



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(JUDICIAL REVIEW DIVISION)

(Coram: Odunga, J)

JR MISC APPLICATION NO. 245 OF 2018

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: THE RATING ACT

AND

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF
JUDICIAL REVIEW IN THE NATURE OF MANDAMUS, CERTIORARI AND PROHIBITION**

REPUBLIC.....APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF MACHAKOS.....1ST RESPONDENT

ADMINISTRATOR MAVOKO SUB-COUNTY RATES OFFICE...2ND RESPONDENT

EXPARTE: PARBAT SIYANI CONSTRUCTION LTD

JUDGEMENT

1. By a Motion on Notice dated 25th July, 2018, the ex parte applicant herein, **Parbat Siyani Construction Ltd**, seeks the following orders:
1. An order of Certiorari to bring into the High Court for purposes of being quashed the decision of the Administrator/Rating Officer of Mavoko Sub-County Rates office to demand for rates in the sum of Ksh.16,874,891.00 against the Exparte Applicant on account of LR No 12715/452.
 2. An order of Prohibition restraining the Respondents from demanding or alleging there is a balance due on the Rating Registry on account of LR No 12715/452 a title that was surrendered to the Government and does not exist.
 3. An order of Mandamus directed at and compelling the 2nd Respondent to rectify their rating register and remove the old Title of LR NO.12715/452 and replace it with 12715/9427.
 4. Such other reliefs as this Honourable Court may deem just and expedient to grant.
 5. **THAT** costs of and incidentals to this application be provided for.

Ex Parte Applicant's Case

2. The application is based on the following grounds:

- 1) **THAT** the purported demand notice issued by the 1st Respondent on 6th June, 2018 upon the Applicant is with respect to a Title already surrendered to the government and does not exist.
- 2) **THAT** the applicant has already paid rates with respect to the same property.
- 3) **THAT** Application raises serious issues of administrative law and practice.
- 4) **THAT** the 1st Respondent has abdicated its statutory authority granted under the Ratings Act & Regulations thereunder.
- 5) **THAT** the Respondents have made a grave error of law by failing to give effect to the Applicants rights under Article 31, 40 and 47 of the Constitution.
- 6) **THAT** the Respondents have entertained and permitted an illegality to trample upon clear statutory provisions.
- 7) **THAT** the Respondents have acted unreasonably within the Wednesbury's principle of unreasonableness.
- 8) **THAT** the Respondents misinterpreted, misapprehended and misapplied the provisions of the Ratings Act and Regulations thereunder.
- 9) **THAT** the Respondents' conduct amounts to a breach of the Applicants' legitimate expectation and fair administrative action as provided under Article 47 of the Constitution.
- 10) **THAT** the Respondents have by their conduct deprived the Applicants of their right to natural justice and equal protection and benefit of the law guaranteed under Article 27(1) of the Constitution.
- 11) **THAT** the Respondents' decision is *ultra vires* its statutory mandate.
- 12) **THAT** the Applicants have a *prima facie* case with high chances of success and should be allowed to ventilate the same.
- 13) **THAT** the Applicants are apprehensive that if the orders sought are not granted, the Interested Parties shall implement the impugned decision without regard to the Applicants' rights.
- 14) **THAT** the wider interest of justice will best be served if the orders sought herein above are granted.
- 15) **THAT** no prejudice will be suffered by the Respondents if the orders sought herein are granted.
- 16) **THAT** this Honourable Court has the power, and in the circumstances of this case, the obligation to quash the decision of the Respondent herein.
- 17) **THAT** it is in the interest of justice that the orders sought be granted.
- 18) **THAT** the balance of convenience tilts in favour of granting the orders sought.

