



IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 163 OF 2014

BETWEEN

NJOKI KANJAPETITIONER

AND

MICHAEL DOUGLAS KANJA1ST RESPONDENT
THE DISTRICT COMMISSIONER, LARI DISTRICT2ND RESPONDENT
LARI DISTRICT LAND CONTROL BOARD3RD RESPONDENT
THE DISTRICT LAND REGISTRAR, KIAMBU4TH RESPONDENT
THE ATTORNEY GENERAL5TH RESPONDENT
CO-OPERATIVE BANK OF KENYA LTD6TH RESPONDENT

AND

FAULU KENYA (DTM) LTD INTERESTED PARTY

RULING

1. The petitioner in this matter is the registered proprietor of land parcels known as LARI/KEREITA/T.64, LARI/KIREITA/T.222, LARI/KIREITA/T.73 and LARI/KIREITA/T.230 which she acquired from her late husband and which she hold in trust for all her family members. She avers that the 1st respondent is her grandson with whom she has enjoyed a cordial and trusting relationship. She alleges that he took advantage of this trust as well as her old age and illiteracy to procure the said properties and use them as security for loans from the 6th respondent, the Cooperative Bank of Kenya and the interested party, Faulu Kenya (DTM) Ltd.

2. She was therefore shocked to learn that LARI/KIREITA/T.330 and LR LARI/KIREITA/T.73 may be auctioned by the 6th respondent as a result of the exercise of its

statutory power of sale. She thereafter proceeded to investigate how the properties were charged. To her dismay she found that there were irregularities in the manner in which the consent of the Land Control Board was secured. For example, she alleged that the consents were issued to the petitioner's deceased husband despite the fact that he had died ten years earlier.

3. In order to forestall the disposition of the properties, she moved this Court by way of petition filed under **Article 22** of the Constitution alleging that her constitutional rights particularly under **Article 40** of the Constitution had been violated by the respondents. In her petition dated 8th April 2013, she seeks the following prayers;

- a. *A declaration that the Respondents' actions and omissions violate the Petitioner's constitutional rights under Articles 26, 27, 28, 35, 40, 46, 47, 50 and 57 of the Constitution.*
- b. *A declaration that the 2nd and 3rd Respondents' actions and omissions violate Article 73 of the Constitution.*
- c. *A declaration that the charge registered on LR. NO. LARI/KIREITA/T.230 and LR NO. LARI/KIREITA/T.73 is fraudulent null and void.*
- d. *A declaration that the Land Control Board Meeting, special or otherwise held on or about 6th July, 2011 was illegal, irregular and unconstitutional.*
- e. *A declaration that the Land Control Act does not recognize Special Land Control Board.*
- f. *An order to set aside the said charge registered on 3rd August, 20 11.*
- g. *A declaration that all the monies that may be due to the 6th Respondent in respect of the charge registered on the said LR NO. LARI/KIREITA/T.230 and LR NO. LARI/KIREITA/T.73 shall be paid by the 1st Respondent.*
- h. *A mandatory injunction compelling the 6th Respondent to release to the Petitioner the title deeds in respect to LR NO. LARI/KIREITA/ T.230 and LR NO. LARI/KIREITA/T.73.*
- i. *A permanent injunction restraining the 6th Respondent, whether by itself, its agents, employees, and/or servants from advertising for auction, disposing by way of auction, alienate, transferring interest or in any other way dealing with the Petitioner's properties known as LR NO. LARI/KIREITAI/T.230 and LR NO. LARI/KIREITA/T.73.*
- j. *Compensation for violation of constitutional rights.*
- k. *Costs of the Petition.*

4. In light of the aforesaid facts and prayers, I directed the petitioner to show cause why this matter should not be struck out as it did not raise any constitutional issue or matter of rights and fundamental freedoms for resolution by an application made under **Article 22** of the Constitution.

