



**Lonzi v National Youth Service & 2 others; National Land Commission  
(Interested Party) (Environment and Land Constitutional Petition  
E013 of 2022) [2024] KEELC 5939 (KLR) (18 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5939 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E013 OF 2022  
CA OCHIENG, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**FESTUS MWANIKI LONZI ..... PETITIONER**

**AND**

**THE NATIONAL YOUTH SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF PUBLIC SERVICE, YOUTH AND GENDER  
AFFAIRS ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**JUDGMENT**

1. By a Petition dated the 17<sup>th</sup> August, 2022, the Petitioner prays for the following Orders:-
  - a. A declaration be and is hereby issued that the Respondents have no jurisdiction to negate the Certificate and or Deed of Title issued under section 24 and 25 of the [Land Registration Act](#), No. 6 of 2022 Laws of Kenya;
  - b. A declaration be and is hereby issued that in the absence of a Court Order under Section 26 of the [Land Registration Act](#), No. 6 of 2012 Laws of Kenya and Section 80 of the [Land Act](#), No. 3 of 2012 Laws of Kenya, divesting the Petitioner’s registered interest in the suit land and or negating its existence or substance, the Respondent have no jurisdiction to negate the said Certificate and or Deed of Title;



- c. A declaration that a decision to negate a registered interest in land and to divest such registered interest in land affects the registered party, and accordingly such decision must be subject to natural justice;
  - d. An Order of Certiorari be and is hereby issued removing into this Honourable Court for purpose of quashing, and quashing the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conveyed in a Public Notice published in the Daily Nation Newspaper publication dated 13<sup>th</sup> February, 2018 purporting to negate and divest and threatening repossession of the Petitioner's property being LR No. 22288 situate in S.E of Thika Municipality within Machakos County.
  - e. A declaration be and is hereby issued that the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conveyed in the Public Notice published in the Daily Nation newspaper publication dated 13<sup>th</sup> February, 2018 purporting to negate and divest and threatening repossession of the Petitioner's property being LR No. 22288 situate in S. E of Thika Municipality within Machakos County, threatens and violates the Petitioner's fundamental rights to protection of property guaranteed by Article 40 read with 260 of the Constitution , to protection against discrimination guaranteed by Article 27 of the Constitution , to life and livelihood and to protection of dignity and respect guaranteed by Article 25 and 28 respectively, Freedom and security of person guaranteed by Article 29 and to Fair Administrative Action guaranteed by Article 47(1) of the Constitution ;
  - f. A declaration be and is hereby issued that the issuance of a letter of allotment over un – alienated government land under Section 7 of the Government Land Act (Chapter 280 of the Laws of Kenya) now repealed, and subsequent processing and issuance of Grants conferred legitimate interests in the suit property, protected by law and guaranteed by the Constitution and which interests can only be upset by an order of court after due process;
  - g. A declaration that as an innocent third purchaser for value, the Petition obtained good title over LR No. 22288 situate S.E of Thika Municipality within Machakos County, and as such the Petitioner's interest over the property is indefeasible;
  - h. An order of permanent injunction be and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants either by themselves, agents, servants or by any other person whomsoever from interfering with the Petitioner's proprietorship over LR No. 22288 situate S.E of Thika Municipality within Machakos County, by evicting, trespassing on, remaining on, interrupting with activities on, or by howsoever interfering with the rights of the Petitioner as by law conferred under sections 24 and 25 of the Land Registration Act, 2012;
  - i. An order for general damages for violation of fundamental rights of the Petitioner;
  - j. Order for costs of the Petition on indemnity basis.
2. The Petition was supported by the Affidavit of Festus Mwaniki Lonzi wherein he explained that he purchased LR No. 22288 situate S.E of Thika Municipality within Machakos County, hereinafter referred to as the 'suit land', from one Samuel Watuka Muindi who had been initially allotted the land under the repealed Government Land Act (GLA), paid the requisite premiums and was issued with a Grant by the Commissioner of Lands. He stated that the Respondents had placed a publication in the Daily Nation Newspaper of 13<sup>th</sup> February, 2018 which mentioned the suit land among other parcels of wherein it was indicated that the said parcels belonged to it. He explained that several affected individuals jointly filed a Petition in Machakos ELC Petition No. 7 of 2018: Thome Reality Limited & 13 Others v National Youth Service & 3 Others, wherein the Court issued Judgement in their favour on 24<sup>th</sup> May, 2019, and quashed the Notice in the Daily Nation Newspaper of 13<sup>th</sup> February, 2018.



