



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 117 OF 2011
(Formally Nairobi HCCC No. 710 of 1997)

GEOFFREY KANU KINYUA.....PLAINTIFF

=VERSUS=

- 1. THE COMMISSIONER OF LANDS**
- 2. LAND REGISTRAR KILIFI**
- 3. THE HON. ATTORNEY GENERAL**
- 4. JAMES NJENGA**
- 5. SAMMY MWAITA**
- 6. TAIWA AGENCIES LIMITED**
- 7. DINAH CHELAL**
- 8. A. SHARIFF**
- 9. C. W. NGATIA**
- 10. PRINCIPAL REGISTRAR OF TITLES**
- 11. REGISTRAR OF TITLES MOMBASA**
- 12. DIRECTOR OF SURVEYSDEFENDANTS**

R U L I N G

Introduction

1. What is before me is the Application by the Plaintiff dated 3rd October 2013 seeking for the following orders:
 - (a) **THAT the court file in the test case HCC (NRB) No. 3106 of 1997 Regina**

Ngahu & Others Vs The Commissioner of Lands & 40 Others be placed fore the court alongside this court file

(b) That the Judgment delivered on 31/3/2009 and the partial Decree issued on 18/7/2009 in the said test suit HCCC No. 3106 of 1997 Regina Ngahu & Others Vs The Commissioner of Lands & 40 Others be recorded as a Judgment and partial decree herein.

(c) The court be pleased to direct that the decree recorded herein be registered on the title to the suit property Chembe/Kibabamshe/420.

(d) The residual claim be listed for formal proof as decreed by the Judgment and partial decree in the test case.

(e) In the alternative, the consent order dated and filed herein on 7/4/2003 be adopted as the order of the court and a decree be issued forthwith.

(f) That the costs of the Application be provided for.

2. The Application is premised on the grounds that on 7th April 2003, a consent order was entered in this matter and filed'; that 71 suits were filed challenging the cancellation of title deed by the Commissioner of Lands vide a gazette notice number 2505 of 30th May 1986 and that subsequently Angawa J ordered that all 71 suits whether finalised or otherwise be determined by way of a test suit, namely Nairobi HCCC No. 3106 of 1997.
3. According to the Applicant, the test suit was heard and Judgment was delivered on 31st March 2009; that a partial decree was issued on 18th July 2009 from the said Judgment and that the said Judgment has already been adopted in other suits including Nairobi HCCC NO. 337 of 1994.
4. Although the Applicant served all the Defendants, none of them filed Grounds of Opposition and/or a Replying Affidavit.
5. The Plaintiff's claim in this suit is that the Commissioner of Lands purported revocation of this title to Chembe/Kibabamshe/362 and 420 vide gazette notice number 2505 of 30th May 1986 was unconstitutional, null and void ab initio.
6. The Plaintiff has annexed on his affidavit the copies of the title deeds for Chembe/Kibabamshe/362 and Chembe/Kibabamshe/420 which were issued to him on 15th June 1978.
7. The Plaintiff has also annexed a consent that was entered into between his then advocate and the representative of Attorney General on 7th April 2003.
8. The crux of the consent is that the Attorney General admitted the Plaintiff's allegations that the cancellation of its title deeds was unconstitutional, null and void. The consent went further to state that the Plaintiff would be paid damages that were occasioned by the cancellation of his titles and the reinstatement of the Plaintiff as the registered proprietary of the two suit properties.
9. The Judgment of Ang'awa J in Nairobi Civil Case Number 3106 of 1997 has also been annexed on the Affidavit.
10. In that case, neither the Plaintiff nor the 6th, 7th and 8th Defendants were parties.
11. The only common denominator between the Plaintiff herein and the Plaintiff in HCCC No. 3106 of 1997 was that both of them had lost their parcels of land vide the actions of the Commissioner of Lands by cancelling their title deed and both of them were by then represented by one advocate, S. K. Ritho & Co. Advocates.
12. In her Judgment, Ang'awa J held that the cancellation of the title deed by the Commissioner of Lands within the ten (10) mile coastal strip was unconstitutional null and void. The court went ahead to award to the Plaintiff in that case general damages of Kshs.1,000,000.
13. Other than stating that the cancellation of the title deed in respect to the suit property was null and void, the Judge never expressly ordered that the Judgment in HCCC No. 3106 of 1997 should apply in this case. The Plaintiffs in the present suit can only use the Judgment of Ang'awa J to persuade this court to agree with the Judgment.

14. Other than the Plaintiff and the Attorney General, there are other Defendants in this matter who never participated in Nairobi HCCC No. 3106 of 1997 or never conceded to the fact that HCCC No. 3106 of 1997 should be used as a test suit.
15. Indeed, after the Plaintiff's titles were cancelled, other parties were allocated the same suit properties. The people who issued the subsequent set of titles have a right to be heard more so when the Plaintiff wants to be reinstated as the proprietor of the suit property.
16. In the circumstances, the Plaintiff's only recourse is to set down the matter for hearing.
17. For those reasons, I dismiss the Application dated 3rd October 2015 with no orders as to costs

Dated and delivered in Malindi this 13th day of **November** 2015.

O. A. Angote

Judge