



**Kinoro v Land Registrar Murang'a & another (Environment and Land Judicial Review  
Miscellaneous Application E030 of 2022) [2023] KEELC 18483 (KLR) (29 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18483 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E030 OF 2022**

**LN GACHERU, J**

**JUNE 29, 2023**

**BETWEEN**

**JAMES KAMAU KINORO ..... APPLICANT**

**AND**

**THE LAND REGISTRAR MURANG'A ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Applicant moved this Court vide Chamber Summons dated November 30, 2022 and sought for orders; -

1. That the Applicant be granted leave to apply for:

- a. An order of *certiorari* removing to this Honourable Court for purpose of being quashed the decision of the Land Registrar, Murang'a to register the subdivisions of the Land Parcel Number Loc. 2/ Kangari/5107, into Land Parcel Numbers; Loc.2/ Kangari/5827, Loc.2/Kangari/5828, Loc.2/Kangari/5829, Loc.2/Kangari/5830 and Loc.2/Kangari/5831.
- b. An order of *mandamus* directing the Land Registrar, Murang'a to cancel the titles for land parcels Loc.2/ Kangari/5827, Loc.2/Kangari/5828, Loc.2/Kangari/5829, Loc.2/Kangari/5830 and Loc.2/ Kangari/5831.
- c. An order of *mandamus* directing the Land Registrar, Murang'a to reconsolidate Land Parcel Loc. 2/Kangari/5827, Loc. 2/



Kangari/5828, Loc.2/ Kangari/5829, Loc.2/Kangari/5830 and Loc.2/ Kangari/5831 in the name of Peter Mwangi Wambugu.

- d. An order of prohibition restraining the Land Registrar, Murang'a from registering any transfer and sub-division of Land Parcel No. Loc.2/ Kangari/5107, pending the filing of a fresh succession cause in regards to the Estate of Peter Mwangi Wambugu.
- e. That the Grant of leave herein does operate to restrain the Respondents herein from transferring, transmitting, registering any instruments or in any way interfering with land parcel Numbers Loc.2/ Kangari/5827, Loc.2/Kangari/5828, Loc.2/ Kangari/5829, Loc.2/Kangari/5830 and Loc.2/ Kangari/5831.

2. That the costs of this application be in favour of the Applicant.
2. The Application is predicated on seventeen grounds stated on its face and the Supporting Affidavit of James Kamau Kinoro, sworn on the 30<sup>th</sup> November, 2022. The Applicant posited that the suit property, Loc.2/Kangari/5107, is part of the estate of Peter Mwangi Wambugu. That some of the beneficiaries of the said estate took out Letters of Administration and the grant was subsequently confirmed. That he later applied for revocation of grant, and filed a protest as creditor claiming 0.2 acres of the suit property, and which was allowed by the Court.
3. He further averred that the trial Court did not allow further applications on account that the said Court was functus officio. That despite there being a revoked grant, transmission of the estate was done as per the unrevoked grant. He terms the registration process as being ultra vires, illegal, null and void ab initio. It was his deposition that unless the title deeds are revoked, he risks losing his property right.
4. The Respondents entered appearance and filed Grounds of Opposition and a Replying Affidavit.
5. On the Grounds of Opposition, the Respondent raised four Grounds;-
  1. That there is a dispute as to the ownership of the suit parcels, which requires that oral and/ or documentary evidence be adduced and as such this is an issue that cannot be determined in a Judicial Review Application.
  2. That cancellation of the titles to the suit parcels is an issue that requires an investigation as to the manner in which they were issued and as such, this is not an issue that can be determined in Judicial Review proceedings.
  3. That the registered owners of the suit parcels are not party to these proceedings: this Honourable Court cannot therefore cancel their titles without granting them an opportunity of being heard.
  4. That this Application is misconceived, mischievous, an after-thought and an abuse of the Court process hence subject for dismissal.
6. In the Replying Affidavit sworn by E.M Mputhia, the Land Registrar, the Respondents deponed that the land parcel Loc.2/Kangari/5107, was a sub-division of Loc.2/Kangari/1040. That the said land was registered in the name of Peter Mwangi Wambugu, and he was issued with said title on January 19, 2016. The Land Registrar deponed that the suit land was transmitted and sub-divided as per the Grant of Letters of administration issued on June 27, 2018. That they have not been served with any Orders of revocation and the transmission registered is therefore lawful. That the issues raised cannot be canvassed by way of a Judicial Review process, as it may necessitate the calling of witnesses.