- He claimed the Respondents violated his rights due to the impugned publication. He insisted that his title is indefeasible and cannot be defeated since requisite premiums were paid by the initial owner. He reiterated that he is an innocent third purchaser for value, as he obtained a good title over the suit land.
3. The Respondents opposed the instant Petition and filed a response to Petition dated 8<sup>th</sup> March, 2023 where they explained that following the publication in the Daily Nation Newspaper of 13<sup>th</sup> February, 2018, several affected individuals jointly filed a Petition in Machakos ELC Petition No. 7 of 2018: *Thome Reality Limited & 13 Others v National Youth Service & 3 Others*, seeking substantially similar reliefs as the reliefs sought in the instant Petition. Further, on 24<sup>th</sup> May, 2019, the Court allowed the Petition and quashed the Notice in the Daily Nation Newspaper of 13<sup>th</sup> February, 2018. They insisted that the impugned Notice in the Daily Nation Newspaper is hence ipso facto non-existent as it was quashed. They contended that LR No. 22277 S.E Thika Municipality within Machakos County has never been private property neither was it ever or lawfully allocated to Samuel Watuka Muindi. They averred that contrary to the Petitioner's allegations about allocation of the suit land, the said parcel of land remained alienated and reserved for the National Youth Service, hence it was public land. Further, that the said parcel of land was never available for alienation to Samuel Watuka Muindi or any other person. They claimed that while the Petitioner may have purchased the suit land from Samuel Watuka Muindi, the latter had no good title to pass by dint of Section 26(1) (b) of the *Land Registration Act*, hence the title allegedly held by the Petitioner is amenable to cancellation. They denied the knowledge or authenticity of alleged representations in the correspondences presented by the Petitioner. Further, that public land cannot be extinguished through alleged correspondence of unauthorized officers. They reiterated that the Petition does not disclose any evidence of discrimination.
  4. The Petitioner filed a Further Affidavit reiterating his averments as per the initial Supporting Affidavit, disputing the averments in the Replying Affidavit and contending that his rights had been violated. Further, that he is an innocent third-party purchaser for value.
  5. The Petition was canvassed by way of written submissions which was highlighted.

## **Submissions**

### **Petitioner's Submissions**

6. The Petitioner in his submissions reiterated his averments as per the Petition and Affidavits. He provided a background of the dispute herein and insisted that this Petition is not res judicata by dint of the decision in the aforementioned Machakos ELC Petition No. 7 of 2018. He argued that the Respondents had violated his rights under the *Constitution* by discriminating against him over the notice issued as the allotments over properties within the disputed area were issued by the Commissioner of Lands in the normal course of Section 7 of the repealed Government Lands Act. Further, that vide a Letter of Allotment dated the 11<sup>th</sup> November, 1996, the President of the Republic of Kenya allotted LR No. 22277 – Machakos District to Mr. Samuel Watuka Muindi, which allotment he accepted culminating in the issuance of Grant Number IR 76322/1 on 8<sup>th</sup> April, 1998. He further submitted that he purchased the said land from Mr. Samuel Watuka Muindi vide Sale Agreement dated 19<sup>th</sup> June, 2017 and a Transfer was duly registered on 22<sup>nd</sup> December, 2017 at Nairobi Registry.
7. He insisted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conceded to the Chief Land Registrar in the year 2016 that the properties within Yatta Area did not belong to the 1<sup>st</sup> Respondent and referred to a letter written by the Chief Land Registrar dated the 26<sup>th</sup> February, 2016, to the Director of the National Youth Service, in respect to one Viola Jepkoskei Munyoki, whose property is within the vicinity of the suit land. He argued that the Respondents should be held in common standards and should afford total deference to his property, just as he did to that of Viola Jepkoskei Munyoki. Further, that the Respondents to



hold otherwise as regards the other Letters of Allotment belonging to him, is blatant and inexcusably discriminatory. He reiterated that his rights under Article 40 of the *Constitution* had been violated. Further, that since he is a holder of a Certificate of Registration under the *Land Registration Act*, he is an indefeasible owner. He reiterated that the State cannot expropriate private property without due process and can only do so in accordance with Article 40 of the *Constitution*. He further insisted that the Respondents have not offered any evidence to substantiate their claim over the suit land and relied on the judgment in Machakos ELC Petition No. 7 of 2018. He contended that there has been violation of his legitimate expectation and his rights to life and dignity as guaranteed under Articles 25 as well as 28 of the *Constitution*. Further, that the Respondents violated their Constitutional duty to heed the National Values as posited under Article 10 of the *Constitution*. To buttress his averments, he relied on the following decisions: *Joseph N. K. Arap Ng'ok v Moiyo Ole Keiwua & 4 Others* (1997) eKLR and *George Bala v Attorney General* (2017) eKLR.

