



SUPREME COURT OF KENYA
TORINO ENTERPRISES LIMITED V. HON. ATTORNEY GENERAL
SC Petition NO. 5 (E006) OF 2022
DATE OF OPINION: 22nd September 2023
MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court dismisses the appeal and orders each party to bear its costs.

Background

On 21st February 1964, a freehold title in Embakasi, measuring 5639 acres was alienated and granted to Kayole Estates Ltd. Thereafter, this parcel of land was transferred to the defunct Nairobi City Council (**NCC**) for valuable consideration. A transfer was duly registered on 22nd November 1971. In 1973, the parcel of land was subdivided into eight parcels. One such parcel is LR No. 22524, Grant No. IR 85966 measuring 83.910 Hectares (**Suit Property**).

At the High Court, Torino Enterprises Limited (the *appellant*), claimed that it acquired the suit property from Renton Company Ltd, a company it claimed had acquired the property from NCC through an allotment letter dated 19th December 1999. It also argued that the Department of Defence (**DoD**) had encroached, fenced off 90 acres, and unlawfully trespassed on its property. Accordingly, it sought various declarations, orders and damages for violation of its rights to property. The trial Court held that DoD was in contravention of Article 40 (3) of the Constitution and its occupation, retention, and continued occupation of a portion of the suit property amounted to an illegal compulsory acquisition.

On first appeal, the Court of Appeal overturned the High Court and dismissed the appeal on grounds that the suit property was not unalienated government land within the meaning of Section 2 of the Government Lands Act (repealed), but was private property and as a result the Commissioner of Lands lacked the power to alienate or allocate it. Consequently, the court concluded that neither Renton Company Ltd, nor the appellant had acquired a valid interest in or over the suit property.

In the appeal before the Supreme Court, the Court framed the following issues for determination:

1. *Whether the superior courts below had jurisdiction to determine the legality of title to the suit property;*
2. *Whether the appellant has a valid title to the suit property;*
3. *Whether DoD acquired a good title to the suit property;*
4. *Whether the impugned documents were procedurally adduced; and*
5. *Reliefs, if any, available to the parties.*

Upon consideration, the Supreme Court has allowed the appeal for the following reasons:

1. **Issue 1:** Both superior courts below had jurisdiction to determine the legality of title to the suit property.
2. **Issue 2:**
 - i. Once an individual or entity acquires any un-alienated government land, consequent upon registration of title in accordance with the provisions of the applicable law, such land transmutes from public to private land;

- ii. Consequently, upon alienation to Kayole Estates Ltd in 1964, the suit property was converted from un-alienated government land to private freehold land;
- iii. There being no question as to the regularity and legality of the process by which the said land was alienated in favour of Kayole Estates Ltd, the same was effectively divested from the purview of the regulatory regime of the Government Lands Act (now repealed);
- iv. The Commissioner of Lands therefore lacked the authority, to allocate the Suit Property to Renton Company Ltd or the appellant as he purported to have done; and
- v. By the same token, there being no evidence on record to the contrary, we find that the defunct Nairobi City Council acquired valid title to the Suit Property from Kayole Estates Ltd through purchase.

In any event,

- i. An Allotment Letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein;
 - ii. An allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein;
 - iii. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an Allotment Letter; and
 - iv. In view of the foregoing, the appellant was not an innocent purchaser for value without notice, entitled to orders for restoration or compensation.
3. **Issue No. 3:**
- i. Although DoD proved that it has been in exclusive occupation and use of the suit property from 1986 to date, with the full knowledge and authority of NCC and the Commissioner of Lands, it failed to prove that it had acquired valid title to the suit property; and
 - ii. As matters currently stand, title to the suit property remains vested in Nairobi County which is the legal successor to the defunct Nairobi City Council.
4. **Issue No. 4:** Production in evidence of public documents within the meaning of Section 79 of the Evidence Act require certification in accordance with Sections 68 (1)(e)(f), (2) (c) and 80 of the Evidence Act.
5. **Issue No. 5:** Appeal dismissed and each part ordered to bear its own costs before the High Court, Court of Appeal and the Supreme Court.

Accordingly, the Supreme Court grants the following orders:

- i. The appeal dated 14th March 2022 and filed on 16th March 2022 is hereby dismissed; and***
- ii. Each party shall bear its own costs.***

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