



Sein v County Public Land Registrar & another; Sein (Interested Party) (Judicial Review E001 of 2024) [2025] KEELC 1447 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1447 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

JUDICIAL REVIEW E001 OF 2024

LC KOMINGOI, J

MARCH 20, 2025

IN THE MATTER OF ARTICLE 10, 22, 23(3)(F), 40, 47, 48, 50 OF THE CONSTITUTION

**IN THE MATTER OF SECTION 7(1) AND 9(1)
OF THE FAIR ADMINISTRATIVE ACTION ACT**

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT

BETWEEN

PASHA SEIN EXPARTE APPLICANT

AND

COUNTY PUBLIC LAND REGISTRAR 1ST RESPONDENT

OFFICE OF THE COUNTY ATTORNEY, KAJIADO 2ND RESPONDENT

AND

KANAI OLE SEIN INTERESTED PARTY

JUDGMENT

1. This is the Notice of Motion dated 13th May 2024 brought pursuant to Article 23(3)(f) and 47 of *the Constitution*; Section 8 and 9 of the *Law Reform Act*; Order 53 Rule 1(1), (2) and (3) of the Civil Procedure Rules seeks and all other enabling Laws and seeks;
 - i. A writ of certiorari to call into the Court and quash the proceedings, findings and decision made by the Respondent over parcel of land allotment No. BI41 (Formerly LR. No 9/ Business) made on 13th December 2023 and communicated on 13th February 2024 via letter dated 2nd February 2024.



- ii. A Judicial Review order of prohibition prohibiting the Respondent and Interested Party from proceeding with the execution of the foresaid decree until further orders of this court.
 - iii. Costs of this Application be awarded to the ex-parte Applicant.
2. The grounds are on the face of the Application and are set out in paragraphs 1 to 12. It is supported by the Affidavit of Pasha Sein, the Ex parte Applicant herein. He claims that he is the duly registered owner of plot No. B141 (Formerly LR No. 9/Business) and had been utilising it from 2007. On 6th December 2003, he received a message on phone inviting him for a dispute resolution meeting at Kajiado Lands Office following a complaint from his brother Alfred Kanai Sein, the Interested Party herein.
 3. He avers that a dispute resolution meeting was held on 13th December where the Interested Party raised an issue of ownership of plot No. B141 (Formerly LR No. 9/Business Sultan Hamud Trading Centre). The Interested Party had nothing to prove why he was contesting the ownership while the ex parte applicant claims that she produced documents to prove her ownership.
 4. On 13th February 2024 she received a letter dated 2nd February 2024 notifying her to surrender the letters of allotment for plot No. B141 (Formerly LR No. 9/Business Sultan Hamud Trading Centre) so that it can be registered to the Interested Party. This decision was communicated by the County Executive Committee Member, in charge of Lands and Physical Planning. He stated that the County Executive Committee Member in charge of Lands and Physical Planning did not invite her for a dispute hearing meeting. He questioned the dispute hearing on the grounds that the Committee that presided over the hearing was different from the Committee that rendered the decision and the decision was therefore erroneous.
 5. She averred that the Respondents actions were ultra-vires since they had no authority to determine land ownership and divesting her of her right to land whose authority lay with this Court. He added that the decision was unjust and unfair and did not explain how it was arrived at since his evidence had been ignored and was not considered therefore denying her right to a fair hearing.
 6. He averred that he had asked to be supplied with certified copies of the proceedings and findings of the meeting and had also tried to register a restriction against the plot unsuccessfully. He therefore seeks the intervention of this Court to aid in upholding her Constitutional rights and quashing the decision over plot No. B141 (Formerly LR No. 9/Business Sultan Hamud Trading Centre).
 7. The 1st and 2nd Respondents entered appearance but did not file their response.
 8. The Interested Party neither entered appearance nor filed his response.
 9. This application was canvassed by way of written submissions.

The Ex parte Applicant's Submissions

10. Counsel submitted that the hearing was contrary to Fair Administrative Action under Article 47 of *the Constitution* and an order or certiorari should thus be issued to quash it as was held in R vs Kenya National Examination Council ex-parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR. It was added that ex-parte applicant was summoned by the Kajiado County Dispute Resolution Committee but the decision was issued by the County Executive Committee Member in charge of Lands and Physical Planning thus a procedural impropriety because she was not accorded an opportunity to be heard by the County Executive Committee Member in charge of Lands and Physical Planning.
11. Counsel submitted that the County Executive Committee Member in charge of Lands and Physical Planning did not have statutory authority to issue such a decision and only the Court was clothed with



jurisdiction to determine questions of fundamental rights and freedoms citing R vs Kenya Revenue Authority ex parte Style Industries Ltd [2019] eKLR.