Additionally, that the registered proprietors are not part of the proceedings as such their titles cannot be cancelled.

7. This Judicial Review was canvassed by way of written submissions.
8. The Applicant filed his submissions and raised three issues for determination by this Court.
9. On whether leave should be granted, he submitted that the registration undertaken by the Respondents was illegal, as there was an order for revocation. He further submitted that he has met the threshold for grant of orders of judicial review as enunciated in the case of *Republic vs Kenya Revenue Authority Commissioner Ex Parte Keycorp Reals Advisory Limited* {2019}eKLR, where the Court when citing the case of *Meixner & Another vs AG*{2005} KLR 189 enlisted what an Applicant must demonstrated before leave can be granted. In submitting that he is deserving of the orders sought, he relied on the cases of *Republic vs National Council for Persons with Disabilities & Another Ex Parte Daniel Njiru Ngai* {2021}eKLR, where the Court observed that a Court need not delve deeply into the arguments by parties when exercising the discretion. He also relied on and the case of *Samuel Maina Njoroge vs Land Dispute Tribunal Ruiru & 2 Others* {2019} eKLR, where the Court observed that the availability of alternative mechanism should not be a bar for grant of judicial review reliefs.
10. On whether injunctive orders should be granted, the Applicant submitted that he has substantially invested in the suit property and should the property change hands, he will suffer substantially. He further submitted that he has established the three principles for grant of injunctions as were elaborated in the case of *Giella vs Cassman Brown & Co Advocates Ltd* {1975}E.A 358. He invited this Court to the pronouncement of the Court in the case of *Sauti Communication Limited vs Communication Authority of Kenya*{2020}eKLR, where the Court opined that grant of leave can operate as stay.
11. On who should bear costs, he urged this Court to find and hold that he is entitled to the costs of this Judicial Review.
12. This Court has perused the Applicant's application and the annexures thereto. It is evident that there was a succession cause filed in Kigumo SPM Succ' No. 92 of 2017; in the Matter of Estate of Peter Mwangi Wambugu. The Applicant herein was an objector in the said succession proceedings where Loise Wambui Mwangi and Mary Waithira Githinji, were the Petitioners. As per the proceedings attached, this Court notes that vide the Ruling of October 4, 2018, the trial Court revoked the Grant issued to the Petitioners on June 22, 2018. It is evident from the copy of the green card that the suit property was registered in the name of the Petitioners on June 27, 2018 and on April 12, 2022, the title deed was closed for sub-division.
13. The Respondents are opposed to this Application on the premise that the cancellation of title requires investigation and cannot be determined by way of Judicial Review, since evidence has to be adduced. It is relevant to point out that the Applicant's application emanates from a succession proceedings, and the parties to the succession cause are not parties to the proceedings herein.
14. Having analyzed the application and the annexures thereto, the Grounds of Opposition, the Replying Affidavit and the Annexures thereto, and the submissions together with the authorities, this Court must first interrogate whether it has the jurisdiction to handle the case.
15. Jurisdiction grants this Court the power to entertain any proceedings placed before it. Without jurisdiction, this Court cannot make any pronouncement. Matters jurisdiction were well elaborated



in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989): where the Court held:

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

16. It is with no doubt that the matters raised herein touch on land, which is a preserve of this Court within the meaning of Section 13 of the *Environment and Land Court Act*. It is also not in dispute that the facts giving rise to the filing of this application arose from a succession proceeding over the estate of one, Peter Mwangi Wambugu, who was the registered proprietor. As per the attached copy of green card, entry 4 informs this Court that the outcome of the Succession Cause No. 92 of 2017, was registered against the suit property on June 27, 2018. However, subdivision occurred on 12<sup>th</sup> April 2022, when the title deed was thus closed for sub-division; it is not clear to whom land was issued to.
17. As per the ruling of the trial Court of April 15, 2021, attached to the application, there were directions on how land was to be shared. This Court notes that after the ruling of the trial Court, an application was filed in Court and the Court made the following observations, “this Court has already ruled on the protest filed and if the parties still have a protest they should appeal against the ruling of the Court”.
18. While the issues raised in this Application are prerogative orders and which this Court has jurisdiction as donated by Section 13(7)(b) of the *Environment and Land Court Act*, it is certain that it emanates from a succession proceeding. It is also not clear to this Court whether the Applicant attempted to seek audience with the Court over the inability to effect the Orders, as this Court has not perused any application post the ruling of the trial Court.
19. Several Courts have pronounced themselves on the powers of a Succession Court to order for cancellation of title. The point at which an Applicant can move this Court was elaborated in the case of *In re Estate of Leah Wanguii Nding'uri (Deceased)* [2020] eKLR which this Court finds to be very persuasive. The Court held:

“In this case, the respondents filed this cause and brought themselves under the provisions of the *Law of Succession Act*. The grant that was issued to the respondents was revoked. It means that, all actions taken by the respondents including the registration of the deceased’s property in their names was rendered a nullity. Unlike the situation described above by J. Musyoka, the Respondents having brought themselves within the *Law of Succession Act*, this court has jurisdiction to order cancelation of the said titles so that the land can revert back to the deceased’s names and that will enable the applicants to comply with the consent order of April 29, 2008, appointing them as administrators of the deceased’s estate and requiring them to show the totality of the deceased’s estate. It is only after the administrators have finished administering the estate that the respondents can file suit in the ELC to pursue their rights.”



20. Even so orders for cancellation of title over the Estate of a deceased person in which case the administrators are not part thereof will amount to breach of the rules of natural justice. The Court in Barasa W. Wabomba & another v Omunyin Kituyi & 2 others [2016] eKLR held:

“To order the cancellation of the titles in the names of those parties, including that of the 2<sup>nd</sup> appellant, at a stage subsequent to those proceedings in which they were not heard or to which they were not privy to, was in our view in breach of the principles of natural justice.”

21. It is not clear whether the estate of Peter Mwangi Wambugu has been successfully administered for this Court to entertain any proceedings emanating against it. Therefore, this Court cannot entertain any proceedings, without that evidence. It appears to this Court that the Applicant has not exhausted the available remedy and this application is meant to oust the jurisdiction of other competent Courts.

22. It is no doubt that issues of ownership of land is at the core and just like the Respondents averred, they were not parties to the previous proceedings and cancellation of title will require investigations and determining the issues herein by way of Judicial Review will not be judicious. This Court agrees with the sentiments of the Court in Sanghami Investment Ltd v Officer in Charge Nairobi Remand and Allocation Prison (2007) I EA 354 as was quoted by the Court in Republic v Commissioner of Land, Director General & 8 others [2013] eKLR, where the Court observed that disputes concerning land will require viva voce evidence, which will thus oust the jurisdiction of judicial review proceedings. It held:—

“Whereas it is true that the underlying dispute herein is ownership of the land, Judicial Review proceedings is not a forum where such a dispute can be adjudicated and determined as there would be a need for viva voce evidence to be adduced on how the land was acquired and came to be registered in the names of the applicant; whether the title is genuine or not. In cases where the subject matter or the question to be determined involves ownership of land, and the rights, to occupy land namely occupation, and disposition there would be need to allow viva voce evidence and cross examination of the witnesses which is not available in Judicial Review proceedings.”

23. Having stated so, this Court finds and holds that it does not have the requisite Jurisdiction to entertain the instant Judicial Review application and proceeds to find and hold that the Applicant has failed to prove his case on the required standard.

24. For the above reasons, the instant Judicial Review application is hereby dismissed entirely as the Court does not have Jurisdiction.

25. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29<sup>TH</sup> DAY OF JUNE, 2023.**

**L. GACHERU**

**JUDGE**

**Delivered online in the presence of; -**

Exparte Applicant – Absent

1<sup>st</sup> Respondent- Absent

2<sup>nd</sup> Respondent – Absent



Court Assistant – Joel Njonjo

**L. GACHERU**

**JUDGE**

**JUNE 29, 2023**

