



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

MISC CIVIL APPLICATION NO. 79 OF 2012 (J.R)

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF TITLES.....1ST RESPONDENT

HON. ATTORNEY GENERAL.....2ND RESPONDENT

Ex- PARTE

JAMES MACHARIA MWANGI

(Judicial review of quash & gazette notice by Registrar of Titles which purported to cancel applicant's title; applicant having earlier sued and succeeded in suit against Registrar of Titles; cancelation of title in face of court decree unlawful; application allowed).

RULING

1. The matter herein is a judicial review application seeking the following orders (which I have paraphrased):-

(a) An order of certiorari to quash the decision of the Registrar of Titles in cancelling and revoking the applicant's title deed to the land parcel Molo Township 533/678 also described as Molo Township Block 2/460.

(b) An order of mandamus to compel the Registrar of Titles to forthwith reinstate the land records of the cancelled title to the land parcel Molo Township/533/678 also described as Molo Township Block 2/460 (the suit land).

(c) An order of prohibition to prohibit the Registrar of Titles from interfering with the applicant's ownership and enjoyment of the suit land.

2. The facts leading to the application are set out in the grounds in support of the application and in the supporting affidavit of the applicant. In the year 1995, the applicant was issued through a Letter of Allotment dated 2nd June 1995 an unsurveyed residential plot - J in Molo Township. He paid the requisite premiums and other charges and was issued with a lease and certificate of lease on 19 February

2002. Before that, in the year 1998, a person to whom he had leased the land was arrested for allegedly trespassing upon a police farm but nothing seems to have arisen out of this arrest . The applicant then drew plans for development of the plot which were approved and he proceeded to develop the plot with a permanent house. In the year 2004, the Molo Town Council wrote to the applicant whereby they stated that the plaintiff's house is situated on public land belonging to the Police Department. This prompted the applicant to file a suit being Nakuru CMCC No. 477 of 2004. The matter was decided and a decree issued in the following terms :-

(i) That the plaintiff's residential house is not situated on public land and that the plaintiff is entitled to quiet occupation and possession of Plot No. 533/678 Molo Township without interference from the defendants jointly and/or severally.

(ii) That a permanent order of injunction is issued restraining the 1st defendant (Molo Town Council) by itself, its agents and/or servants from entering, trespassing on, demolishing the plaintiff's residential house on Plot No. 533/678 Molo Township or in any way interfering with the suit premises.

(iii) That costs to be borne by the defendants.

3. The applicant has averred that despite the matter having been decided by a court of law, the Registrar of Titles through a Notice dated 21 June 2012 published in the Kenya Gazette of 29 June 2012, revoked the title of the applicant. The Gazette Notice is worded as follows :-

THE CONSTITUTION OF KENYA

THE GOVERNMENT LAND ACT (CAP 280)

THE TRUST LAND ACT (CAP 288)

REVOCAION OF TITLES

WHEREAS the parcels of land whose details are under the schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purpose under the relevant provisions of the Constitution, the Government Lands Act (Cap 280) and the Trust Land Act (Cap 288). The allocations were therefore illegal and unconstitutional. Under the circumstances and in view of the public need and interest, the Government revokes the said titles.

Molo Township :

L.R No. 533/675,676,677,678,679,680,681,682,683,684,685,686,693 and 694.

The above land is reserved for Molo Police Station.

Nairobi City :-

(unrelated)...

Dated the 21st June 2012

C.K. Maina

Registrar of Titles.

4. It is the above notice which the applicant wants quashed; in addition to the order of mandamus to compel the Registrar of Titles to reinstate his title; and prohibition to stop any further interference.

5. Despite being duly served, and despite numerous requests to be allowed to file a reply out of time being allowed, the respondents never filed any replying affidavit. Grounds of Opposition were however filed in the following terms :-

(a) *The application lacks merit, is incompetent and inept.*

(b) *The alleged cause of action largely consists of disputed issues of fact which do not warrant an action for judicial review.*

(c) *The application is fatally defective.*

6. The respondents pray that the application be dismissed with costs.

7. Mr. Ngure for the applicant relied on four authorities to support the application. These are the cases of ***R v G.G Gachih*** and ***Registrar of Titles, Nairobi J.R Nos. 32,33,34,35 and 36 of 2011***; ***James Mukora Wachih*** v ***Minister of Lands & 6 Others, Nairobi High Court Petition No. 82 of 2010***; Nairobi High Court Petition No. 107 of 2010, ***Kuria Greens vs Registrar of Titles and Commissioner of Lands***; and ***Nairobi High Court Petition No. 167 of 2012, Kobian (K) Limited vs The Honourable Attorney General***.

8. Ms. Khatambi for the respondents on the other hand submitted inter alia that the land was public land set aside for Molo Police Station and that Section 60 of the Registration of Titles Act, permitted the Registrar of Titles to recall any title deemed defective or inappropriate for purposes of rectification. It was her view that rectification means correcting the register and thus ownership. She submitted that public interest overrides any other interest. She argued that this principle was upheld in the cases of ***John Peter Mureithi & 2 others vs Attorney General Misc. No. 158 of 2005*** and ***Dennis Kuria & Another Misc Application No. 663 of 2006***. She further submitted that this matter raises contentious issues of fact where a declaration cannot issue. She relied on the case of ***Commissioner of Lands vs Hotel Kunste Civil Appeal No. 234 of 1995***. She also argued that in matters relating to real property where the rights are contested, judicial review is an inappropriate remedy. She relied on the case of ***R v The Officer of G.K Prisons ex parte David Kibiwot, Eldoret High Court Civil Application No. 65 of 2006***.

