



Republic v National Land Commission & another; Kimani & 2 others (Exparte); Eastleigh Residents Community Association & another (Interested Parties) (Environment and Land Judicial Review Case 8 of 2019) [2025] KEELC 2844 (KLR) (19 March 2025) (Judgment)

Neutral citation: [2025] KEELC 2844 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 8 OF 2019
CA OCHIENG, J
MARCH 19, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**NATIONAL LAND COMMISSION 1ST RESPONDENT
CHIEF LAND REGISTRAR, MINISTRY OF LANDS AND PHYSICAL
PLANNING 2ND RESPONDENT**

AND

**NANCY WANJIKU KIMANI EXPARTE
NANCY WANJIKU KIMANI (SUING IN HER CAPACITY AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF THE LATE DAVID KIMANI
KONGO) EXPARTE
EVERYWHERE INVESTMENT LIMITED EXPARTE**

AND

**EASTLEIGH RESIDENTS COMMUNITY ASSOCIATION INTERESTED
PARTY
NAIROBI COUNTY GOVERNMENT INTERESTED PARTY**

JUDGMENT

1. What is before Court for determination is the Ex parte Applicants’ Notice of Motion application dated the 25th March 2019, filed pursuant to leave granted to the Ex-Parte Applicants on 8th March 2019. The Ex parte Applicants seek the following orders:



- a. That an order of certiorari do issue, directed to the 1st Respondent to move into this Honourable Court for purposes of quashing the decision of the 1st Respondent made on 28th April 2017 revoking the titles for the properties known as Land Reference Numbers 36/1/1025, 36/1/1026, 36/1/2027, 36/1/1028, 36/1/1029, 36/1/1030 and 36/1/1031.
 - b. That an order of Prohibition do issue prohibiting the Respondents, their agents, employees, servants, officers or whosoever from altering the documents in respect of the properties known as LR No's 36/1/1025, 36/1/1026, 36/1/2027, 36/1/1028, 36/1/1029, 36/1/1030 and 36/1/1031 and evicting the Ex parte Applicants from the same properties.
 - c. That costs of the application be provided for.
2. The application is premised on the grounds on the face of it, the Statement of Facts dated the 6th March 2019 as well as the verifying affidavit of Nancy Wanjiku Kimani.
 3. The Ex-parte Applicants' claim to be the registered proprietors of properties known as LR Nos 36/1/1025, 36/1/1026, 36/1/2027, 36/1/1028, 36/1/1029, 36/1/1030 and 36/1/1031, hereinafter referred to as the 'suit lands'. They explain that the suit lands were disposed off by the defunct City Council of Nairobi pursuant to its resolution dated 4th August 1992, which was approved by the then Minister for Local Government, the Late Hon. William Ntimama. Further, that this was in line the Government's then policy of reducing unprofitable non-strategic establishments and public assets.
 4. They claim that the 1st Applicant was allotted LR 36/1/1028 by the defunct City Council of Nairobi and purchased land parcel No. 36/1/1025 from one Shadwel Junior, parcel 36/1/1026 from Mr. Abbas I. Shabura and LR 36/1/1029 from Mr. Zablon A. Mabeya. The 2nd Applicant is said to have been allotted parcel No. 36/1/1027 and 36/1/1030 by the defunct City Council of Nairobi while the 3rd Applicant was allotted parcel No. 36/1/1031.
 5. They state that in 2016, the 1st Respondent purported to investigate the grants and dispositions of LR No.36/1/915R which is now Land Reference Numbers 36/1/1024, 36/1/1025, 36/1/1026, 36/1/2027, 36/1/1028, 36/1/1029, 36/1/1030, 36/1/1031, 36/1/1022, 36/1/1033 and 36/1/1034 respectively. Further, on 28th April 2017, it purportedly decided to revoke their titles on ground that LR No.36/1/915R was set aside for public utility, more particularly an open market. They aver that the 1st Respondent did not serve them with the said decision until late September 2018 and it acted ultra vires as it created its own witnesses and testimony in their case.
 6. They insist that the 1st Respondent took into consideration the testimony of one Anna Mumbua Nzioka, who presented her case for a different matter that also involved investigation of dispositions of land in Eastleigh. They contend that she testified on the same day their case was heard, where she stated that the property she was referring to, had a market with eleven (11) stalls yet LR No. 36/1/915R had never been an open market, thus the 1st Respondent's decision was based on wrong and extraneous facts.
 7. The application is opposed by the 1st Respondent vide the replying affidavit sworn by Mr. Brian Ikol, its Director-Legal Services. He explains that the 1st Respondent conducted proceedings regarding the suit lands as mandated under Section 14(3) & 4 of the *National Land Commission Act*, and at the hearing, the ex parte Applicants were granted an opportunity to be heard. He pointed out that, through documents presented by the 1st Ex parte Applicant's Legal Counsel, she claimed to be owner of LR 36/1/1031, which is the location of the Airbase Chief's Camp and DO'S office. Further, that the 2nd Ex parte Applicant claimed to be the owner of LR 36/1/1027 and LR 36/1/1030 pursuant to allocation made in the 1990's.