3. The application was supported by a verifying affidavit sworn by **Parbat Siyani**, the applicant's the Executive Chairman of the Applicant.
4. According to the deponent, the Applicant is a limited liability company engaged in Civil Engineering & General Building Construction works and it has go downs situated in Plot No.LR 12715/9427 in Mavoko Sub-County of Machakos County. By a rating bill dated 6th June 2018 to the Applicant the Respondent demanded arrears in the sum of Ksh.16, 874, 891.00 with regards to parcel LR No.12715/452.
5. It was however averred by the applicant that on 9th November 2006 it made an Application for permission for change of user from Residential to Industrial on L.R. NO.121715/452 from the Municipal Council of Mavoko. Pursuant thereto, the commissioner of lands wrote to the applicant a letter dated 18th September 2007, stating that the Application for change of user was approved subject to the applicant paying Ksh. 68,220.00 which amount was paid on 3rd November 2008 and it was issued with an approval dated 7th January 2007. Accordingly, the said parcel of LR No.12715/452 was surrendered to the government upon change of user and a new deed plan and title No.LR 12715/9427 was issued. Therefore, according to the applicant, in effect the old title of LR No.12714/452 refers to the same property LR No.12714/9427.
6. It was disclosed by the applicant that on 13th October 2008 it made another Application to the Municipal Council of Mavoko for permission to build go downs (industry) on the same parcel of land which was approved on 15th October 2008 subject to some conditions which it followed to the letter. According to the applicant it has since this change been paying land rates on parcel LR 12715/9427 and that all the rates with regards to plot number LR 12715/9427 are up to date with no arrears. It averred that on 21st October 2008 it was issued with clearance certificate for payment of rates and all charges on Plot L.R No.12715/452.
7. It was therefore the applicant's case that the decision by the Respondent to demand rates on account of a non-existent title is not only arbitrary, irregular and illegal but also unlawful as L.R No.12715/452 was closed upon obtaining a clearance certificate on the 21st October 2018 and L.R No.12715/9427 file opened.

8. The applicant disclosed that when the Respondent sent debt collectors to demand for rates in Plot L.R No. 12715/452 it instructed its lawyer who wrote a letter on the 21st June 2018 to clarify the position but the Respondent was still adamant the Applicant still owed rates. According to the applicant, the Respondent cannot purport to demand for rates on L.R No. 12715/452 as the file was closed and L.R No.12715/9427 opened. To do so amounts to double payment as the rates in L.R No.12715/9427 are up to date.

9. The applicant's case was therefore, that it is in the interest of justice that orders sought herein be granted.

10. On behalf of the ex parte applicant cited various authorities and prayed the court finds merit in the Notice of Motion Application and allow the same.

Respondent's Case

11. On behalf of the Respondent, the application was opposed vide the following grounds of opposition:

1) THAT the Ex-Parte Applicant seeks judicial review orders against the merits of a decision and not the decision making process thus rendering the said application defective.

2) THAT the Applicant has not in any way shown and proved that LR. No. 12715/452 is the same as LR. No. 12715/9427.

3) THAT the Applicant has failed to show that the decision making process that led to the issuance of a demand note for payment of rates was arbitrary.

4) THAT the Applicant has failed to show the payment receipts for the alleged settlement of rates.

5) THAT the Applicant has also attached demand notes referring to two entities i.e Syokimau Farm Limited (*Annexure PS4 of the Further Affidavit of Parbat Siyani filed on 22nd January 2018*) and Parbat Siyani Construction Limited thus failing to proof the authenticity of the same.

6) THAT the Applicant has not shown and or produced the Rates clearance certificate purportedly issued by the County Government in regards to LR No. 12715/452 to confirm alleged payment of rates.

12. On behalf of the Respondent, it was submitted that from the evidence presented, nothing shows/confirms a transition of the property from LR no. 12715/452 to LR No.12715/9427 and that in fact a perusal of all documents presented by the Applicant show that the properties are distinct and separate. It was submitted that the Applicant has only attached a copy of one title deed; that is the title for LR. No.12715/9427 which title shows that it was issued on 5th March 2010 and registered on 8th July 2010. However, this title document does not at any point indicate that it is a replacement of an earlier title number or that it refers to the earlier parcel of land. In the Respondent's view, looking at the trail of documents on LR. No. 12715/452, an application for change of use was made on 9th November 2009 to the now defunct Municipal Council of Mavoko and an approval issued on 6th February 2007. The only precondition placed was that the application was to be in conformity with the approved use, that is industrial purposes. Subsequently, the ex-parte applicant made an application to the Ministry of Lands which application was approved on 18th September 2009. The only pre conditions issued by the Ministry of lands for the said change of user from residential to industrial was the payment of Kshs. 61,000.00 as annual rates, payment of Kshs.5000 approval fees and the presentation of the title document for endorsement. It was submitted that there was no condition or provision or requirement that the title would be replaced and that the land would be assigned a new Land Reference Number as the Ministry of lands only asked for the title for purposes of endorsement and not issuance of a new title number. As such, the two titles being referred to by the Applicant clearly refer to two different parcels of land.

13. It was submitted that in fact, the Applicant sought for development approvals for LR no.12715/452 on 13th October 2008 and the said approvals were granted on 15th October 2008, clearly more than a year after the land changed user from residential to industrial and it still was registered under LR Number 12715/452 clearly sowing that the number never changed upon change of user in the year 2007.

14. It was submitted that the failure to attach any communication from the ministry recalling the title document for LR. No.12715/452 and communication replacing the same with LR No.12715/452 is a clear indication that the two properties are separate and distinct.