### Respondents' Submissions

8. The Respondents in their submissions contended that this court should decline to exercise jurisdiction, and invoke constitutional avoidance in this matter, in view of the holding in Machakos ELC Petition No. 7 of 2018: *Thome Reality Limited & 13 Others v National Youth Service & 3 Others*. Further, that by dint of the Judgment in the aforementioned case, the impugned public notice was quashed by a court of competent jurisdiction and is hence not available for purposes of litigation, hence the substratum of the Petition does not exist. They averred that in the absence of the impugned public notice, the remaining issues raised are civil wrongs as there is nothing Constitutional left. They reiterated that the part of the Petition relating to a public notice published in the Daily Nation Newspaper of 13<sup>th</sup> February, 2018 is res judicata in view of the findings in the aforementioned Machakos ELC Petition 7 of 2018. Further, that the remaining part of the Petition does not raise constitutional matters. They reaffirmed that the Petitioner has not proved the allegations to the required standard. To support their arguments, they relied on the following decisions: *Stephen Muthami Mbau & 10 Others v Kenya Railways Corporation & Another* (2022) eKLR; *CNM v WMG* (2018) eKLR; *IEBC v Maina Kiai & 5 Others* (2017) eKLR; Kapsabet ELC Petition 6 of 2021: *Kaptien Farmers Limited & 17 others v Cheptilik Farmers Cooperative Society & 231 Others*; *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport & Infrastructure & 3 Others* (2015) eKLR; *Africa Oil Turkana Limited (previously known as Turkana Drilling Consortium Ltd) & 3 Others v Permanent Secretary, Ministry of Energy & 17 Others* (2016) eKLR; *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & Another*, Motion No. 42 of 2014 (2016) eKLR; (*Muiri Coffee Case*); *Northern Nomadic Disabled Person's Organization (Nondo) v Governor County Government of Garissa & Another* (2013) eKLR; *Council of Civil Service Unions & Others v Minister for the Civil Service* (1984) 3 All ER 935; *Jitendra Kumar & Others v State of Haryana & Another*: Supreme Court of India Civil Appeal No. 5803 of 2007; *Republic v Council of Legal Education & 2 Others Ex parte Mitchell Njeri Thiongo Nduati* (2019) eKLR and *Anarita Karimi Njeru v The Republic* (1976 -1980) KLR 1272.

### Analysis and Determination

9. Upon consideration of the instant Petition, respective Affidavits, annexures and rivaling submissions, the following issues are for determination:-
  - a. Whether the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conveyed in the Public Notice published in the Daily Nation newspaper publication dated 13<sup>th</sup> February, 2018 in respect to the suit land should be quashed.



- b. Whether the Petitioner has proved the allegations on discrimination as against the Respondents to the required standards and if the Petition is merited.

As to whether the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conveyed in the Public Notice published in the Daily Nation newspaper publication dated 13<sup>th</sup> February, 2018 in respect to the suit land should be quashed.

10. The Petitioner has sought for orders of certiorari to quash the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conveyed in the Public Notice published in the Daily Nation newspaper publication dated 13<sup>th</sup> February, 2018 in respect to the suit land among other parcels of land, which stated that:-

“National Youth Service (NYS) is a statutory body established under Cap. 208 Laws of Kenya and currently under the Ministry of Public Service, Youth and Gender Affairs. The Department is the legal proprietor of various parcels of land located within the Republic. It has however come to the notice of the Department that a number of individuals acquired specific parcels of land without the knowledge or consent of the Department. This is therefore to notify the individuals and or entities and the public that the de jure registered owner of the said parcels is the National Youth Service. The department, therefore, does not recognize any claim whatsoever that any individual or entity has over the said parcels of land whether through themselves, their agents, assigns or successors. Take Notice therefore that any such individuals or entities aforesaid either through themselves, their agents, assigns or successors that are described in the listed schedule thereunder - located in Yatta Complex, Kilifi, Samburu/ Laikipia – should take steps to voluntarily vacate the subject parcels of land and surrender any title documents relating to the said parcels to the office of the Director General, NYS within the next fourteen (14) days from the date hereon, failure to which the department shall embark on the process for repossession of the subject parcels at the individuals or entities own peril as to the attendant costs and legal consequences arising from such repossession.”

