



REPUBLIC OF KENYA



KENYA LAW
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**Kimuri v Commissioner of Lands & 5 others (Civil Appeal
26 of 2016) [2022] KECA 957 (KLR) (26 August 2022) (Judgment)**

Neutral citation: [2022] KECA 957 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 26 OF 2016
HM OKWENGU, F SICHALE & A MBOGHOLI-MSAGHA, JJA
AUGUST 26, 2022**

BETWEEN

WILSON THEURI KIMURI APPELLANT

AND

COMMISSIONER OF LANDS 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

MUNICIPAL COUNCIL OF NANYUKI 3RD RESPONDENT

JENNIFER KOINATE KIHORO 4TH RESPONDENT

JOSEPH WACHIRA GITHINJI 5TH RESPONDENT

MARY MUMBI GITHINJI 6TH RESPONDENT

((An Appeal from the Judgment of the High Court of Kenya at Nyeri (Ombwayo, J.) dated 11th August, 201 and delivered on 22nd September, 2015 in Misc. Application No. 4 of 2013))

JUDGMENT

1. The facts in this Appeal are essentially the same with Civil Appeal Numbers 60, 61 and 62 of 2015 as these appeals are all related. The appellant in *Civil Appeal No. 26 of 2016*, Wilson Theuri Kimuri is also dissatisfied with the judgment of Ombwayo, J. dated 22nd September 2015.
2. The appellant had vide a motion dated 21st February 2013, filed in the High Court at Nyeri sought inter alia an order of certiorari with respect to land title Number Nanyuki Municipality Block 12/122 quashing registration of the parcel in favour of the present registered owners or at all.
3. The matter was heard by Ombwayo, J. who in a judgment delivered on 22nd September 2015, slightly deviated from his findings in Civil Appeal Numbers 60, 61 and 62 of 2015 and subsequently dismissed the Notice of Motion with costs.



4. The appellant was aggrieved with the aforesaid findings thus provoking the instant appeal vide a Notice of Appeal dated 5th October 2015 and a Memorandum of Appeal dated 5th May 2016 raising 6 grounds of appeal which are in a nutshell that the learned judge erred in fact and in law in making a finding that an order for certiorari was discretionary and would not be issued even if the 1st respondent had violated the law; that the learned judge erred in fact and in law in making a finding that there had been any procedural impropriety shown to have been occasioned by the respondent in exercise of their statutory duty and then failed to grant the orders sought and finally, that the learned judge erred in fact and in law in failing to ensure parity of reasoning for similar facts and law.
5. When the appeal came up for plenary hearing on 18th May 2022, Mr. Enonda, learned counsel appeared for the appellant. There was no appearance for the 1st, 2nd and 3rd respondents whereas learned counsel, Mr. Nderi appeared for the 4th respondent and learned counsel, Miss Mwai on the other hand appeared for the 5th and 6th respondents.
6. As we had alluded to earlier, this appeal (*Civil Appeal No. 26 of 2016*) is related to Civil Appeal Numbers 60, 61 and 62 of 2015 and similar orders had been sought in the 4 appeals. We will therefore not rehash the appellant's submissions in this appeal which we have duly considered together with the 5th and 6th respondents' submissions. The only point of departure by the learned judge in this appeal is that he did not grant orders of certiorari as he did in the other 3 appeals, whereupon he subsequently dismissed the appellant's motion with costs.
7. The gist of the learned judge in not granting the orders of certiorari as had been sought in this appeal was that the appellant had received the sum of Kshs 300,000.00 from the 5th respondent to enable him access the suit parcel and allowed the surveyor to do survey works on the said land and that there had been no evidence that he had refunded the money.
8. The learned judge concluded that allowing the respondents to conduct survey on the parcel of land meant that the appellant was aware that the 5th respondent had purchased the parcel of land from the 4th respondent and therefore allowed them to proceed with the process of alienation from the 4th respondent and as such, from the circumstances of this case and judicial review reliefs being discretionary, the same would not issue in favour of the appellant.
9. From the circumstances of this appeal and having found earlier on in the other appeals *inter alia* that there was no procedural impropriety on part of the 1st, 2nd and 3rd respondents, it follows therefore that the conclusions we arrived at in the other appeals must as well apply to this one.
10. More so in our view, the orders of certiorari would not have been issued given the fact that the appellant in this appeal had received a sum of Kshs 300,000.00 from the 5th respondent in order for the latter to access the parcel of land and carry out survey work. Having facilitated the survey, he cannot now turn around and find fault with the subsequent allocation/registration.
11. Regarding the issue of the learned judge failing to ensure parity of reasoning in this appeal like in the other related appeals i.e. Civil Appeal Numbers 60,61 and 62 of 2015, the learned judge gave his reasons as to why he arrived at his findings in this appeal namely; that the appellant had received the sum of Kshs 300,000.00 from the 5th respondent to enable him access the suit parcel and allowed the surveyor to do survey works on the said land and that there had been no evidence that he had refunded the money. Consequently, we find no merit in this appeal.
12. Accordingly, the appellant's appeal is without merit and the same is hereby dismissed in its entirety. We make no order as to costs.



It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF AUGUST, 2022.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

A. MBOGHOLI MSAGHA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

