



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO. 3 OF 2011**

**REPUBLIC .....PLAINTIFF**

**VERSUS**

**NAKURU DISTRICT LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**HON ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**EX-PARTE**

**DR. SZUMBAH MWANAONGORO & 7 OTHERS**

**JUDGMENT**

***(Suit to challenge decision of Land Registrar to revoke the titles of the applicants; Registrar through gazette notice cancelling titles of applicants; applicants not given any hearing before such cancellation; doubtful whether Registrar had powers to cancel the titles; the Gazette Notice revoking the said titles quashed)***

1. Through a Gazette Notice published in the Kenya Gazette of 26 November 2010, the District Land Registrar, Nakuru, gave notice that the Government has revoked the various land titles listed in the Notice on the ground that the parcels of land were reserved for public purposes and the allocations were therefore illegal and unconstitutional. The said land titles were Nakuru Municipality/ Block 12/ 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, and 281 which were said to have been reserved for Moi Primary School and the titles Nakuru Municipality/ Block 1/ 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 675, 676, and 677 which were said to have been reserved for Nakuru Municipality Water Treatment Plant.

2. On 18 January 2011, the ex-parte applicants filed a motion for leave to commence judicial review for the following substantive orders :-

(i) *Certiorari to bring to the High Court for purposes of being quashed the decision of the Nakuru District Land Registrar vide Gazette Notice No. 15574 in the 26th November 2010 Kenya Gazette to revoke the following titles Nakuru Municipality Block 12/ 269, 281, 278, 274, 275, 271, 279 and 273.*

(ii) *An order of prohibition prohibiting and/or restraining the Government from acting on the decision of the Nakuru District Land Registrar contained in Gazette Notice No. 15574 revoking*

*titles Nakuru Municipality Block 12/ 269, 281, 278, 274, 275, 271, 279 and 273.*

3. Leave was granted on the same day, and on 1 February 2011, the substantive motion for judicial review was filed seeking the above orders.

4. The case of the ex-parte applicants is that they are the lawful registered proprietors of the named parcels of land (hereinafter the suit properties), having purchased the same from the Municipal Council of Nakuru and titles issued to them. It was averred that on 14 October 1997, owing to a debt which the Municipal Council of Nakuru owed the Kenya National Assurance in respect of Moi Estate, the Municipal Council did resolve to sell the suit properties so as to raise money to pay its aforesaid debt. It was deposed in the supporting affidavit, that the Minister for Local Authorities did give approval for the sale of the plots through a letter dated 4 May 1998 and after the said approval, the Municipal Council of Nakuru offered the suit properties for sale. The 2nd and 4th ex-parte applicants were the beneficiaries of the sale, and they were issued with letters of allotment. They sold some of what was allotted to them to the 1st, 3rd, 5th, 6th, 7th and 8th ex-parte applicants. Certificates of Leases were then issued to them in the year 2002. The ex-parte applicants took possession of the properties and developed them and aver that they have residing therein to the date of the motion. They have attacked the Gazette Notice cancelling their titles on the grounds that they were condemned unheard in breach of the rules of natural justice. It is their position that they needed to be heard before any such decision could be reached by the Land Registrar. They also aver that they are first registered owners and therefore their titles are indefeasible.

5. To the supporting affidavit, the ex - parte applicants annexed minutes dated 14 October 1997, of the Municipal Council of Nakuru, showing the approval to sell the plots in issue; letter dated 17 September 1997 from the Municipal Council of Nakuru to the Permanent Secretary, Ministry of Local Government, seeking approval to sell the plots; letter dated 4 May 1998 from the Permanent Secretary the Ministry of Local Government, giving the Municipal Council of Nakuru, approval to sell the plots; allotment letters and Certificates of Lease issued to them.

6. The respondent only filed Grounds of Opposition drawn in the following fashion :-

- (a) *This is not a case for judicial review.*
- (b) *The applicant has not exhausted all available remedies and therefore is untenable.*
- (c) *The application is misconceived, bad in law and an abuse of the court process.*

7. I gave counsels an opportunity to file written submissions, but only counsel for the ex-parte applicants filed submissions. At the hearing of the motion, Mr. Kahigah, counsel for the ex-parte applicants entirely relied on his written submissions, whereas Mr. Nguyo counsel for the respondent, stated that he will not be making submissions but will entirely rely on the Grounds of Opposition. To be fair to him, Mr. Nguyo stated that despite writing letters seeking instructions, none were forthcoming.

8. In his submissions, Mr. Kahigah inter alia submitted that the Land Registrar did not have power to cancel titles and he relied on Section 143 (1) of the Registered Land Act, now repealed, under which the titles were issued. He relied on the cases of ***Kuria Greens Limited vs Registrar of Titles & Another (2011) eKLR; Republic vs The Registrar of Titles Mombasa & 2 Others ex parte EMFK Limited (2012) eKLR.***

9. I have considered the matter herein and I am of the view that the motion must succeed, at the very least, on the simple ground that the ex-parte applicants were not given any opportunity of being heard before the Land Registrar made his decision to revoke the titles. It is a cardinal principle of law, that a person ought not to be condemned unheard. This is captured in the latin maxim of *audi alteram partem*. A body or person entrusted with administrative power, ought not to exercise the same, without first hearing from the person who is going to be negatively affected by any order that may be issued by the said authority. It was not proper for the Land Registrar to purport to cancel the titles of the ex-parte applicants without first giving them a hearing.

10. There is also doubt as to whether the Land Registrar had power to revoke the titles in the first place. This was contested by the ex -parte applicants, and the respondent did not in any way demonstrate that the Land Registrar, Nakuru, had power to cancel the titles. I was referred to the two cases of *Kuria Greens* and *EMFK Limited* by counsel for the applicants. The two authorities relate to titles to land issued under the Registration of Titles Act, and not the Registered Land Act but I think the reasoning in them, that it is only the Court which may cancel titles is sound.

11. For the reasons above, I allow this motion and issue the orders of certiorari and prohibition as prayed by the ex-parte applicants. The ex-parte applicants shall also have costs of this motion.

12. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of July, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**NAKURU**

**In presence of :**

Ms. Gitau holding brief for Mr. Kahigah for e-parte applicants.

N/A for respondents.

Court Assistant: Janet.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**NAKURU**