



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

MISC APP NO. 15 OF 2011 (JR)

**IN THE MATTER OF: APPLICATION OF KRE KENYA REAL ESTATE LIMITED FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS AND PROHIBITION**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA THE REGISTERED LAND ACT,
CAP 300**

AND

IN THE MATTER OF: PLOT NO. CHEMBE/KIBABAMSHE/399

**IN ACCORDANCE WITH: ORDER 51 RULE 1(1) (3) & (4) OF THE CIVIL PROCEDURE
RULES AND SECTIONS 8 AND 9 OF THE REFORM ACT 26 LAWS OF KENYA**

REPUBLIC

VERSUS

- 1. THE COMMISSIONER OF LANDS**
- 2. THE CHIEF LAND REGISTRAR**
- 3. THE KILIFI LAND REGISTRAR.....RESPONDENTS**

AND

- 1. FIDELITY EXPORT & IMPORT LIMITED**
- 2. ESTHER ALPHONCE MOMBO.....INTERESTED PARTIES**

AND

KENYA REAL ESTATE LIMITED.....EXPARTE APPLICANT

J U D G M E N T

1. In the Notice of Motion dated 2nd June, 2011, the Ex-parte Applicant is seeking for the following reliefs:-

(a) THAT Judicial Review orders of Mandamus do issue directed against the Respondents jointly and severally compelling themselves, their servants, agents and/or employees to revoke, annual and/or cancel the leasehold interest of title to plot No. Chembe/Kibabamshe/399 granted to the 2nd Interested Party on the 1st September 2010 and subsequently transferred to the 1st interested party on the 28th April 2011 and to further compel Respondents by themselves, their servants, agents and/or officers jointly and severally to forthwith reinstate and/or retain the Exparte Applicants records of ownership and title to Plot No.Chembe/Kibabamshe/399 at Kilifi District Land Registry.

(b) THAT Judicial Review orders of prohibition to issue against the Respondents and the interested parties prohibiting them jointly and/or severally either by themselves, their servants, employees and/or agents from interfering with the Exparte Applicant's occupation, possession, ownership and use or dealing with plot No. Chembe/Kibabamshe/399 and to further prohibit the said Respondents and interested parties from registering any dealings whatsoever with regard to the title to plot No.Chembe/Kibabamshe/399.

(c) THAT the costs of the Judicial Review Application at the leave stage and at the substantive motion stage be borne by the Respondents and the Interested Parties.

2. The Motion is premised on the ground that the Applicant is the registered owner of parcel of land known as Chembe/Kibabamshe 399 having purchased it from the first registered owner; that when the Applicant conducted a search on 29th April, 2011, he discovered that the Respondent had allocated the suit property to the 2nd Interested Party who then transferred it to the 1st Interested Party and that the Applicant was never notified of the said cancellation of his Title Deed.
3. According to the Applicant, the actions of the Respondents in granting another title by way of a Lease to the Interested Parties is illegal, unlawful, null and void.
4. The Interested Parties filed a Notice of Preliminary Objection which was dismissed by Omondi J on 18th April 2012.
5. The Interested Parties neither filed the Grounds of Opposition nor a Replying Affidavit. The facts as deponed by the Ex-parte Applicant are therefore uncontested.
6. I have considered the submissions on record.

Analysis and findings:

7. The undisputed facts in this matter is that on 13th December, 2007, the Applicant was registered as the proprietor of the suit property after purchasing it from Sophia Abdilahi Chacha.
8. The Applicant produced in evidence the Agreement that it entered into with the three individuals together with a copy of the Transfer, the Title Deed and the official search as at 7th December, 2007.
9. The Applicant also produced an official search that he conducted on 29th April 2011 in respect to parcel of land known as Chembe/Kibabamshe 399 which showed the registered owner of the land to be the 1st Interested Party.
10. The Applicant's case is that it was never notified by the Respondents that its title to the land had been cancelled or revoked; that in any event the Respondents have no legal mandate to cancel his Title Deed and that their actions are a nullity.
11. Neither the Respondents nor the Interested Parties filed Replying Affidavits to challenge the Applicant's depositions. Consequently, the facts as pleaded by the Applicant have not been controverted.
12. It is true, as submitted by the Applicant's counsel, that the Respondents do not have the legal mandate to cancel or revoke a title which has been registered under the repealed Registered Land Act.

13. It is even worse that while purporting to exercise the powers that they did not have, the Respondents did not inform the Applicant of their intended action of cancelling the Applicant's Title Deed and issuing another Title Deed to the 1st Interested Party who then transferred the land to the 1st Interested Party.
14. The importance of the doctrine of natural justice was captured well by the Court of Appeal in the case of **Onyango Oloo Vs Attorney General (1986-1989) EA 456** where it was held as follows:-

“ The Principle of natural justice applies where ordinary people would reasonably expect those making decisions will affect others to act fairly.....a decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at.”
15. The failure by the Respondents to invite the Applicant to defend its title, after giving it sufficient reasons and documents as to why they think they should cancel the title, falls foul of the provisions of Article 47 of the Constitution and the rules of natural justice.
16. It is now settled law that a benefit cannot be withdrawn until the reason for withdrawal has been given and the person concerned has been given an opportunity to comment on the reason (**See R vs Nairobi City County Ex parte ELMC LTD (2014) eKLR**).
17. Consequently, the decision by the Respondents to cancel the Applicant's Title Deed and then issue another Title Deed to the Interested Parties was illegal and ultra vires.
18. The Respondents are the custodian of the register in respect to the suit property, which register has “defects of justice” occasioned by the Respondents' unilateral actions of cancelling the Applicant's title and issuing another title to the Interested parties.
19. For those reasons, I allow the Ex-parte Applicant's Application dated 2nd June, 2011 as prayed.

Dated, signed and delivered in Malindi this **24th** day of **June**, 2016.

O. A. Angote

Judge