



Endere & 2 others v District Land Registrar Kajiado South & Central & another (Judicial Review Miscellaneous Application E014 of 2022) [2023] KEELC 17097 (KLR) (27 April 2023) (Judgment)

Neutral citation: [2023] KEELC 17097 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E014 OF 2022**

LC KOMINGOI, J

APRIL 27, 2023

IN THE MATTER OF: ARTICLE 40(3) & 47 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: SECTIONS 9, 10, 34 AND 101
OF THE LAND REGISTRATION ACT, NO. 3 OF 2012.**

AND

**IN THE MATTER OF: SECTIONS 4, 6, 7 AND 9 OF THE
FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015.**

AND

**IN THE MATTER OF: AN APPLICATION BY THE APPLICANTS FOR OFFICIAL
AND CERTIFIED COPIES OF THE GREEN CARDS AND FOR OFFICIAL SEARCH
RESULTS FOR THREE PARCELS OF LAND RESPECTIVELY KNOWN AS TITLE
NUMBERS KAJIADO/ KISAJU/4653, KAJIADO/KISAJU/4654 & KAJIADO/KISAJU/4655.**

AND

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL
REVIEW PROCEEDINGS FOR THE ORDERS OF MANDAMUS AND PROHIBITION.**

BETWEEN

PAMELA CHEPCHUMBA ENDERE 1ST APPLICANT

FRANCIS BIDALI BIDALI 2ND APPLICANT

SAMSON BOGONKO 3RD APPLICANT

AND

**DISTRICT LAND REGISTRAR KAJIADO SOUTH &
CENTRAL 1ST RESPONDENT**



JUDGMENT

1. This is the Notice of Motion dated 20th December, 2022 brought under;
(Under Sections 9, 10, 34 and 101 of the *Land Registration Act*; Section 9 of the *Fair Administrative Action Act*; and Section 13 (7) (b) of the *Environment and Land Court Act*).
2. It seeks Orders;
 1. That the Honourable Court be pleased to issue the Judicial Review Orders of:
 - a. Mandamus to compel the 1st Respondent to produce the Originals And to issue to the ex parte Applicants the certified copies of green cards and official search results for each of the 3 parcels identified known as Title Number Kajiado/Kisaju/4653, Kajiado/Kisaju/4654 and Kajiado/Kisaju/4655;
 - b. Prohibition to restrain the 1st Respondent and its officers from howsoever suppressing the ex parte Applicants' title records within their custody or in any manner restricting or interfering with the Applicant's lawful transactions and user over their parcels of land known as Title Number Kajiado/Kisaju/4653, Kajiado/Kisaju/4654 and Kajiado/Kisaju/4655.
 2. That the Costs of these proceedings be borne jointly and/or severally by the Respondents.
3. The grounds are;
 1. The Applicants are severally registered as absolute proprietors of all those 3 parcels of Land respectively known as Kajiado/Kisaju/465, Kajiado/Kisaju/4654 and Kajiado/Kisaju/4655. They hold Title Deeds validly issued by the 1st Respondent herein.
 2. The 1st Respondent is a public office, and the custodian of the land registers including those for these 3 parcels of land. Further:
 - a. Section 9 of the *Land Registration Act* tasks the 1st Respondent with the public statutory duty of maintaining the Land Register and related documents in a secure, accessible and reliable format.
 - b. Section 10 thereof obligates the Registrar to make the register accessible to the public.
 - c. Section 34 thereof also entitles every Applicant to official search results for every subsisting entries in the land register, together with certified copies of any documents on paying prescribed fees.
 3. The 2nd Respondent is joined to these proceedings as the Government Chief Legal Advisor so mandated pursuant to Article 156 of *the Constitution*, and legally empowered to institute and defend proceedings by or against the Government, including those instituted against the 1st Respondent herein.
 4. This dispute is that since January 2021, the Applicants have been unlawfully and unreasonably restricted from freely transacting and dealing with their aforesaid parcels by the fact that the



1st Respondent illegally neglected, failed and or refused to furnish them with certified copies of the green cards or official search results, despite due application.

