



REPUBLIC OF KENYA



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Republic v County Land Register; Njoka (Exparte Applicant); Njoka (Suing as the Legal Representative of Alice Kahaki Njoka) (Interested Party) (Environment and Land Case Judicial Review Application 1 of 2022) [2023] KEELC 18987 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18987 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION 1 OF 2022
LA OMOLLO, J
JULY 27, 2023

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY LAND REGISTER RESPONDENT

AND

LUCY WANJIRU NJOKA EXPARTE APPLICANT

AND

ELIZABETH WANJIKU NJOKA (SUING AS THE LEGAL REPRESENTATIVE OF ALICE KAHAKI NJOKA) INTERESTED PARTY

RULING

Introduction.

1. This ruling is in respect of the interested party/applicant's notice of motion application dated November 16, 2022.

The said application is expressed to be brought under article 159(2)(c) of the Constitution, section 3A of the Civil Procedure Act, order 51 rules 1 to 3 of the Civil Procedure Rules and section 56 of the Advocates Act.

2. The application is filed under certificate of urgency and seeks the following prayers;

a. Spent

b. Spent



- c. Spent
 - d. That this honorable court be pleased to order the *ex parte* applicant to serve on her all the pleadings in this suit as mandated by order 53 rules 3(2) of the [Civil Procedure Rules](#).
 - e. That this Honorable Court be pleased to set aside/quash all the proceedings herein.
 - f. That this Honorable Court be pleased to order that the hearing of this judicial review application be heard *de novo*.
 - g. That as alternative to 5 and 6 above, do strike out this Judicial Review application with costs to her *ex parte* applicant or her advocates.
 - h. That the costs of this application be provided for.
3. The application is based on the grounds on its face and supported by the affidavit of Elizabeth Wanjiku Njoka. The supporting affidavit is sworn on November 16, 2022.

Factual Background.

4. The *ex parte* applicant/respondent commenced this suit *vide* an application dated March 11, 2022 where she had sought the following prayers;
- a. That the subject/applicant be granted leave to apply to this honorable court to issue an order of *mandamus* directed to the respondent herein, by themselves and or their successor in office to implement the decision of National Land Commission dated January 28, 2019 in respect of LR No. Dundori/Lanet Block 5/216 (Kiamunyeki 'A') within such a period as the court may be consider just.
 - b. That costs of this application be in the cause.
5. The said application was heard on March 14, 2022 where the *ex parte* applicant/respondent was granted leave to apply for an order of *mandamus* directing the Respondent to implement the decision of the National Land Commission dated January 28, 2019 in respect of LR No. Dundori/Lanet Block 5/216 (Kiamunyeki 'A').
6. The *ex parte* applicant/respondent was also directed to file a substantive motion within twenty-one days.
7. The *ex parte* applicant/respondent filed the substantive notice of motion application on March 16, 2022. She seeks the following prayers;
- a. That this honorable court do issue an order of *mandamus* directed to the respondent herein, by themselves and or their successor in office to implement the decision of National Land Commission dated January 28, 2019 in respect of LR No. Dundori/Lanet Block 5/216 (Kiamunyeki 'A') within such a period as the court may be consider just and in default the court do issue notice to show cause do issue against the respondent why they should not be committed to civil jail for contempt of court.
 - b. That costs of this application be in the cause.
8. In response to the said application, the respondent filed grounds of opposition dated July 28, 2022. It is as follows:
- a. The National Lands Commission does not have the power to revoke titles.