15. As regards the Applicant's allegation that it had paid all land rates due and owing form LR No. 12715/9427 and as such no rates is due and owing, the Respondent averred that since the applicant had attached the land rates demand note for the year 2017 and the rates clearance certificate for the year 2017 in respect of LR No. 12715/9427, this is not contested. However, in regard to LR No. 12715/542, no such evidence has been produced. From the documents attached both in the supporting affidavit and in the further affidavit, nothing can support the Applicants allegation of payment of rates since no such evidence exists. If indeed the two parcels of land are the same, then there would have been a final demand note for LR No. 12715/542 and a payment receipt together with a rates clearance certificate from the Municipal Council of Mavoko and or the County Government of Machakos before a new title document with new title numbers could be issued. In the Respondent's submission, no new title over a property and amendment of the Registry Index map can proceed without a rates clearance certificate and no such certificate in regards to LR No. 12715/542 was produced by the Applicant in both of its affidavits thus confirming that the same does not exist as payment for rates for the said property are due and outstanding and in fact have never been paid by the Applicant.

16. As for the question whether the 1st Respondent has the powers to impose and/charge rates, it was submitted that the **Rating Act**, Cap 267 of the laws of Kenya imposes a duty on all rating authorities to charge and collect rates from all properties falling within their jurisdiction. According to the Respondent, the County Government of Machakso is a Rating authority as provided for in law. Furthermore, the

Constitution of Kenya 2010 creates County Governments under Article 176 with the power and duties as conferred under article 186 of the Constitution and as enumerated under the fourth Schedule thereto. The **County Government Act** also extensively covers the functions of a County Government thus also adding weight onto the powers of the county to impose and charge rates.

17. As such, it was submitted, the act of the County Government of Machakos to impose and charge rates on the subject property is thus in accordance with the law and well within the confines and parameter imposed on the County by the Law. As such, the Applicants cannot be heard to challenge the performance of the County of its obligation unless shown that the same is illegal and arbitrary which is not the case herein. The Applicant thus is unable to prove its case as framed before this court.

18. It was further submitted that the 2nd Respondent, the office of the Sub County Administrator is an office created under section 50 of the **County Governments Act**, and he is an employee of the County Government and who reports to Chief Officers in the County Government and as such, ought not be sued in his capacity as an administrator thus making the suit as against the 2nd Respondent defective.

19. It was submitted that though the Ex Parte Applicant herein seeks judicial review orders of certiorari, mandamus and prohibition, it had not shown nor fulfilled the principles for the grant of the said orders. Based on **Kiscoba Association (acting through John Maina – Chairman James Ndiba -Organizing Secretary vs. Nairobi City County Government [2018] eKLR**, it was submitted that what the Ex-parte applicant is calling this court to do is to review the evidence on record, that is the issue of title document, whether the land reference numbers refer to one and the same parcels of land, and whether rates have been paid or payable thus rendering the current application an improper candidate for determination by way of judicial review. It was submitted that the Ex-parte applicant having failed to show that the 1st Respondent lacks power to charge and levy rates, and that in so levying it was arbitrary, unfair, invalid and/or in abuse of its powers, the application ought to fail.

20. The Respondent therefore prayed that the Ex-Parte application be disallowed as it is not a proper candidate for judicial review and further due to the fact that the Applicant has failed to prove its case as brought before this court.

Determinations

21. I have considered that the issues raised in this application.

22. It is important to consider the circumstances under which judicial review remedies do issue. The parameters of judicial review were set out by the Court of Appeal in **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001** in which 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.”

23. In **Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited [2008] eKLR** it was held that the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself, guilty of usurpation of power. See ***Halsbury’s Laws of England 4th Edition Vol (1)(1) Para 60.***

24. It must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See ***R vs. Secretary of State for Education and Science ex parte Avon County Council (1991) 1 All ER 282, at P. 285.***

25. The broad grounds on which the Court exercises its judicial review jurisdiction were restated in the Uganda case of **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300.** In that case the Court cited with approval **Council of Civil Unions vs. Minister for the Civil Service [1985] AC 2** and **An Application by Bukoba Gymkhana Club [1963] EA 478 at 479 and** held:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural

rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

26. The reason for saying this is due to the recognition that the grounds upon which the Court exercises its judicial review jurisdiction are incapable of exhaustive listing. As was stated by Nyamu, J (as he then was) in Republic vs. The Commissioner of Lands Ex parte Lake Flowers Limited Nairobi HCMISC. Application No. 1235 of 1998:

