



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC PETITION NO. 9 OF 2015

IN THE MATTER OF ARTICLE 22 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 27
AND 40 (1) OF THE CONSTITUTION

AND

IN THE MATTER OF INFRINGEMENT OF RIGHTS AND FUNDAMENTAL FREEDOMS

BETWEEN

LUCY WAMBUI GICHIRA.....PETITIONER

VERSUS

COUNTY GOVERNMENT OF KIRINYAGA.....RESPONDENT

JUDGMENT

By her petition filed on 11th March 2016, the Petitioner **LUCY WAMBUI GICHIRA** prays this Court to issue the following orders against the Respondent:-

- (a) *A declaration be issued that the petitioner is the owner of plot No. 254 A Kutus Mjini measuring 50 x 100 feet.*
- (b) *A declaration that any purported sub-division of the disputed plot No. 254 A Kutus Mjini by the predecessor of the Respondent without the Petitioner's consent is irregular, illegal, null and void ab initio and contravenes Article 40 (1) and (3) of the Constitution 2010.*
- (c) *An order that the Petitioner owns the whole of plot No. 254 A Kutus Mjini measuring 50 x 100 feet.*
- (d) *Any further relief which this Honourable Court may deem fit to grant.*
- (e) *The Respondent be ordered to bear the costs of this petition.*

According to her supporting affidavit, the plot No. 254 A Kutus Mjini (the suit plot) was originally allocated to one **JOHN P.K. MWANGI** on 15th April 1993 before being transferred to her father **EVANS GICHIRA RUAGI** who transferred it to the Petitioner on 17th February 2004. She was then

issued with the beacon certificate and part development plan (PDP) by the **KERUGOYA/KUTUS MUNICIPAL COUNCIL** the predecessor of the Respondent. All plots in the area and the beacon certificate show that the suit plot measures 50 x 100 feet – see annexure **LWG 4A**.

In March 2006 she received a letter stopping any development on the suit plot and later in April 2007, she received a letter addressed to her and one **LAWRENCE MUCHIRI KAMUTU** who was laying a claim to the same property. However, although the **KERUGOYA/KUTUS COUNCIL** called a meeting to solve the dispute, no solution was arrived at and so the Petitioner filed **KERUGOYA PRINCIPAL MAGISTRATE’S COURT CIVIL CASE No. 469 of 2007** against the Council seeking a declaration that she was the lawful owner of the suit plot and a permanent injunction restraining the Council from allocating it to another person. The Council filed a defence alleging that her plot was number 331. However, when the suit came up for hearing, the Council sought time to settle the dispute. The Council later filed a report in Court confirming that her plot was No. 254 A. However, when she went to get a letter confirming that the suit plot is hers, she was surprised to note that the suit plot had been reduced from 50x100 feet to 50x50 feet. It is her claim that her right to property as enshrined under **Article 40 (1) of the Constitution** has been violated hence this petition.

Though served through its County Secretary on 25th May 2015, the Respondent did not file any response to the petition which is therefore not contested.

It is clear from the beacon certificate in respect of the suit plot (Petitioner’s annexure **LWG 4A**) that it measures 100 x 50 feet. That beacon certificate was issued on 4th February 1994 when the suit plot was still in the names of **JOHN MWANGI** the original owner. It is therefore not clear why in their meeting held on 15th July 2008 (some 14 years later) the **KERUGOYA/KUTUS TOWN PLANNING WORKS and HOUSING COMMITTEE** could arrive at the finding that:-

“Members perused the documents held by the Council and later visited the site of plot No. 254 A Kutus. After some deliberations, it was resolved that Lucy Wambui Gichira owned plot No. 254 A Kutus measuring 50 x 50 feet”

Article 40 (1) of the Constitution recognizes the right to own property. It provides:-

“Subject to Article 65, every person has the right, either individually or in association with others to acquire and own property –

(a) of any description, and

(b) in any part of Kenya”

Article 47(1) & (2) of the Constitution provides for fair administrative action in the following terms:-

47 (1) “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”

47 (2) “If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given reasons for the action”

The above Constitutional provision has been echoed in the **Fair Administrative Action Act** and **Section 4 (3)** thereof provides that where administrative action is likely to adversely affect the rights and fundamental freedoms of any person, the administrator shall give the person affected by the decision prior and adequate notice of the nature and reasons for the proposed action, an opportunity to be heard and to make representations in that regard, notice of the right to a review or internal appeal against the action taken and where applicable, the reasons.

It is clear from the petition which was not opposed, that the suit plot measures 100 x 50 feet and not 50 x 50 feet in size. It was lawfully allocated to the Petitioner and at no time was she informed that a decision

would be made to reduce its size or alter its ownership. Any decision that was made by the Respondent's predecessor with respect to the suit property and specifically in relation to its size and ownership without the involvement of the Petitioner was therefore contrary to the law and infringed her right to property. The Petitioner is therefore entitled to the remedies sought in her petition.

The result is that the petition is allowed and orders granted in terms of the orders sought therein save that there shall be no order as to costs.

B.N. OLAO

JUDGE

30TH SEPTEMBER, 2016

Judgment dated, signed and delivered in open Court this 30th day of September 2016.

Mr. Munene for the Petitioner absent

Mr. Mwangi for the Respondent present

Right of appeal explained.

B.N. OLAO

JUDGE

30TH SEPTEMBER, 2016

MR. MWANGI: I pray for 30 days stay.

COURT: Granted.

B.N. OLAO

JUDGE

30TH SEPTEMBER, 2016