- b. That the decision of the National Land Commission is a mere recommendation as was illustrated in the case of *Mwangi Stephen Muriithi v National Land Commission & 3 others* [2018] eKLR.
 - c. The land registrar is therefore not bound by the decision of the National Lands Commission hence a mandatory injunction cannot be issued.
 - d. The decision by the National Lands Commission cannot overturn a court's judgement.
 - e. There exists a court order in Nakuru HCC No. 33 of 1998 directing title number Dundori/ Lanet Block 5/216 (Kiamunyeki A) be cancelled.
 - f. The Judicial Review application does not meet the threshold for issuance of the orders sought.
9. The parties were directed to file submissions and the matter reserved for judgement on February 23, 2023.
 10. Before the said date, the interested party/applicant through her advocate wrote a letter dated October 21, 2022 to the deputy registrar whose contents, briefly are that she is an affected person within the meaning of order 53 rule 3(2) and ought to have been served with the application. The letter goes on to state that the Interested Party herein wishes to participate in these proceedings. Her counsel proceeds to invoke article 35 of the *Constitution of Kenya* 2010 and requests to be supplied with certain documents and undertakes to pay charges necessary to have copies of those documents. The letter has a bundle of documents attached it.
 11. Subsequently, on November 18, 2022, the interested party/applicant filed the present application which is under consideration.
 12. The application first came up for directions on November 23, 2022 when it was certified urgent and a hearing date given.
 13. On January 23, 2023, the Court allowed prayer 3 of the said application and directed that the application heard by way of written submissions.
 14. On March 7, 2023, parties confirmed having filed their submissions and the application was reserved for ruling.

The Interested Party/applicant's

Contention.

15. The interested party/applicant contends that she is the legal representative of the estate of her late mother Alice Kahaki Njoka who died in the year 1983.
16. The interested party/applicant also contends that she was issued with a grant in Nakuru High Court Succession Cause Number 16 of 1984; in the Matter of the Estate of Alice Kahaki Njoka.
17. The interested party/applicant further contends that her late father intermeddled with the estate of her late mother jointly with the *ex parte* applicant/respondent together with other persons.
18. It is her contention that in September, 2016, she filed a suit against the *ex parte* applicant/respondent and other persons.
19. It is also her contention that the suit is part heard and Lucy Wanjiru the *ex parte* applicant/respondent herein is represented by the firm of Musembi Ndolo & Co. Advocates.



20. It is further her contention that the suit property in the present proceedings is one of the properties in that suit.
21. She contends that the valid grant in respect of the suit property had been issued to her sister Christine Nyagitha Njoka who was a trustee of the Estate of her late mother.
22. She also contends that her title deed was cancelled on January 22, 2016 through a Kenya Gazette Notice.
23. She further contends that she has read the *ex parte* applicant/respondent's notice of motion application dated March 16, 2023, the Statement dated March 11, 2023 and the verifying affidavit sworn on March 11, 2022 respectively.
24. It is her contention that the *ex parte* applicant/respondent has sworn a false affidavit and a false statutory declaration.
25. It is also her contention that the *ex parte* applicant/respondent in her verifying affidavit does not disclose that a suit exists and that she is directly affected by the outcome of the present suit.
26. It is further her contention that the *ex parte* applicant/respondent in her statement of facts did not disclose the fact that the said family division suit exists.
27. She contends that it is her wish to protect all assets of her late mother's estate of which the suit property is part of.
28. She also contends that she became aware of the present suit through a friend who drew her attention to the cause list dated October 17, 2022 in which this case was listed.
29. She further contends that on October 21, 2022, she applied for documents in this case but instead of being supplied with the documents, she was advised to file the present application for arrest of judgement which was scheduled to be delivered on March 22, 2023.
30. It is her contention that she will be prejudiced as she has not had a chance to put before the court the case of her late mother.
31. She ends her deposition by stating that she is entitled to the reliefs sought.

The *Ex Parte* Applicant/respondent's Contention.

32. The *ex parte* Applicant/Respondent contends that the Judicial Review application is seeking an order of Mandamus for implementation of the National Land Commission decision delivered on January 28, 2019.
33. She also contends that the proceedings before the National Land Commission were initiated by Christine Nyagitha Njoka a sister to the Interested Party/Applicant herein over LR Dundori/Lanet Block 5/216 (Kiamunyeki 'A') that was initially registered in her name as per the title deed issued on September 29, 2009.
34. She further contends that on February 29, 2016, the Nakuru Land Registrar fraudulently transferred the suit property to Christine Nyagitha Njoka which fact is evidenced in the official search of the suit property.
35. It is her contention that the National Land Commission carried out investigations and found that the suit property belonged to Lucy Wanjiru Njoka and directed the Land Registrar Nakuru to revoke the title deed held by Christine Nyagitha.



