the suit properties were acquired by the initial allottees and the Petitioners fraudulently. In fact, the National Land Commission, whose mandate is to investigate any historical land injustice, and who are a party to this suit, did not present any evidence to show that the Petitioners acquired the suit properties fraudulently or through corrupt scheme."**

85. This court proceeded to hold that the Ex parte Applicant is the legal proprietor of the suit properties.
86. Having been served with the Petition and failed to participate, the Respondent herein cannot purport to re-open the issue of whether the Title Deeds that were issued to the initially allottees before they sold the land to the Petitioner were obtained illegally or irregularly.
87. It is trite that under Article 159 (1) of the Constitution, judicial authority vests in and is exercised by the courts and tribunals established by the Constitution.
88. It is also trite that under Article 162 (2) (b) of the Constitution, it is this court that is mandated to hear disputes relating to the environment and the use and occupation of, and title to land.
89. Once a dispute has been filed in this court relating to the environment and the use and occupation of, and title to land, the Respondent herein is obliged to participate in those proceedings, if the issues raised in the suit falls within its mandate, and where it does not appear, to abide by the decision of the court.
90. The Respondent cannot re-open the issue of the propriety or legality of the suit properties on the

ground that it did not participate in those proceedings because it has no legal authority to do so.

91. Indeed, even where the decision of the court was made before the Respondent was established, the Respondent cannot re-open the issues which were litigated upon before its establishment. (**See section 30(b) of the National Land Commission Act).**

92. The only recourse that the Respondent had was to appeal against the Judgment of this court in Malindi Petition No. 11 of 2012 and not to second guess the decision of the court by purporting to review the dispositions of the suit properties. It is this court that is Constitutionally and statutorily mandated to review the decisions of the Respondent, and not the other way round.

93. An order of certiorari is used to bring to the High Court the decision of some inferior tribunal or authority for quashing, that is to declare it invalid for having been made ultra vires.

94. Considering that the Respondent had not made any decision viz-a-aviz the suit properties, the order of certiorari cannot issue as prayed in the Motion.

95. The Ex-parte Applicant is also seeking for the writ of prohibition.

96. Unlike the quashing order, a prohibiting order is prospective. A prohibiting order is meant to restrain an inferior tribunal from doing something in excess of its jurisdiction.

97. Indeed, the only difference between the writ of certiorari and prohibition is that the latter is usually invoked at an earlier stage.

98. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed, an order of prohibition will lie to restrain it from so. **(see R V Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1924) 1KB 171 at 206).**

99. I have already found and held that the Respondent does not have the jurisdiction to review grants or disposition of public land where the court has already dealt and announced itself on the issue of the propriety of the grant or disposition in question.

100. Having delivered its Judgment in Malindi Petition number of 2012 on the propriety and legality of the suit properties, the Respondent exceeded its jurisdiction by issuing the public notices for review of grants or dispositions of the suit properties in the standard newspapers of 1st and 2nd September, 2015.

101. It is for the above reasons that I allow the Ex-parte Applicant's Notice of Motion dated 11th September, 2015 in the following terms.

> **(a) An order of Prohibition be and is hereby issued to restrain the Respondent from in any manner whatsoever investigating, adjudicating or reviewing the Title Deeds or dispositions arising out of the initial allocation and subsequent transfers of parcels of land known as Chembe Kibabamshe 396, 637, 638, 401, 423, 425, 428, 394 and 379 situated in Kilifi County.**
>
> **(b) The Respondent to pay to the Ex-parte Applicant the costs of the suit.**

Dated, signed and delivered in Malindi this **6th** day of **May,** 2016.

O. A. Angote

Judge