



**Republic v Ruiru District Land Registrar; Gitau (Interested Party);
Kihiu (Exparte Applicant) (Judicial Review Application E004 of 2024)
[2024] KEELC 7512 (KLR) (11 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7512 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW APPLICATION E004 OF 2024
BM EBOSO, J
NOVEMBER 11, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

RUIRU DISTRICT LAND REGISTRAR RESPONDENT

AND

LUCY WANGARI GITAU INTERESTED PARTY

AND

GERALD WAMBUGU KIHU EXPARTE APPLICANT

JUDGMENT

1. On 21/5/2024, this court [Kemei J] granted the Gerald Wambugu Kihiu [the exparte applicant] leave to bring a substantive motion seeking an order of mandamus compelling the respondent [Ruiru District Land Registrar] to immediately perform his statutory duties under Sections 7, 9, 12, 13, 14, 25, 26, 29 and 30 of the *Land Registration Act* by recalling and cancelling the title deed issued to the interested party [Lucy Wangari Gitau] on 21/7/2016. The said title deed relates to land parcel number Ruiru/Mugutha/Block 1/2453 [the suit land]. The ex-parte applicant subsequently brought a motion dated 21/5/2024, seeking the above order. The motion is the subject of this Judgment.
2. The application was premised on the grounds set out in the motion and in the ex-parte applicant's supporting affidavit sworn on 20/5/2024. It was canvassed through written submissions dated 11/7/2024. In summary, the ex-parte applicant's case is that he was registered as proprietor of the suit land on 16/4/2003 and he has neither sold nor transferred the land to any other person. He contends that the suit land was registered on 16/4/2003 as Ruiru/ Mugutha Block 1/T2453 and he was issued



- with a title which he holds to date. It is his case that he has learnt that the interested party procured a parallel land register [green card] and a parallel title relating to the suit land on 21/7/2016 expressed as Ruiru/ Mugutha Block 1/2453. He adds that title number Ruiru/ Mugutha Block 1/2453 which the respondent issued in July 2016 relates to the same land on the ground. The ex-parte applicant adds that his request to the respondent to recall and cancel the interested party's title has gone unheeded.
3. The respondent opposed the application through grounds of opposition dated 21/6/2024 and written submissions dated 18/9/2024. The case of the respondent is that there is a dispute as to the ownership of the suit land and that dispute requires that oral and documentary evidence be adduced to enable the Court resolve the dispute. The respondent contends that the issue relating to ownership of the suit land cannot be determined through a judicial review application. The respondent adds that the cancellation of either of the two titles is a matter that requires investigation into the manner in which the title was obtained. The respondent urges the Court to reject the application.
 4. When the motion came up for direction before this Court [Eboso J] on 2/7/2024, the interested party was absent. Consequently, the Court directed the ex-parte applicant to serve a hearing notice on the interested party through a prominent notice in either The Daily Nation Newspaper or The Standard Newspaper. The ex-parte applicant subsequently filed an affidavit of service sworn on 11/7/2024 by Edwin Omulama Onditi [the applicant's advocate], indicating that the ex-parte applicant caused a hearing notice to be published in The Daily Nation Newspaper edition of 10/7/2024. The interested party did not, however, enter appearance. Put differently, the interested party did not step forward to respond to the plea for cancellation of her title.
 5. The Court has considered the motion, the respondent's grounds of opposition, and the parties' respective submissions. The interested party did not step forward to respond to the plea for cancellation of her title. Secondly, although the respondent [the Land Registrar] stepped forward, he did not bother to challenge the affidavit evidence which the ex-parte applicant presented. Thirdly, he did not bother to present an affidavit to explain to the Court the circumstances under which he opened a parallel land register and issued a parallel title relating to the suit land in 2016. He only filed grounds of opposition questioning the suitability of a judicial review motion as a platform on which to seek an order cancelling a title. Consequently, the single issue to be determined in this Judgment is whether the relief sought in the motion dated 21/5/2024 is available in these proceedings.
 6. The ex-parte applicant contends that title number Ruiru/Mugutha Block 1/T.2453 and title number Ruiru/ Mugutha Block 1/2453 relate to one and the same property on the ground. The Land Registrar elected to withhold evidence relating to the above factual assertion. Consequently, the evidence presented by the ex-parte applicant remains uncontroverted.
 7. Both the repealed Registered Land Act and the current Land Registration Act did not/do not countenance the opening of parallel land registers. They did not/do not countenance the issuance of parallel titles relating to the same parcel of land. Every registered parcel of land is expected to have only one land register. Every registered parcel of land is expected to have only one current registered title.
 8. It is therefore strange that a Land Registrar facing allegation of duplication of a land register and duplication of a title would elect not to respond to the allegations through a replying affidavit. It is also strange that the holder of an impugned duplicate title would elect not to step forward and respond to the plea for cancellation of his title.
 9. In my view, the point raised in the grounds of opposition would make sense if there was a replying affidavit by the Land Registrar, explaining the circumstances under which the alleged duplicate land register and the alleged duplicate title were created. The point would carry weight if the interested party stepped forward to defend his registration and title through a replying affidavit. For reasons known to



the Land Registrar, he elected to withhold affidavit evidence from the Court yet he is the custodian of the relevant land registration records. The Interested Party elected not to step forward to defend her title. As things stand, the evidence tendered by the ex-parte applicant is uncontroverted. The court does not know if the interested party exists. There is, therefore, no proper basis for denying the ex-parte applicant the relief sought in the motion. Put differently, in the absence of any challenge to the affidavit evidence that the ex-parte applicant has presented, there is no substantive issue that would warrant referral of the applicant to trial as suggested by the Land Registrar. The above circumstances of this suit warrant grant of the relief sought in these proceedings. That is the finding of the court on the single question in this suit.

10. On costs, this suit would not have been necessary if the Land Registrar adhered to the law. The suit would not have been necessary if, having opened a duplicate land register and having issued a duplicate title, the Land Registrar swiftly moved the court and procured an order authorizing him to cancel the duplicate land register and the duplicate title. He elected to do nothing about the anomaly. He also elected to withhold evidence from the court. He will, for this reason, bear costs of the suit.
11. For the above reasons, the notice of motion dated 21/5/2024 is granted in the following terms:
 - a. An order of mandamus is hereby issued decreeing the Ruiru Land Registrar to immediately cancel the title issued to Lucy Wangari Gitau on 21/7/2016 together with the parallel land register opened on 21/7/2016 expressed as relating to land parcel number Ruiru/ Mugutha Block 1/2453.
 - b. The respondent shall bear costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 11TH DAY OF NOVEMBER 2024.

B M EBOSO

JUDGE

In the Presence of: -

Mr Omulama for the Ex-parte Applicant

Court Assistant: Hinga