36. It is also her contention that the National Land Commission further directed the Director of Criminal Investigation to investigate the alleged fraudulent transfer of the suit property to Christine Nyagitha Njoka.
37. It is her further contention that the affected parties in dispute before the National Land Commission were herself, Christine Nyagitha Njoka and the Land Registrar Nakuru.
38. The *ex parte* Applicant/Respondent contends that that at no time had the suit property been registered in the name of Alice Kahaki Njoka (deceased) in respect of whose estate the Interested Party/Applicant had taken out Letters of Administration and neither was the Interested Party/Applicant a party to the proceedings before the National Land Commission.
39. She also contends that it therefore beats logic how the Interested Party/Applicant is a person directly affected by the decision of the National Land Commission.
40. It is her contention that the application before court is to give effect to the decision of the National Land Commission of January 28, 2019 and restore the legal status of the proprietary rights of the suit property before it was transferred to Christine Nyagitha. She contends that the proper party in the present suit is the Land Registrar Nakuru who failed to implement the decision of the National Land Commission and adds that unless compelled by this court through orders of Mandamus, the Registrar will not do so.
41. It is also her contention that based on the foregoing, it is her belief that the interested party/applicant colluded with the Land Registrar to frustrate the implementation of the National Land Commission decision.
42. It is further her contention that the determination of the present judicial review proceedings would not in any way be prejudicial to the proceedings in Nakuru HC Misc. Application No. 33 of 2016 as the suit property can be reverted by the court to the true owner using equitable doctrine of tracing as all other properties in the said suit are registered in the names of third parties.
43. The *ex parte* Applicant/Respondent contends that the Interested Party/Applicant should explain if at all the suit property is part of the estate of Alice Kahaki and what steps she has taken to retrieve the same from Christine Nyagitha Njoka.
44. She contends that she is advised by her advocates on record that the Interested Party and her sister while being aware of the said proceedings and determination of the National Land Commission never bothered to challenge the same under section 7 and 8 of the *Fair Administrative Action Act* No. 4 of 2015.
45. She further contends that to that extent, the application before this court is an abuse of the court process and the same should be dismissed with costs.

Interested Party/applicant's Response To The Ex Parte Applicant/respondent's Replying Affidavit.

46. In response to the *ex parte* applicant/respondent's replying affidavit, the interested party/applicant filed a further affidavit sworn on December 13, 2022.
47. She deposes that she has been advised by her advocates on record that the estate of the late Philip Njoka Kamau who is the deceased in Nakuru High Court Succession Cause No. 497 of 2013 in the Matter of the Estate of Philip Njoka is not fully administered and the suit property is purportedly bequeathed to Lucy Wanjiru the *ex parte* Applicant/Respondent.



48. She also deposes that according to probate law no beneficiaries have proprietary rights over any asset before the grant has been confirmed.
49. She further deposes that the *ex parte* applicant/respondent lacks the *locus standi* to bring Judicial Review as the only person who can do so is the executor of the estate under section 82 of the [Law of Succession Act](#).
50. It is her contention that where facts are deposed to and are not controverted by the other side, they are deemed to be accepted by that side as was held by the Court in the case of [Standard Resource Group Ltd v Attorney General & 2 others](#) [2016] eKLR.
51. It also her contention that the *ex parte* applicant/respondent has not controverted paragraph 7 of her supporting affidavit that the suit property is one of the suit properties in her suit which copy of the Plaint she attached to her application.
52. It is also her contention that the *ex parte* applicant/respondent is the 4th defendant in that suit which is partly heard before Lady Justice Matheka.
53. It is further her contention that the *ex parte* applicant/respondent admitted that she instituted this suit so that that issue is determined by this Court instead of the family division of the High Court.
54. It is her contention that she relies on the doctrine of *res judicata* to prevent adjudication of that issue by the family division.
55. She also contends that in her plaint she is seeking an order against *ex parte* applicant/respondent that she accounts to the estate of her mother all the rent received from houses standing on the said property.
56. She further contends that she is entitled to all the reliefs claimed in the application under consideration and denies that the *ex parte* applicant/respondent has *locus standi* and ought to have joined her sister Christine Nyagitha, herself and all the defendants in Nakuru HC Misc. 33 of 2016 and all the beneficiaries in Nakuru HC Succession Cause No. 497 of 2013 to this suit.
57. It is her contention that the *ex parte* applicant/respondent was not entirely honest about the history of the suit property and her investment career.
58. It is also her contention that the *ex parte* applicant/respondent did not invest in the suit property as the houses built thereon were built by her deceased mother.
59. It is further her contention that she annexed to her application the *ex parte* applicant/respondent's defence which did not make any reference to the determination of the National Land Commission.
60. She contends that the *ex parte* applicant/respondent intends to use the purported determination of the National Land Commission, which is the foundation of this application as a secret weapon to try and keep the suit land away from the part-heard suit before the High Court and only bring it after she has obtained a favourable judgment from this Court.
61. She also contends that the the *ex parte* applicant/respondent's application is fraudulent for many reasons like the *ex parte* applicant/respondent's failure to disclose the fact that the suit property went to her late mother's estate through a share she held in a land buying company.
62. It is her contention that in the proceedings before Lady Justice Matheka, she produced a share certificate issued in the name of her late mother.