8. He contends that after concluding the hearings, the 1st Respondent made a determination based on the documents submitted by the parties and it also made reference to and relied on records held by the Ministry of Lands where it revealed that the suit lands had been reserved for public use and recommended that the said titles be revoked. He argues that there is no evidence that the 1st Respondent's proceedings and determination was against any relevant laws.
9. The 2nd Interested Party opposed the application vide Grounds of Opposition dated the 26th September 2023 contending that the Ex-Parte Applicants' were accorded an opportunity to appear and present their case, before the 1st Respondent rendered its decision. Further, that there is no evidence that the said decision was ultra vires.
10. The 2nd Respondent and the 1st Interested Party did not file responses.
11. The instant Notice of Motion application was canvassed by way of written submission.

Submissions

12. In their submissions, the Ex parte Applicants contended that while Section 14 of the [National Land Commission Act](#) clothes the 1st Respondent with powers to review all grants /dispositions of public land to establish their legality, the said powers must be exercised with strict regard to Articles 40, 47 and 60 of [the Constitution](#) as well as the [Fair Administrative Action Act](#), 2015.
13. They submitted that there was a mix-up of identity of the property under investigation as the 1st Respondent imported the evidence of one Anna Mumbua Nzioka whose testimony related to LR No.36/VII/1037, which was not the subject of investigation in respect of which, the Exparte Applicants were summoned, thus contravening Article 50 of [the Constitution](#) and thereby occasioning a miscarriage of justice, which renders the 1st Respondent's decision unfair and biased.
14. They further submitted that the surveyor's report from an exercise conducted from 22nd to 26th March 2024 by Geomatics Technics Limited shows that parcel LR No. 36/VII/1037 and LR No. 36/1/11025-36/1/1030 are approximately 950 meters apart making any confusion between the two parcels improbable.
15. They reiterated that the 1st Respondent was biased in its decision to the extent that it upheld titles for parcels LR 36/1/1024 and LR 36/1/1032 held by New Eastleigh Akamba Dancers and the PCEA Church respectively, yet they also formed part of LR 36/1/915R, the same larger parcel that the revoked titles emanated from. They argued that the decision beats the test of reasonableness as espoused in the case of Republic v Safaris & 3 Others; Khaminwa (Ex parte) [2022] KEHC 18064 (KLR), Republic v Speaker of the senate & Another Ex Parte Afrison Export Limited & Another [2018] eKLR as well as the case of Sceneries Limited v National Land Commission, Ngengi Muigai & Kenya Reinsurance Corporation Ltd [2017] KEHC 8460 (KLR).
16. To support their averments, the ex parte applicants also relied on various decisions including: Municipal Council of Mombasa v Republic, Umoja Consultants Ltd, Nairobi Civil Appeal No. 185 of 2007 (2002) eKLR, Evelyn College of Design Ltd v Director of Children's Department & Another [2013] eKLR and Republic v National Land Commission & Tropical Treasure Limited Ex- parte Krystalline Salt Limited [2015] KEHC 7322 (KLR).
17. In its submissions, the 1st Respondent provided a background of the dispute herein and contended that it exercised its jurisdiction to review Grants under Section 14(1) of the [National Land Commission Act](#), following a complaint raised by Kituo Cha Sheria alleging that the Eastleigh open Air Market had been grabbed by private individuals.