9. I have considered the pleadings and the submissions of counsel. In a nutshell, the case of the applicant is that he is the rightful owner of the land parcel that he has described as Molo Township 533/678 which he has stated is also known as Molo Township Block 2/460. It is his view that the Gazette Notice which revoked his title is illegal and ought to be quashed, and further the respondents ought to be compelled to reinstate the same and be prohibited from any further interference.

10. I have gone through the various documents exhibited by the applicant. There is no question that the Registrar of Titles did publish the Gazette Notice in issue. The Gazette Notice has mentioned the land parcels L.R No. 533/675,676,677,678,679,680,681,682,683,684,685,686,693 and 694. The applicant contends that the land parcel Molo Township 533/678 belongs to him. However, I have not seen any copy of title exhibited by the applicant to demonstrate that he holds any title to the land described as LR No. Molo Township 533/678. The allotment letter exhibited shows an "unsurveyed residential Plot J - Molo Township" measuring 0.522 hectares. The payment for stand premium and registration fees is again for "unsurveyed residential plot J- Molo Township." I have also looked at the survey plans annexed. They do show the plot 533/678 but nowhere is it indicated that the said plot belongs to the applicant. The only documents which connect the applicant to the plot 533/678 are the receipts for building plan approval and inspection, issued by the Molo Town Council. They are two receipts dated 27/4/2002 and 29/5/2002. But these cannot be good enough to prove title. The applicant however has a decree issued in the case Nakuru CMCC No. 477 of 2004 where it was declared that he is entitled to quiet possession of the plot No. 533/678. It is only because of this decree that will I give him benefit of doubt on the ownership of the plot No. 533/678.

11. The leasehold title that the applicant holds is one issued under the Registered Land Act (CAP 300) (now repealed) which title as noted earlier, was issued on 19 February 2002. There is no evidence linking

this leasehold title, which is to land described as Molo Township Block 2/460, to the plot No. 533/678. It has been mentioned that this is the same plot as Plot No. 533/678, but I have not seen the connection thereto. I note that the suit Nakuru CMCC No. 477 of 2004 claimed the Plot No. 533/678 and not the land parcel Molo Township Block 2/460. If title to the latter was issued in the year 2002, it has not been explained why the applicant sued using the Plot No. 533/678 and not the parcel Molo Township Block 2/460. I have little option but to ignore the title Molo Township Block 2/460 in my ruling as I have no evidence that the said parcel is one and the same as Plot No. 533/678.

12. Be as it may, the case of the applicant is that the Registrar of Titles could not through the said Gazette Notice, revoke his title. There have been numerous decided cases on this point and the jurisprudence is consistent that the Registrar of Titles has no power to revoke a title through a Gazette Notice, but rather, if he is of the view that such title was irregularly issued, the avenue is to approach the court for such title to be revoked. In the case of ***Kuria Greens Limited vs Registrar of Titles***, Musinga J (as he then was), was of the opinion that there is no law which bestows on the Registrar of Titles or the Commissioner of Lands power to revoke a registered title in the absence of a court order to that effect. The same holding ensued in the cases of ***R vs G.G Gachihi & Others ex parte Varun Industrial Credit Limited*** and ***John Mukora Wachihhi vs Minister of Lands & 6 Others***, which cases were cited by counsel for the applicant.

13. Ms. Khatambi for the respondents referred me to the case of ***R vs The Officer of G.K Prisons ex parte David Kibiwot***. In that case, the applicants sought prerogative orders against the Officer of the Eldoret G.K Prison to stop further trespass into his land. The court dismissed the application for judicial review and held that on the facts it was best that the matter be handled through a full trial. I do not resist the position taken by Ibrahim J (as he then was) in the case, for there could be instances where the court is of the view that the dispute before it is best settled through a full hearing rather than through a judicial review application. However, that case is distinguishable to this one, since the matters therein did not involve a revocation of title through a Gazette Notice as was done in this case. I am not however saying that the court cannot in its discretion, decline to issue prerogative orders even in a case of revocation through a Gazette Notice. That will squarely depend on the facts in issue in the case. But for the facts of this case, I think the applicant is within his rights to seek the prerogative orders, more so, because there is already a decree in his favour, giving him rights over the land described as Plot No. 533/678, which decree was granted in Nakuru CMCC No. 477 of 2004. The Gazette Notice revoking the title of the applicant, in essence purported to override that which has already been granted by court, a position that cannot be allowed to stand. If the Registrar of Titles was aggrieved by the decision in Nakuru CMCC No. 477 of 2004, the avenue was to appeal, and not to attempt to overrule a court decree through a Gazette Notice. That is not permissible in law.

14. I do not think it is necessary to say more. For the above reasons, I allow this application and make the following final orders :-

1. *I quash Gazette Notice No.8653 published on 29 June 2012, in so far as it relates to the land described as L.R No. 533/678.*
2. *I issue an order an order of mandamus directing the Registrar of Titles or his successor to reinstate the applicant's title to L.R No. 533/678.*
3. *I issue an order of prohibition, prohibiting the Registrar of Titles or his successor from interfering with the applicant's title to LR No. 533/678 other than in accordance with the law.*
4. *The applicant shall have costs of this suit.*

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 23rd day of April 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of : -

Ms Kipruto holding brief for Mr Ngure for ex-par applicant

Ms Kariuki holding brief for Ms Khatambi for respondents.

Emmanuel Juma : Court Clerk

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

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