“Although judicial review has been bequeathed to us with defined interventions namely illegality, irrationality and impropriety of procedure the intervention has been extended using the principle of proportionality...The court will be called upon to intervene in situations where authorities and persons act in bad faith, abuse power, fail to take into account relevant considerations in the decision making or take into account irrelevant considerations or act contrary to legitimate expectations...Even on the important principle of establishing standing for the purposes of judicial review the Courts must resist being rigidly chained to the past defined situations of standing and look at the nature of the matter before them...Judicial review is a tool of justice, which can be made to serve the needs of a growing society on a case-to-case basis... The court envisions a future growth of judicial review in the human rights arena where it is becoming crystal clear that human rights will evolve and grow with the society.”

27. This is in tandem with the holding in Re Bivac International SA (Bureau Veritas) [2005] 2 EA 43 that like the Biblical mustard seed which a man took and sowed in his field and which is the smallest of all seeds but when it grew up it became the biggest shrub of all and became a tree so that the birds of the air came and sheltered in its branches, judicial review stems from the doctrine of *ultra vires* and the rules of natural justice and has grown to become a legal tree with branches in illegality, irrationality, impropriety of procedure (the three “I’s”) and has become the most powerful enforcer of constitutionalism, one of the greatest promoters of the rule of law and perhaps one of the most powerful tools against abuse of power and arbitrariness. It has been said that the growth of judicial review can only be compared to the never-ending categories of negligence after the celebrated case of Donoghue vs. Stephenson in the last century.

28. To paraphrase Bagmall, J in Crowcher vs. Crowcher [1972] 1 WLR 425, 430, judicial review jurisdiction is not past child-bearing age; however, its progeny must be legitimate and it is well that this should be so; otherwise no lawyer could safely advise his client and every quarrel would lead to a lawsuit.

29. In this case, the ex parte applicant’s case was that following its Application for permission for change of user from Residential to Industrial on L.R. No.121715/452 from the Municipal Council of Mavoko, which application was approved subject to the applicant paying Kshs. 68,220.00 which amount was paid, the said parcel of LR No.12715/452 was surrendered to the government upon change of user and a new deed plan and title No.LR 12715/9427 was issued, thereby replacing LR No.12715/452 with title No.LR 12715/9427. Therefore, according to the applicant, in effect the old title of LR No.12714/452 refers to the same property LR No.12714/9427. Having paid the outstanding rates, the applicant contended that on 21st October 2008 it was issued with clearance certificate for payment of rates and all charges on Plot L.R No.12715/452. According to the applicant it has since this change been paying land rates on parcel LR 12715/9427 and that all the rates with regards to plot number LR 12715/9427 are up to date with no arrears. This later position was conceded to by the Respondent.

30. However, the Respondent contended by way of grounds of opposition and submissions, that there is no evidence that the said two parcels are one and the same property since the evidence adduced falls short of proving he same. There was however no replying affidavit filed on behalf of the Respondent. In those circumstances, I agree with the position in Kennedy Otieno Odiyo & 12 Others vs. Kenya Electricity Generating Company Limited [2010] eKLR wherein the court held: -

“The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition addresses only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the application in its supporting affidavit. Thus what was deposed to was not entered nor rebutted by the Respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant’s supporting affidavit, means that the respondents have no claim against the applicant.”

31. Similarly, in Mohammed & Another vs. Haidara [1972] E.A 166 at page 167 paragraph F-H, Spry V.P considered the failure by a party to file any reply to allegations set out in evidence and expressed himself as follows:

“The respondent made no attempt to reply to these allegations and they therefore remain unrebutted...Here, the respondent’s affidavit gives no material facts and the only real evidence of facts is that contained in the appellant’s affidavit. In these circumstances, it seems to me that a replying affidavit was essential. There was no need for it to be prolix but it should have made clear which of the facts alleged by the appellants were denied...”

32. In Kenya Akiba Micro Financing Limited vs. Ezekiel Chebii & 14 others [2012] eKLR the court stated as follows:

“In my view, a statement made on oath should as a matter of fact be expressly denied on oath. If not challenged, it remains a fact and the truth for that matter.”

33. What are the consequences of a party failing to adduce evidence? In the case of Motex Knitwear Limited vs. Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No. 834 of 2002, Lesiit, J citing the case of Autar Singh Bahra And Another vs. Raju Govindji, HCCC No. 548 of 1998 appreciated that:

“Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the defence rendered by the 1st plaintiff’s case stand unchallenged but

also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail”.

34. Again in the case of **Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001** the learned judge citing the same decision stated that it is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the plaintiff against them is uncontroverted and therefore unchallenged.