11. The Petitioner explained that in the said notice, NYS proceeded to list 65 titles therein among which is the suit land. He claimed to have purchased the said land from one Samuel Watuka Muindi who already had a title to his name. The Respondents opposed the instant prayer and insisted that this Court in Machakos ELC Petition No. 7 of 2018: *Thome Reality Limited & 13 Others v National Youth Service* had already made a determination on the notice, by quashing it, hence the Petitioner’s said claim is res judicata.

12. On perusal of the proceedings and Amended Judgment in ELC Petition No. 7 of 2018: *Thome Reality Limited & 13 Others v National Youth Service*, I note the Petitioners therein had indeed sought for orders to quash the public notice of 13<sup>th</sup> February, 2018 whose excerpt, I have cited above. Further, I note one of the orders the Court in its impugned Judgment proceeded to make is as follows:-

“(c) An order of certiorari be and is hereby issued removing into this Honourable Court for purposes of quashing and quashing the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conveyed in a Public Notice published in the Daily Nation Newspaper dated 13<sup>th</sup> February, 2018 purporting to negate and divest listed properties and threatening repossession of the properties listed therein, particularly in L.R. No. 22284, L.R. No. 22297, L.R. No. 222302, L.R. No. 222306, L.R. No. 22238 (which now exists as L.R. No. 22238/2, L.R. No. 22238/3, L.R. No. 22238/4 and L.R. No. 22238/5), L.R. No. 18475 (which



now exists as L.R. No. 18475/2, L.R. No. 18475/3, L.R. No. 18475/4, L.R. No. 18475/5, L.R. No. 18475/6, L.R. No. 18475/7, L.R. No. 18475/8, L.R. No. 18475/10, L.R. No. 18475/11, L.R. No. 18475/12, L.R. No. 18475/13, L.R. No. 18475/14, L.R. No. 18475/16, L.R. No. 18475/17 and L.R. No. 18475/5/18), L.R. No. 22300, L.R. No. 22337, L.R. No. 22288, L.R. No. 22287, L.R. No. 22289, L.R. No. 22290, L.R. No. 15246 (now existing as L.R. No. 15246/1 and L.R. No. 15246/2), L.R. No. 22279, L.R. No. 22283 and L.R. No. 22339.”

13. Even though the Respondents have claimed the prayer for quashing of the public notice is res judicata, I note the Petitioner was not a party in the aforementioned suit and there is no demonstration that the Petitioners’ therein represented him. In relying on the provisions of Section 7 of the *Civil Procedure Act* which gives parameters on res judicata, I find that the said prayer cannot hence be deemed as res judicata as claimed by the Respondents. Be that as it may, since an order of certiorari was already issued by a court of competent jurisdiction, quashing the impugned Public Notice that affected LR No. 22288, which is the suit land herein, I opine that the Petitioner by implication of the said Order became a beneficiary therein. In the foregoing, I find that the said Public Notice is ipso facto non-existent and is hence not available for purposes of litigation. In the circumstance, I find that the prayer of certiorari has sought hence cannot issue.

As to whether the Petitioner has proved the allegations on discrimination as against the Respondents to the required standards and if the Petition is merited.

14. The Petitioner claimed he is an innocent third party purchaser of the suit land, which he bought from one Samuel Watuka Muindi who previously held a valid letter of allotment including Grant to the said land. He averred that the Respondents had violated his rights as contained in Articles 10, 40, 47, 48 and 50 of the *Constitution*. The Respondents on the other hand denied violating the Petitioner’s rights and contended that the suit land was public land which was not available for alienation to any third party.
15. Before I proceed to make a determination on whether the Petitioner’s rights were violated by the Respondents’ due to the impugned public notice, I wish to decipher whether the remaining prayers sought by the Petitioner meet the threshold for a Constitutional Petition.
16. In the case of *Mumo Matemo v Trusted Society of Human Rights Alliance* Civil APP.290/2012 (2013) eKLR, the court observed that:-

“...the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court... Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.”