5. More particularly, the Applicants intended to subdivide and subsequently utilize the parcels in a joint venture with third parties and for commercial benefit through extensive real estate projects. However, the 1st Respondent failed to provide certified copies of the green cards, effectively frustrating their request for official search, results and stalling the intended subdivision process and latter commercial activities.
6. The 1st Respondent therefore failed to perform their public statutory duty to maintain and keep the Register as identified above, and to issue the said land records to the Applicants. The 1st Respondent also neglected, failed and refused to comply with the Applicant's demand letters dated 18th January 2021, 23rd August 2021 and 14th October 2022 to issue the certified copies of the green cards for the 3 parcels of land.
7. The 1st Respondent's action in this case is illegal, irrational and procedurally unfair. It breaches provisions of the [Land Registration Act](#) and the [Fair Administrative Action Act](#), with the overall result of infringing on the Applicants' constitutional right to property protected by Article 40 of [the Constitution](#).
4. The Notice of Motion was duly served on the Respondents as shown by the affidavit of Nicholas Muinde Kisilu, Court Process Server on the 1st February, 2023.
5. Despite service the Respondents neglected to file any responses. The Notice of Motion is therefore unopposed.
6. It is the Exparte Applicants' case that they are the registered owners of Land Parcel Numbers Kajiado/Kisaju/4653, Kajiado/Kisaju/4654 and Kajiado/Kisaju/4653 respectively.
That they hold Title Deeds validly issued by the 1st Respondent herein.
7. It is also there case that since January 2021 the Applicants have been unlawfully and unreasonably restricted from freely transacting and dealing with their aforesaid parcels by the fact that the 1st Respondent illegally neglected, failed and or refused to furnish them with certified copies of the green cards or official search results despite due application.
8. It is their claim that the 1st Respondent failed to perform their statutory duty to maintain and keep their register and to issue the said land records to the Applicants.
9. It is their submission that the 1st Respondent's inaction is illegal, irrational and procedurally unfair and ultra vires. It breaches the Provisions of the [Land Registration Act](#) and the [Fair Administrative Action Act](#), with the overall result of infringing on the Applicants' Constitutional Right to property Protected by Article 40 of [the Constitution](#).
They pray that the reliefs sought be granted.
10. The Exparte Applicants' have annexed title deeds for their respective parcels to confirm that they are the registered owners.
11. They have also attached three letters to the 1st Respondent dated 18th January 2021, 23rd August 2021 and 14th October 2022. Seeking to be supplied with the said documents.

It is the Exparte Applicant's case that the said letters did not elicit any response hence this application



12. I have considered the Exparte Applicant's application. As stated earlier there are no responses by the Respondents.

Nyamu J in Exparte Selex Systemic Interrogated Case Stated thus;

“Judicial review plays an important role in our society which is to check excesses omnipotence, arbitrariness abuse of power and also accountability and maintenance of constitutionalism and the rule of law.....”

13. I find that the 1st Respondent was under obligation to respond to the letters by the Exparte Applicants.

14. In conclusion , I find merit in the Notice of Motion dated 20th December 2022 and I grant the orders sought namely:

- a. That an Order of Mandamus is hereby issued to compel the 1st Respondent to produce the Originals and to issue to the Exparte Applicants certified copies of Green Cards and official search results for each of the three parcels known as Kajiado/ Kisaju/4653, Kajiado/ Kisaju/4654 and Kajiado/Kisaju/4655.
- b. That an order of Prohibition is hereby issued to restrain the 1st Respondent and its officers from suppressing the Exparte Applicants' title records within custody or in any other manner restricting or interfering with the applicant's lawful transactions and use over their parcels of land known as Kajiado/Kisaju/4653, Kajiado/Kisaju/4654 and Kajiado/Kisaju 4655.
- c. That costs be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 27TH APRIL 2023 AT KAJIADO.

L. KOMINGOI

JUDGE.

In the Presence of:

Ms. Said for Mr. Ochieng for the Exparte Applicant.

N/A for the Respondents.

Court Assistant - Mutisya