35. In the case of **Karuru Munyoro vs. Joseph Ndumia Murage & Another Nyeri HCCC No. 95 of 1988**, Makhandia, J (as he then was) held that:

“The plaintiff proved on a balance of probability that she was entitled to the orders sought in the plaint and in the absence of the defendants and or their counsel to cross-examine her on the evidence, the plaintiff's evidence remained unchallenged and uncontroverted. It was thus credible and it is the kind of evidence that a court of law should be able to act upon”.

36. In **Janet Kaphiphe Ouma & Another vs. Marie Stopes International (Kenya) Kisumu HCCC No. 68 of 2007** Ali-Aroni, J. citing the decision in **Edward Muriga Through Stanley Muriga vs. Nathaniel D. Schulter Civil Appeal No. 23 of 1997** held that:

“In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere allegations...Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence”.

37. Similarly, in the case of **Interchemie EA Limited vs. Nakuru Veterinary Centre Limited Nairobi (Milimani) HCCC No. 165B of 2000**, Mbaluto, J held that where no witness is called on behalf of the defendant, the evidence tendered on behalf of the plaintiff stands uncontroverted.

38. I must however state that where the allegations made even in an affidavit fall short of the legal threshold expected in a matter the Court may still decline to grant the orders sought and this must be so even in cases where the application is not opposed. This was the Court of Appeal's position in **Central Bank of Kenya vs. Uhuru Highway Development Ltd. & 3 Others Civil Appeal No. 75 of 1998** where it was held that it is an error for the Court to hold that a failure to file grounds of opposition automatically entitles the applicant to orders *ex parte* as the applicant is not relieved of the onus on him of justifying his application.

39. This is my understanding of the holding of **Rajah, JA** in **Britestone Pte Ltd vs. Smith & Associates Far East Ltd [2007] 4 SLR (R) 855 at 59** that:

“The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him.”

40. In this case, however, the issues which were raised by the Respondent in the submissions ought to have been brought to the court's attention by way of a replying affidavit since they were not issues of law that could be properly canvassed in grounds of opposition. By not filing an affidavit and instead opting to raise the same in the grounds of opposition the Respondent decided to take a risk hoping to short circuit the procedure, a very risky gamble in my respectful view. Parties and their legal advisers ought to take the advice of the Court of Appeal in **James Njoro Kibutiri vs. Eliud Njau Kibutiri 1 KAR 60 [1983] KLR 62; [1976-1985] EA 220** that the ingenious lawyers are advised that short cuts are fine, as long as you are absolutely sure they won't land you in a ditch.

41. In the absence of any evidence on oath to controvert the applicant's averment that LR No.12714/452 cease to exist after the title was surrendered and the same was substituted with LR No.12714/9427, this court has no basis upon which it can disregard such evidence made on oath and believe the Respondent's grounds and submission not made on oath. The applicant has even exhibited a copy of a letter dated 21st June 2018 by which it complained to the Respondents about the said double levying of the rates. That letter on the face of it was received by Mavoko Sub-County Administrator. The Respondents were very silent about this letter and how they responded to it, if at all. One would have expected the Respondents to take this matter with the seriousness it deserved taking into account the amount in question. However, the casualness with which they decided to handle the matter leaves a lot to be desired.

42. Therefore, based on the only evidence on record, I find that the applicant proved that having surrendered the title to L.R No.12715/452 and having paid the outgoings in respect of parcel LR 12715/9427, payment which the Respondents admitted, it was irrational for the Respondent to have turned back on a transaction which it approved and sought payment of rates on the suit property.

43. In the premises this application succeeds and I issue the following orders:

a) An order of Certiorari bringing into this Court for purposes of being quashed the Respondents' decision to demand for rates in the sum of Ksh. 16,874,891.00 against the Exparte Applicant on account of LR No 12715/452.

b) An order of Prohibition restraining the Respondents from demanding or alleging there is a balance due on the Rating Registry on account of LR No 12715/452 a title that was surrendered to the Government and does not exist.

c) An order of Mandamus directed at and compelling the 2nd Respondent to rectify their rating register and remove the old Title of LR NO.12715/452 and replace it with 12715/9427.

d) Since the 2nd Respondent ought not to have been joined to these proceedings, there will be no order as to costs.

44. Orders accordingly.

Judgement read, signed and delivered in open court at Machakos this 25th day of March, 2019.

G V ODUNGA

JUDGE

In the presence of:

Miss Muithirania for Mr Makori for the Petitioner

Mr Shikoli for Mr Mutua for the Respondent

CA Geoffrey