



Dina Management Limited v County Government of Mombasa & 5 others (Petition No. 8 (E010) of 2021),

Certificate of Title no longer conclusive evidence of proprietorship.

The case involved the allocation of a parcel of land in Nyali Beach, Mombasa to H.E. Daniel T. Arap Moi. Subsequent transfers of the property occurred, leading to its acquisition by Dina Management Limited from Bawazir & Company. However, their ownership rights were abruptly challenged when the County Government of Mombasa, without prior notice, forcefully entered the property and proceeded to demolish the perimeter wall, effectively flattening the entire property.

To assert its ownership and seek redress for the violations committed, Dina filed a lawsuit at the Environment and Land Court asserting its ownership of the suit property and sought orders of a declaration that its rights under Article 40, 27(1) & (2), 29, 47(1) & (2) of the Constitution had been violated and a permanent injunction against the County Government to restrain it from interfering with the suit property. Their claim rested on the argument that they were the rightful owners of the property and that the actions taken by the County Government infringed upon their constitutional rights.

In response, the County Government of Mombasa filed a separate petition, disputing Dina's ownership claim and asserting that the land in question was public land, therefore nullifying Dina's acquisition.

However, undeterred by the outcome, Dina took their case to the Supreme Court of Kenya as a final effort to overturn the previous rulings. The Supreme Court granted Dina the opportunity to present their arguments before the court.

In a unanimous decision, the Supreme Court dismissed Dina's appeal and upheld the judgments of the lower courts. The court determined that Dina's ownership of the property was not protected under Article 40 of the Constitution of Kenya. It emphasized that the initial allocation of the land to the first registered owner, H.E. Daniel T. Arap Moi, was conducted in an irregular and flawed manner. The court stated that the doctrine of indefeasibility of title could not be used to justify irregularities and illegalities in the allocation of public land. It asserted that merely possessing a lease or title was insufficient to establish rightful ownership.

The Supreme Court's rationale was based on the interpretation of Article 40 of the Constitution, which guarantees the right to property with certain limitations. Article 40(6) restricts this right when the property in question has been unlawfully acquired. Since it was established that Daniel Arap Moi, the initial registered owner, did not acquire the title properly, Dina's ownership of the property could not be protected under Article 40 of the Constitution. As the legitimacy of the title was in question, Dina could not invoke the doctrine of bona fide purchase.

The Supreme Court's decision highlights the critical importance of conducting thorough due diligence and investigating the validity and legality of property titles before engaging in transactions. It placed the burden of proof on property buyers and other stakeholders to ensure the legality and compliance of the entire allocation process.

By dismissing Dina's appeal, the Supreme Court established a new legal precedent, deviating from the previous position based on the Torrens System, where a certificate of title was considered conclusive evidence of proprietorship. The ruling emphasized the significance of adhering to lawful procedures in the acquisition of land, thereby safeguarding the integrity of property transactions and protecting the interests of both buyers and sellers.

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