18. It contended that the suit lands being private land are not excluded from proceedings for review of grants and dispositions since it was alleged that their title stemmed from illegally acquired public land.
19. It further contended that there is no evidence to the effect that its decision was tainted but insists that, the said decision was as a result of consideration of the submissions of all parties as well as reliance on the records held by the Ministry of Lands. It argued that the proceedings before it, were not expected to be carried out in the exact manner as they would be in a court of law since it operated as a quasi-judicial tribunal within the full meaning of Article 169(1) of *the Constitution*.
20. It reiterated that even though Section 14(2) of the *National Land Commission Act* required it, to make rules for better carrying out of its functions of review of grants and dispositions, it conducted the impugned hearing when the said rules had not been promulgated. Further, that it was a delay caused by Parliament but despite absence of rules, it acted lawfully in accordance with the rules of natural justice, Article 47 of *the Constitution* of Kenya, the *Fair Administrative Action Act* and the *National Land Commission Act*. The 1st Respondent reaffirmed that the prayer for Certiorari contravenes Order 53 Rule 2 of the Civil Procedure Rules, in that it is sought outside the statutory period of six months, after the decision complained of was made. To buttress its averments, it relied on various decisions including: Republic v National Land Commission Ex Parte Krystalline Salt and Republic v National Land Commission ex parte Hodon Properties Limited [2016] eKLR.
21. The 2nd Interested Party in its submissions argued that the purported Letters and Leases allegedly issued to the Ex-Parte Applicants did not confer any title to them as regards, the suit lands, since the same were not perfected through registration. It contended that, from the 1st Respondent's decision dated the 28th April 2017, it was evident that during the 1st Respondent's hearing, Mr. Zablon Agwata Mabeya stated that he never applied for any plot. Further, Chief Antony Njoka testified that LR36/1/915R had always been a market place. It reiterated that the Ex Parte Applicants were accorded a chance to be heard by the 1st Respondent. To support its averments, it relied on various decisions including: Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022 [2013] KESC 79 (KLR) and Lilian Waithera Gachuhi v David Shikuku Mzee [2005] eKLR.

Analysis and Determination

22. Upon consideration of the Notice of Motion application dated the 25th March, 2019 including the Statement of facts, Grounds of Opposition, respective affidavits, annexures and rivalling submissions, the only issue for determination is whether the ex parte Applicants are entitled to the orders of Certiorari and Prohibition as sought.'
23. In the case of Council for Civil Service Unions vs. Minister for Civil Service [1985] A.C. 374, at 401D, Lord Diplock provided the parameters on judicial review and stated inter alia:

“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’ ...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as



‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”

24. Further, in the case of *Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd* Civil Appeal No. 185 of 2001, it was held that:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters... The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision... It is the duty of the decision maker to comply with the law in coming to its decision, and common sense and fairness demands that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but it a statutory body which can only do what is authorised by the statute creating it and in the manner authorised by statute.”

25. On administrative action, Article 47 of *the Constitution* stipulates thus:

“(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. (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall— (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.”

26. While section 4 of the *Fair Administrative Action Act* stipulates thus:

“(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. (2) Every person has the right to be given written reasons for any administrative action that is taken against him. (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

- (a) prior and adequate notice of the nature and reasons for the proposed administrative action; (b) an opportunity to be heard and to make representations in that regard; (c) notice of a right to a review or internal appeal against an administrative decision, where applicable; (d) a statement of reasons pursuant to section 6; (e) notice of the right to legal representation, where applicable; (f) notice of the right to cross-examine or where applicable; or (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action. (4) The administrator shall accord the person against whom administrative action is taken an opportunity to-



attend proceedings, in person or in the company of an expert of his choice; (b) be heard; (c) cross-examine persons who give adverse evidence against him; and (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing. (5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings. (6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of *the Constitution*, the administrator may act in accordance with that different procedure.”

