



REPUBLIC OF KENYA
THE SUPREME COURT OF KENYA
DICKSON NGIGI NGUGI v. COMMISSIONER OF LANDS & OTHERS
(Coram: Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ)

SC PETITION NO. 9 OF 2019
DATE OF JUDGMENT: 31ST MARCH, 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 dismissed the appeal with costs awarded to the respondent and the interested parties.

Background

The appeal arose as a result of a controversy concerning proprietary interest over unalienated government land which was initially allocated to Dickson Ngigi Ngugi, the appellant, by a letter of allotment under the Government Lands Act (repealed) subject to the fulfilment of certain conditions within a period of 3 years. When the appellant failed to fulfil the pre-set conditions within the stipulated time, ownership of the suit land reverted to the Government. Subsequently, the Commissioner of Lands (the respondent) allocated portions of the suit land to third parties (the interested parties) and a portion to the appellant.

Aggrieved by the decision of the respondent issuing him a portion of the suit land as opposed to the entire suit property, the appellant filed a judicial review application in the High Court seeking orders that the respondent be directed to issue to him a lease of the entire suit land and to be prohibited from proceeding with the sub-division of the suit land or alienating it to the interested parties. The High Court dismissed the appellant's application on two grounds; first, it held that the letter of allotment expired after the stipulated 3-year period hence there was nothing for the appellant to enforce as against the respondent. Secondly, it held that the appellant ought to have first sought an order to quash the allotment to the interested parties. On first appeal, the Court of Appeal upheld the decision of the High Court.

In the second appeal before the Supreme Court, respondent and interested parties in their respective submissions, questioned the Court's jurisdiction to determine the appeal since it did not raise any issue or issues involving the interpretation or application of the Constitution.

Upon consideration of the same, the Supreme Court has dismissed the appeal for reasons that:

1. The appeal is incompetent and the Court has no jurisdiction to entertain it. The appellant failed to directly point to the specific instances where the Court of Appeal erred in its interpretation and application of the Constitution; and that the matter turned on purely factual issues as applied to the Government Lands Act (repealed).
2. The appeal presents neither exceptional circumstances nor opportunity for the Court to provide interpretive guidance on the Constitution.
3. The Court awards costs to the respondent and the interested parties.