63. It is also her contention that her late mother died in the year 1983 and her late father was appointed the administrator of her estate in Nakuru Succession Cause No. 16 of 1984 in the matter of the estate of Alice Kahaki (Deceased).
64. It is further her contention that when the land buying company issued titles to shareholders, the title deed was issued to her late father whom she claims gave it to her.
65. She contends that a ruling was delivered on June 15, 2016 that revoked the said grant and a share certificate was issued to her late mother and it was held that her late father had obtained the grant through making false statements.
66. She also contends that her late father had no ownership of the suit property and so he lacked the legal capacity to pass title to Lucy Wanjiru and therefore held the suit property as a constructive trustee Lucy Wanjiru.
67. She further contends that during the lifetime of her late mother, Lucy Wanjiru had a secret love affair with her late father when she was working as a bartender and after her mother died in the year 1983, they openly cohabited as husband and wife.
68. It is her contention that from her plaint and her evidence before the High Court matter, is evident that Lucy and her late father cohabited between the years 1983 to 2012 and intermeddled in the estate of her late mother.
69. It is also her contention the houses referred to by the *ex parte* applicant/respondent were built with rental income obtained from her late mother's property and that she is seeking an order for taking accounts in the suit filed before Family Division of the High Court.
70. It is further her contention that as per the rule in *Re; Hallet's Rea Estate* (1879-80) 13 any investment bought with trust funds can be followed to its current form be it movable or immovable property.
71. She contends that Nakuru High Court Succession Cause No. 497 of 2013 is the one which will be used to distribute her late father's assets and Lucy Wanjiru will be at liberty to make whatever claims she wants on the basis of her status whatever her status is.
72. She admits paragraphs 1 and 2 of the *ex parte* applicant/respondent's affidavit but denies the contents of paragraphs three to sixteen.
73. It is her contention that her application to arrest the judgement is valid as the *ex parte* applicant/respondent prosecuted it secretly.
74. It is also her contention that she is advised by her advocates on record that the said application contravenes order 83 rule 2 of the [Civil Procedure Rules](#) which provides that a notice of motion must be served upon all affected parties.
75. It is further her contention that the *ex parte* applicant/ respondent who is the 4th defendant in Nakuru High Court Miscellaneous Civil Suit No. 33 of 2016; [Elizabeth Wanjiku Njoka v Juma Kiplenge & 12 others](#), chose not to serve the pleadings in the suit despite being aware that the suit property is one of the many properties in the said suit, which is part heard before the High Court.
76. She contends that in the case of [Nabro Properties v Sky Structures Limited](#) (2002) 2 KLR 299, it was held that a person is barred from basing their claim on their own wrong and that the suit is an abuse of the process of the court as it is not filed honestly.



77. She also contends that no Judicial Review remedy is available where there is a property ownership dispute as held by a three-judge bench in Nairobi High Court Miscellaneous Number 128 of 2003; *Kenya African National Union v Mwai Kibaki & 6 others* [2005] eKLR.
78. She further contends that in the case of *James N. Wa Wambu v Republic & 7 others* [1995] eKLR it was held that a person cannot lose their liberty without defending themselves.
79. It is her contention that the foundation of order 53 rule 2 is article 50 of the *Constitution* which replaced section 77 of the *Constitution* which the Court of Appeal interpreted in the case of *Mradula Suresh Kantarla v Suresh Nanolal Kantarla*, Civil Appeal (Application) No. 277 of 2005.
80. It is also her contention that the *ex parte* applicant/respondent was aware that the genuine title deed was in the name of Christine Nyagitha Njoka, who was not made a party to this suit.
81. She ends her deposition by stating that under article 50 of the *Constitution*, she is guaranteed enjoyment of a right to a fair hearing.