27. In the current scenario, the ex parte Applicants have sought for orders of Certiorari and Prohibition to quash the decision of the 1st Respondent made on 28th April 2017 and to restrain the Respondents from revoking the titles or altering documents in respect to properties known as Land Reference Numbers 36/1/1025, 36/1/1026, 36/1/1027, 36/1/1028, 36/1/1029, 36/1/1030 and 36/1/1031 (suit lands).
28. The 1st Respondent is a government Commission which is mandated to allocate and manage public land. Further, Section 14 of the *National Land Commission Act* gives the 1st Respondent jurisdiction to enforce Article 68(c)(v) of *the Constitution* which entails reviewing all grants or dispositions of public land to establish their propriety or legality. Pursuant to the said jurisdiction, the 1st Respondent considered the grants and dispositions of LR No. 36/1/915R through a public hearing and arrived at a decision dated the 28th April 2017, where it directed for the revocation of the Ex Parte Applicants’ titles to the suit lands.
29. The Ex Parte Applicants being aggrieved with the impugned decision allege that the 1st Respondent exhibited bias in making a finding that LR 36/1/915R was “public land” but went ahead to endorse LR 36/1/1032 and LR 36/1/1024, which formed part of the said land. Further, in its decision of 28th April 2017, the 1st Respondent regularized titles to LR 36/1/1032 registered to New Eastleigh Akamba Dancers as well as LR 36/1/1024 held by PCEA subject to a re-survey to ensure that it did not encroach on the land set aside for the market.
30. Upon perusal of the impugned decision, I note the Ex parte Applicants fully participated in the public hearing and even had an advocate to represent them. Further, they even produced documents to prove their claim. I note even one Zablon Mabeya denied being allotted LR 36/1/1029, which he allegedly sold to one of the Ex parte Applicants. Further, I note one of the Ex parte Applicants’, Nancy Wanjiku Kimani even admitted that she was allotted LR No. 36/1/1031, which had some government institutions to wit Airbase chief’s camp and D.Os office, and she allowed them to occupy it.
31. The Ex parte Applicants claimed the 1st Respondent was biased as it had outlined that LR No. 36/1/915 had been subdivided into four (4) plots and it is only one plot that was designated for open air market. Further, that there was a mix-up of identity of the property under investigation as the 1st Respondent imported the evidence of one Anna Mumbua Nzioka whose testimony related to LR No. 36/VII/1037, which was not the subject of investigation, thus tainting the entire proceedings.
32. I note from the impugned decision sought to be quashed, the 1st Respondent does not make reference to another parcel and there is no evidence that the testimony of one Anna Mumbua Nzioka as captured at page 3 of the 1st Respondent’s decision refers to a different parcel. It was the Ex parte Applicants’ contention that the 1st Respondent merely perused through their documents without taking their



- views into account, which amounted to grave violation of their right to hearing and fair administrative action.
33. Further, that sections 14 of the *National Land Commission Act* contemplates that the 1st Respondent would give every person who has an interest in the grant or disposition the subject of its proceedings an opportunity to appear before it. While, section 8 calls upon the 1st Respondent to be guided by the principles set out under Article 47 of *the Constitution* which provides that every person is entitled to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 34. I note the Ex parte Applicants were represented in the entire proceedings that led to the decision of 28th April 2017, and even had a Counsel who presented their documents. I opine that there is no evidence that the 1st Respondent's proceedings were tainted with illegality and were unfair to the Ex parte Applicants. From the averments in the Ex parte Applicants' affidavit, it is evident they are mainly aggrieved with the aforementioned decision of the 1st Respondent and seek to cast aspersions on the procedure that was adhered to, in arriving at the impugned decision so as to ensure it is set aside.
 35. However, in the circumstance, while associating myself with the decisions cited as well as relying on the legal provisions I have quoted, I find that the ex parte Applicants were indeed accorded an audience during the hearing conducted by the 1st Respondent. Further, I find that no rules of natural justice were violated by the 1st Respondent as claimed by the ex parte Applicants. I further find that the ex parte Applicants in their Statement of facts and affidavit have failed to demonstrate that there was procedural impropriety, unfairness, unreasonableness or bias during the hearing conducted by the 1st Respondent. I opine that the ex parte Applicants sought for the court to analyse the merits of the 1st Respondent's decision on Appeal but this is not permissible within the purview of judicial review.
 36. In line with my analysis above, I find that there was procedural fairness which was efficient, lawful and reasonable during the hearing culminating in the impugned decision sought to be quashed. Further, I find that the 1st Respondent acted in accordance with its legal mandate.
 37. In the foregoing, I hold that the prayers for Prohibition and Certiorari sought cannot issue at this juncture. I hence find the Notice of Motion application dated the 25th March 2019 unmerited and will proceed to dismiss it with costs 1st Respondent and 2nd Interested Party.
 38. I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19th DAY OF MARCH 2025.

CHRISTINE OCHIENG

JUDGE

In the presence of:

Kibe Mungai for Exparte Applicants

Ojanga for 2nd Interested Party

Court Assistant: Joan