Analysis and determination

12. I have considered the Notice of Motion, the written submissions, the authorities cited and statutes and find that the issue for determination are:
- i. Whether the Ex parte Applicant is entitled to the reliefs sought;
 - ii. Who should bear the costs of this application?
13. The Ex-parte Applicant claims that he was invited for a dispute hearing regarding her plot No. B141 (formerly LR No. 9/Business) Sultan Hamud Trading Centre sometime in December 2023 which he attended and produced documents as evidence of ownership of the said property. He claims that his brother, the Interested Party had no documents to support this claim. However in February 2024 he received a letter asking him to surrender the letter of allotment for the said plot on grounds that the original owner was Kanai Ole Sein.
14. He therefore seeks a writ of certiorari to quash the decision on grounds that it was erroneous, ultra vires and an infringement of his right to property and right to fair administrative action without reasons.
15. *The Constitution* of Kenya through Article 159 (2)(c) recognizes the use of Alternative Dispute Resolution methods including traditional dispute resolution mechanism as forms of dispute resolution that aid in access to justice. However, such resolution should be within the statutory and administrative precincts and should uphold the tenets of *the Constitution* which include right to fair trial and right to be heard.
- Article 159 (2)(c)- alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
- (3) Traditional dispute resolution mechanisms shall not be used in a way that-
 - (a) contravenes the Bill of Rights;
 - (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
 - (c) is inconsistent with this Constitution or any written law.
16. The Court has perused the said letter dated 2nd February 2024 from the County Public Land Registrar, the 1st Respondent herein. Indeed the letter asks the Ex-parte Applicant to surrender her allotment letter. However, there are no proceedings or minutes of the hearing on how the hearing was conducted. This Court has no record of who testified, what was said, evidence produced or any other material information regarding the said hearing. The ex-parte applicant stated that was not supplied with the said proceedings. The Ex-parte Applicant has a right to information as enshrined under Article 35 of *the Constitution* which has been curtailed by the refusal to issue him with the proceedings that apparently divested him of his property. Article 47 of *the Constitution* also categorically stipulates that where a person's fundamental freedom is likely to be affected as a result of an administrative action, then the person has a right to be given reasons for the action:

Article 47(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.



- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
17. If such information cannot be afforded, how is the Court expected to satisfy itself that a fair hearing under Article 50, of *the Constitution* was accorded? It is also a Constitutional right under Article 40(3) that the State shall not deprive a person of their property without reason:
- Article 40 (3); “The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation-
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
- (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-
- (i) requires prompt payment in full, of just compensation to the person; and
- (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
18. Is the Ex-parte Applicant therefore entitled to the writ of certiorari as sought? The Court of Appeal in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR) went into great detail to explain when judicial review remedies should be granted. The Court stated:
- “...an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons...”
19. Having pronounced that this Court is not satisfied that the rules of natural justice were complied with by the Respondents in arriving at the decision for the surrender of the Ex-parte Applicant’s allotment letter, I am satisfied that the Exparte Applicant is entitle to the writ of certiorari to quash decision in the letter dated 2nd February 2024.
20. The Ex parte Applicant also prayed for an order of prohibition against execution of the said directive. Once again, the Court of Appeal in the above cited case of Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 held:
- “Prohibition ... It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice...”
21. I find that the Ex parte Applicant is entitled to grant of prohibition against the directive to surrender his allotment letter because the said directive was issued against the rules of natural justice.
22. As costs follow the event, the Ex-parte Applicant is awarded costs of this suit.
23. The disposal orders are thus:



- i. A writ of certiorari is hereby issued quashing the proceedings, findings and decision of the Respondents over parcel of land allotment No. BI41 (Formerly LR. No 9/Business) in the letter dated 2nd February 2024.
- ii. An order of prohibition is hereby issued against the Respondents prohibiting them and the Interested Party from proceeding with the execution of the aforesaid decision.
- iii. The Ex-parte Applicant is awarded costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF MARCH 2025.

L. KOMINGOI

JUDGE.

In the Presence of:

Mr. Musili for the Exparte Applicant.

Mr. Oronga for the Respondents.

Court Assistant – Mutisya.