The Ex Parte Applicant/respondent's Response To The Interested Party/applicant's Further Affidavit.

82. The *ex parte* applicant/respondent subsequently filed a further replying affidavit sworn on January 27, 2023 and filed on February 6, 2023.
83. It is her contention that she is in possession of the original title deed of the suit property and so the title held by Christine Nyagitha Njoka is fake and her continuation to hold the same without any justification might be used to commit further fraud and so the same ought to be recalled and cancelled by the 2nd Respondent.
84. It is also her contention that she is the bonafide registered owner of the suit property by virtue of section 24(a) of the *Land Registration Act* and hence has the rights to file the judicial application for enforcement of the National Land Commission decision.
85. It is further her contention that the estate of the Late Alice Kahaki has no known legal right over the said property worthy of protection by this court and that the averments in Nakuru H.C Misc Application No. 33 of 2016 are disputed allegations that are yet to be determined.
86. She contends that there are no injunctive orders obtained against her barring the reversion of the suit property back to her name, as the orders obtained by the interested party/applicant in Nakuru H.C Misc Appl No. 33 of 2016 did not include the suit property herein.
87. She also contends that the reversion of the suit property to her name as the registered owner is not prejudicial and would not in any way interfere in the outcome of Nakuru H.C Misc Application No. 33 of 2016.
88. She further contends that the issue for determination in the judicial Review application is the enforcement of the decision of the National Land Commission against the Nakuru County Land Registrar.
89. It is her contention that under section 15(3)(c) & (e) of the *Amended National Land Commission Act, 2016* there is no other legal remedy to enforce the said decision other than the present proceedings.
90. It is also her contention that the ownership of the suit property between the *ex parte* applicant/respondent herein and Christine Nyagitha Njoka who illegally and fraudulently caused transfer of the



property to herself was determined by the National Land Commission under its mandate conferred under section 15(10) of the [Amended National Land Commission Act, 2016](#).

91. It is further her contention that as such the ownership of the suit property is no longer an issue for determination in this judicial Review application.
92. She contends that she developed the suit property with her late husband with their own money twenty years after the death of Alice Kahaki and the allegation that the houses built on the suit property were built with Late Alice Kahaki's money is weird and unsubstantiated.
93. She also contends that the contents of paragraph 14, 18 & 19 of the said affidavit are attacks directed to her which are unwarranted, morally offensive, scandalous, defamatory demeaning, an abuse of court process and solely made to vex, injure and assassinate her character and infringes on her inherent constitutional right for the protection of her dignity guaranteed under article 28 of the [Constitution](#) and the deponent should be reprimanded by this court for using unsavoury language in court proceedings.
94. She further contends that the said paragraphs should be expunged from the court proceedings.
95. It is her contention that paragraphs 4(h) and 27 the said affidavit clearly demonstrate the purported Interested Party/Applicant is litigating on behalf of Christine Nyagitha Njoka who illegally and fraudulently caused the suit property to be transferred to her name and not on behalf of the estate of Alice Kahaki who is a stranger to the present proceedings.
96. It is also her contention that interested party/applicant has not demonstrated to the court what she finds legally prejudicial and offensive for the suit property to revert to the registered owner and why at the same time she is comfortable with suit property being held fraudulently & illegally by Christine Nyagitha Njoka.
97. She ends her deposition by stating that the Interested Party/Applicant's application lacks merit and should be dismissed.

Issues For Determination.