17. From a perusal of the Petition, except for confirming he is the owner of the suit land and that there was a public notice affecting it, the Petitioner did not itemize how the Respondents had discriminated against him by interfering with the said suit land nor whether the Respondents cancelled his title. The Petitioner has made reference to various correspondence touching on one Viola Jepkoskei Munyoki’s Letter of Allotment and argued that the Respondents’ should be held in common standards and afford total deference to his property, just as they did to that of the said Viola Jepkoskei Munyoki. Further, that the Respondents’ to hold to the contrary as regards the other Letters of Allotment belonging to



him, is blatant and inexcusably discriminatory. The Respondents on the other hand have insisted that the suit land belonged to NYS, was public land and hence not available for alienation to third parties.

18. I note the Petitioner never bothered to adduce oral evidence, nor indicate with precision how the Respondents' proceeded to expropriate his property. In my view, the issues the Petitioner was raising in respect to the indefeasibility including validity of his title fall within the civil realm and not Constitutional Petitions. I note the Petitioner further failed to enjoin the Chief Land Registrar who is the successor of the Commissioner of Lands that had issued the title, to these proceedings and seeks to shift the burden of proof to the Respondents to prove that their land is indeed public land. I opine that since he was seeking orders to validate his title, he ought to have brought in the vendor Samuel Watuka Muindi, who was the alleged initial allottee including title holder to explain the root of the title and how he acquired it and let the Chief Land Registrar, confirm its authenticity. The Petition has sought to heavily rely on the Judgment in ELC Petition No. 7 of 2018: Thome Reality Limited & 13 Others v National Youth Service, which is simply persuasive and not binding on this court. Section 107 of the Evidence Act, places the burden of proof upon the Petitioner to prove his case but seeking to rely on correspondence in respect to Viola Jepkoskei Munyoki's Letter of Allotment, for a different parcel of land, to validate a title is not feasible. I am of the view that it was incumbent upon the Petitioner to demonstrate how the Respondents had violated his rights due to the impugned notice, but he failed to do so. In the foregoing, I find that the Petitioner's claims that the Respondents' discriminated against him and violated his rights, do not meet the constitutional threshold as set out in the authority cited above.
19. Which brings me to the question as to whether the Petitioner has proved he obtained a good title from the vendor Samuel Watuka Muindi, to be deemed as an innocent third party purchaser for value. On validity of title, Sections 26(1) (b) of the Land Registration Act states that:-

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge, except – (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
20. In the case of Dr. Joseph Arap Ngok v Justice Moiwo Ole Keiwua & 5 Others, Nai. Civil Appeal No. 60 of 1997 the court categorically declared that:-

“Section 23(1) of the then Registration of Titles Act (now reproduced substantially as Section 25 and 26 of the Land Registration Act) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the titleholder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”
21. See also the decisions of Arthi Highway Developers Limited V West End Butchery Limited & 6 others (2015) eKLR and Munyu Maina v Hiram Gathiba Maina, Civil Appeal No. 239 of 2009.
22. Based on the facts as presented while associating myself with the decisions quoted, I opine that in order to make a just determination on validity of the Petitioner's title to suit land, he should have filed a Civil Claim instead of a Petition and enjoin the Chief Land Registrar including Samuel Watuka Muindi to



the proceedings. Further, the Petitioner should have adduced viva voce evidence to demonstrate the root of his title. In the interest of justice and in absence of the same, I will decline to determine the validity of the Petitioner's title in these proceedings and direct him to file a Civil Suit instead. Further, since the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' conveyed in the Public Notice published in the Daily Nation newspaper publication dated 13<sup>th</sup> February, 2018 was quashed prior to the institution of this Petition, I find that the Petitioner's rights as contained in Articles 25, 27, 28, 40, 47(1) and 260 of the Constitution were not violated by the Respondents as claimed as he still holds the Certificate of Title to the suit land. Further, he has not indicated if he was evicted therefrom after the impugned notice.

23. In the circumstances, I find the instant Petition unmerited and will proceed to strike it out, but make no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Mukuha for Bwire for Petitioner

Ms. Lungu for Respondents

Court Assistant – Simon/Ashley