5. Mr Mwangi urged the court that the matter raised constitutional issues. He submitted that the reason the matter is filed by way of a petition is that the 2nd and 3rd respondents conducted an irregular Land Control Board meeting without the registered owner and the consents issued conferred a benefit to the 6th respondent who registered a charge upon request from the 1st respondent who stole the titles from the petitioner. Counsel submitted that were it not for the fact that the 2nd, 3rd and 4th respondent's failed to follow the law, the transaction would not have happened and as a result of the irregularities the petitioner's rights are violated.

6. Counsel submitted that **Articles 21 and 22** of the Constitution gives the petitioner the right to sue any person and does not restrict rights to sue. He cited the case of *Satrose Ayuma and Others v Registered Trustees of Kenya Railways Staff Retirement Benefit Scheme Nairobi Petition No. 65 of 2010 [2013]eKLR* where the court expressed the view that the application of the Constitution was both horizontal and vertical and as such a case such as this was within the jurisdiction of the court to hear and determine as a petition.

7. I have anxiously reflected on the issue raised and in my view, **Article 40** of the Constitution, which is the core right invoked, obliges the State to protect property. The responsibility of the State in such circumstances is to provide a framework for resolution of such disputes as a means of protecting the property. Various statutory enactments like the *Land Act, Act No. 6 of 2012* and the *Land Registration Act, Act No. 3 of 2012* which repealed previous statutory enactments like the *Registration of Titles Act* fulfil the protection guaranteed by the Constitution by providing an orderly manner of acquisition, holding and disposal of property. Where disputes arise between parties, the ordinary procedures for dispute settlement provided by the State are to be invoked. This is evidenced by the fact that our courts, on a day-to-day basis, deal with land cases within the framework established by the Constitution and law enacted pursuant to Constitutional provisions to protect property rights (See *Tony Munene v Commissioner of Lands and Others Nairobi Petition No. 322 of 2012 [2012]eKLR*). It is therefore unnecessary to have recourse to constitutional provisions to resolve what is in fact an ordinary civil dispute respecting claims to property.

8. The fact that public officials are involved or made party to the suit does not necessarily elevate the case to a constitutional one. I take the view that the involvement of the Government officers was part of the alleged scheme of fraud put in motion by the 1st respondent. As the reliefs show, if the fraud is demonstrated, the charges registered on the properties will be set aside irrespective of the conduct of the said officers.

9. The petitioner has invoked **Article 73** of the Constitution which is part of **Chapter Six** of the Constitution dealing with leadership and integrity. As the Court has stated in several cases; *International Centre for Policy and Conflict & 4 Others v Hon. Uhuru Kenyatta and Others*, **Petition No. 552 of 2012 [2012]eKLR** and *Michael Wachira Nderitu and 3 Others vs Mary Wambui Munene & 2 Others High Court Petition No 529 of 2012 [2012]eKLR*, **Chapter Six** has enforcement mechanisms which must be invoked before the High Court is moved. The persons implicated by the petitioner are civil servants who are subject to the jurisdiction of the Public Service Commission on matters of integrity and leadership under the *Leadership and Integrity Act (Act No. 19 of 2012)*. Furthermore, the application of these provisions is to specific and named officers in whom the responsibilities are given and not offices they occupy as are named in the petition.

10. While the petitioner has called in aid several provisions of the Constitution, her rights will not be prejudiced if the matters are heard in the normal way. The High Court in all its manifestations is guided by the Constitution and the fundamental rights are also realised through the application of ordinary legislation giving effect to property rights.

11. Shorn of all the references to the Constitution, the petitioner's case is an ordinary case where an old lady has been subjected to fraud by her grandson she trusted. The Constitution provides the legal framework for the resolution for such a dispute.

12. The petition is therefore struck out with no order as to costs.

DATED and DELIVERED at NAIROBI this 12th day of May 2014.

D.S. MAJANJA

JUDGE

Mr Mwangi instructed by Mwangi and Partners Advocates for the petitioner.

Mr Nguyo, Litigation Counsel, instructed by the State Law Office for the 2nd, 3rd, 4th, 5th respondents.

Mr Ayisi instructed by Muthaura Mugambi Ayugi and Njonjo Advocates for the 6th respondent.



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