98. On December 13, 2022 the interested party/applicant filed submissions which she describes as "skeleton".
99. The Interested Party/Applicant submits that this court lacks jurisdiction to entertain the Judicial Review Application and should therefore strike it out. She states that the proper person to bring such an application is the executor of the will of the late Philip Njoka Kamau whose estate is unadministered.
100. She relies on the case of *Livingstone v Commissioner of Stamp Duties* and submits that the suit property was bequeathed to the *ex parte* applicant/respondent by the late Philip Njoka and the court should therefore strike out the Judicial Review Proceedings on this ground.
101. The interested party/applicant submits that even if the court entertains the said application, it would fail for non-compliance with order 53 rule 2 of the [Civil Procedure Rules](#) for failing to serve the motion on the beneficiaries in Nakuru HC succession cause No. 497 of 2013 and the defendants in Nakuru Succession Cause No. 33 of 2016.
102. She relies on the cases of *James N. Wa Wambu v Republic & 7 others* [1995] eKLR and [Mradula Suresh Kantaria v Suresh Nanalai Kantaria](#) Civil Appeal (Application) No. 277 of 2005.
103. The interested party/applicant also submits that the application is fraudulent for non-disclosure of material facts and is an abuse of the court process. She argues that Judicial Review is unnecessary as the



- ownership is disputed. She relies on the case of Nairobi High Court Miscellaneous No. 128 of 2003; *Kenya African national Union v Mwai Kibaki & 6 others* [2005] eKLR.
104. The interested party/applicant reiterates the contents of her further affidavit and seeks that her application be allowed as prayed.
105. The interested party/applicant also filed further submissions dated February 22, 2023 where she reiterates her submissions dated December 13, 2022 and submits that Nakuru Misc. Application No. 33 of 2016 is part heard and yet to be determined and the *ex parte* applicant/respondent is not the registered owner of the suit property.
106. The Interested Party/Applicant relies on the case of *Echaria v Echaria* Civil Appeal No. 75 of 2002 207 1KLR and submits that Alice Kahaki had property rights over the suit property.
107. The *ex parte* Applicant/ Respondent filed her submissions on March 6, 2023.
108. She identifies the following issues for determination;
- i. Whether the application is premature, inept, incompetent, bad in law and an abuse of the court process.
 - ii. Whether the purported Interested Party is merited.
 - iii. Issue on costs.
109. On the first issue, the *ex parte* Applicant/ Respondent submits that the interested party/applicant is a stranger to the present proceedings as her presence contravenes the provisions of order 1 rule 10(2) of the *Civil Procedure Rules*.
110. The *ex parte* Applicant/ Respondent relies on the case of *Hope v Director of Survey & 2 others, Sakaja & 2 others (Interested Party)* [2020] eKLR and reiterates that the Interested Party/Applicant is a stranger to the present proceedings and the pleadings filed should be struck out.
111. The *ex parte* applicant/ respondent submits that even if the interested party/applicant is admitted to the present proceedings, her presence is untenable and premature as she has not challenged the decision by the National Land Commission, was not a party to those proceedings and adds that the interested party/applicant has no *locus* to challenge the said proceedings.
112. The *ex parte* applicant/ respondent relies on the case of *R v Kenya National Examination Council ex -*
113. *parte Gathenji & others* [1997] eKLR and seeks that the Interested Party/Applicant's application be dismissed.

Analysis And Determination.

114. After considering the application, the response thereto, the further responses and the rival submissions filed herein, the only issue that arises for determination is whether the interested party/applicant's application has merit.
115. Numerous issues have been raised in this application. They range from allegations of misrepresentation of facts and/or withholding of information from this court by the parties herein, existence of proceedings before other courts which proceedings have either been concluded or pending.
116. The applicant has also taken liberty to describe herself as an interested party and I have continued to reservedly adopt this description knowing fully well that it is erroneous. I shall continue to use it only for purposes of distinguishing the parties herein.



117. The interested party/applicant is seeking that the court orders the *ex parte* applicant/respondent to serve her with all the proceedings in the present suit, that the court sets aside all the proceedings herein, that the court orders that the Judicial Review application be heard *de novo* and, in the alternative, this Judicial Review application be struck out.
118. The interested party/applicant seeks the said orders on the grounds that the *ex parte* Applicant/Respondent failed to serve her with the pleadings and that the suit property is subject to other proceedings in the High Court in Nakuru HC Misc Application No. 33 of 2016.
119. In response to the said application, the *ex parte* applicant/respondent argues that the application lacks merit as the present matter is a Judicial Review application seeking that an order of *mandamus* be issued compelling the respondent to enforce the decision of the National Land Commission.
120. The *ex parte* Applicant/Respondent also argues that the Interested Party/Applicant was not a party to the proceedings before the National Land Commission and so she has no locus to file the application under consideration.
121. Further, the *ex parte* Applicant/Respondent argues that the determination of the present Judicial Review proceedings would not in any way be prejudicial to the proceedings before the High Court i.e Nakuru HC Misc Application No. 33 of 2016.
122. In her submissions, the *ex parte* Applicant/Respondent points out that the Interested Party/Applicant is not a party to the present suit and so she is not entitled to the orders sought.
123. I will first consider the question whether the Interested Party/Applicant is a party is properly before this court and in these proceedings before considering whether she is entitled to the reliefs sought.
124. As stated in the introductory paragraphs, the Interested Party/Applicant filed the application under consideration as this suit was pending judgement.
125. The prayers sought in the said application are as follows;
1. That this application be certified urgent.
 2. That the service of the said application be dispensed with in the first instance owing to the urgency of the matter.
 3. That this honorable court be pleased to arrest the judgement scheduled to be delivered on 22nd March 2023.
 4. That this honorable court be pleased to order the *ex parte* applicant to serve on her all the pleadings in this suit is mandated by order 53 rules 3(2) of the [Civil Procedure Rules](#).
 5. That this honorable court be pleased to set aside/quash all the proceedings herein.
 6. That this honorable court be pleased to order the hearing of this judicial review application be heard *de novo*.
 7. That as alternative to 5 and 6 above, do strike out this Judicial Review application with costs to her *ex parte* applicant or her advocates.
 8. That the costs of this application be provided for.
126. The application was certified urgent by my brother Hon. Justice Ombwayo for the reason that no return can be made on a Judicial Review Order issued by this court. He noted that there was no need to arrest the judgement and ordered that the application proceeds to hearing.



127. The Supreme Court in the case of County Assembly of Mandera County v Governor, Mandera County & another [2020] eKLR held as follows;

“10] Having considered the said prayer, we unanimously find that a party yet to be enjoined in a matter such as the present Reference, lacks the capacity to seek any substantive orders in it and that the prayer aforesaid is premature, the Prayer for dismissal of the Reference is consequently struck out.”

128. In Hopf v Director of Survey & 2 others; Sakaja & 2 others (Interested Party) (Environment & Land Case 4 of 2021) [2022] KEELC 6 (KLR) (4 May 2022) (Ruling) the court held as follows;

“In that respect it means a person has first to move the Court. In case he so wishes, he should seek leave of the Court first. After the leave is granted, he will be enjoined. It is upon being given leave and he actually being enjoined that he can participate in the proceedings and move the Court for other reliefs. Absent of that, he is a stranger to the proceedings.” (Emphasis is mine)

129. In the present matter, the Interested Party/Applicant did not seek leave to be joined in the present suit as an Interested Party. As was held by the Supreme Court in the case of County Assembly of Mandera County v Governor, Mandera County & another (*supra*) a party yet to be joined in a suit lacks capacity to seek substantive orders.

130. I take note that Judicial Review proceeding herein have far reaching consequences especially in so far as the relate to orders compelling the Land Registrar to revoke title issued to one Christine Nyagitha in respect of L.R Dundori/Lanet Block 5/216 (Kiamunyeki “A”) and restore it to Lucy Wanjiru Njoka. The said Christine Nyagitha is not a party to these proceedings

Disposition.

131. In the result, the Interested Party/Applicant’s application dated November 18, 2022 is hereby struck out with costs to the *ex parte* applicant/respondent.

132. That does not, however, take away the fact that she is a person affected by orders sought by the *ex parte* applicant/respondent; as it has emerged.

133. Consequently, the applicant in the application dated November 16, 2022 is at liberty to move this court so as to be properly joined in these proceedings. This shall be done within 14 days of the date hereof should she find it necessary.

134. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 27TH DAY OF JULY, 2023.

L. A. OMOLLO

JUDGE

In the presence of: -

Parties – A

bsent

Court Assistant; Miss Monica Wanjohi.

-----ELC

