



**Nanjero v Cabinet Secretary Ministry of Land, Housing and Urban Development;  
Law Society of Kenya (Interested Party) (Environment and Land Miscellaneous  
Application E277 of 2022) [2023] KEELC 21202 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21202 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E277 OF 2022  
MD MWANGI, J  
OCTOBER 17, 2023**

**BETWEEN**

**DORCAS AYOMA MBALANYA NANJERO ..... APPLICANT**

**AND**

**THE CABINET SECRETARY MINISTRY OF LAND, HOUSING AND URBAN  
DEVELOPMENT ..... RESPONDENT**

**AND**

**LAW SOCIETY OF KENYA ..... INTERESTED PARTY**

*(In respect of the Applicant’s application dated 14th April, 2023)*

**RULING**

**Background**

1. Before delving in the merits of the instant application, it is important to highlight the background that has informed its filing. The Applicant initially moved this court through an application dated 30<sup>th</sup> November, 2022 seeking for orders: -
  - a. That a typed and certified copy of the original register of shareholders and plot Nos. relating to Nairobi Block 110 be deposited with the Interested Party.
  - b. That any dealings in Nairobi Block 110 be verified from this record before registration of any land by the Respondent
  - c. That costs be in the cause.



2. The Court after hearing the Applicant through her lawyer Ms. Vuchocho, Ms. Murugi representing the Respondent, as well as the President of the Law Society of Kenya, allowed the application in the following terms;
  - i. That typed and certified copies of the original register of shareholders and plot numbers relating to Nairobi Block 110 be deposited with the Law Society of Kenya (LSK) and the Ministry of Lands (the 2nd Respondent).
  - ii. That the typed and certified copies once deposited with the two institutions shall be made accessible to the public and stakeholders.
3. The Applicant dissatisfied with the Orders given by the court subsequently filed the instant application on the 17th April, 2023 seeking that;
  - a. The Honourable Court be pleased to review and or vary the orders made on the 16th March, 2023.
  - b. That costs be provided for.
4. The application is premised on the grounds on the face of it and the Supporting Affidavit of Ruth Vuchocho deponed on the 17th April, 2023. In summary the deponent avers that the Orders issued by this court on 16th March, 2023 were erroneously captured. The court failed to cite the correct details of the property in question which formed the subject matter of the Miscellaneous Application and the key aspect of verification before registration.
5. She depones that the court be pleased to vary the terms captured in the Order to include the correct property, which is Nairobi/Block 110 and not as indicated in the order and ought to be rectified.
6. She states that the orders cannot be executed as it is due to the fact that the property details have not been correctly captured and there is an error on the court record. That it is therefore imperative to rectify the order to clarify the same for avoidance of doubt.
7. During the hearing of the application on 19th April, 2023, counsel for the Applicant stated that there is an error on the description of the subject property described as Nairobi Block 110. Further, that order number 2 ought to have been that any dealings in Nairobi Block 110 be verified from this record before registration of any land by the Respondent.
8. Mr. Theuri, the LSK President stated that for good order, prayer No. 2 should not be couched in mandatory terms. He averred that his understanding of this matter is that there are other plots that may not have been allocated and are open spaces for public use. That if the said information is made public, the open spaces may become susceptible to fraud. That is why Block 110 transactions have been suspended due to the high incidences of fraud.
9. Counsel for the Respondent on her part stated that she is not opposed to having the LSK hold the register in their custody and a copy deposited with them. With regard to the application for review, it is important to ensure the register is not open for public use. A proposal that the Applicant's counsel did not oppose.
10. The court issued directions on 30th May, 2023 and directed parties to address the issues listed hereunder by way of written submissions;
  - a. Whether there is legal basis for granting the orders sought by the Applicant herein under the various legal regimes dealing with land matters in Kenya.



- b. Whether the proposed action by the Applicant herein would interfere with the powers/ functions of the Chief Land Registrar as by law established.
  - c. Whether the issuance of the orders sought by the Applicant would impact on previous decisions made by the courts and various cases pending before the courts in respect to Nairobi/ Block 110.
  - d. Whether granting the orders sought by the Applicant without involvement of all stake holders, would amount to a violation of their constitutional rights, under Article 50 of *the Constitution*.
11. The Applicant complied and filed her submissions. The Respondent and the Interested Party did not file submissions as directed.

### **Submissions by the Applicant**

12. The Applicant submissions on the first issue is that as the custodian of the original register of the owners of Nairobi Block/ 110, the member's right to ownership of land as is stated in Article 40 of *the Constitution*. That the fraudsters having acquired titles over Nairobi Block 110 have no right to claim ownership and protection as provided in Article 40(6) of *the Constitution*. That it will be impossible to determine the rightful owner unless verification is done as against the original register.
13. She submits that the legal basis is therefore to ensure that proper assistance is given to the Respondent to ensure that verification is properly done before registration of titles. That this will ensure indefeasibility of titles in ownership of Nairobi Block 110.
14. On the second issue, the Applicant restates the functions of the Chief Land Registrar as provided in the *Land Registration Act*. That the Applicant has no interest to interfere with the Registrar's functions but only to assist the Respondent in maintaining the correct register through verification.
15. As for the third issue, she submits that genuine plots owners have lost their land due to collusion between land officials and conmen who have registered land without verification from the original register. That she has been a witness in many fraud cases in relation to Nairobi Block 110 to the extent that she is a protected witness. In determining and verifying beneficial ownership should be guided by Section 24, 25 and 26 of the *Land Registration Act* No. 3 of 2012. That issuance of the orders sought will bring sanity on the issue of ownership in Nairobi Block 110.
16. Finally, on the fourth issue, the Applicant submits that all relevant stakeholders together with Members of Thome Farmers No. 1 Company Limited who are beneficial owners with interest in Nairobi Block 110 are beneficial owners with interest in that land and the same is recorded in the register. That Article 50 gives each party a right to seek relevant remedies in a competent court of law. That the application being unopposed by both the Respondent and the Interested Party, the orders sought should be granted.

### **Issues for Determination**

17. As earlier stated, the issues for determination as framed by the court are as follows:
  - a. Whether there is legal basis for granting the orders sought by the Applicant herein under the various legal regimes dealing with land matters in Kenya.
  - b. Whether the proposed action by the Applicant herein would interfere with the powers/ functions of the Chief Land Registrar as by law established.



- c. Whether the issuance of the orders sought by the Applicant would impact on previous decisions made by the courts and various cases pending before the courts in respect to Nairobi/Block 110.
- d. Whether granting the orders sought by the Applicant without involvement of all stake holders, would amount to a violation of their constitutional rights, under Article 50 of *the Constitution*.

### **Analysis and determination**

18. As regards the rectification of the details of the suit property, the error is clearly apparent on the Order issued by the court on the 16th March, 2023 on description of subject property. It was a clerical error arising from an accidental slip. The court is empowered under Section 99 of the *Civil Procedure Act* to correct such an error either on its own motion or on the application of any party. I therefore direct the Deputy Registrar of this court to rectify the Order of 16th March, 2023 on description of subject property to read as follows;
  - a. “That typed and certified copies of the original register of shareholders and plot numbers relating to Nairobi Block 110 be deposited with the Law Society of Kenya (LSK) and the Ministry of Lands (the 2nd Respondent).
19. The second part of the application is where the contention is. The Applicant invites the court to include a second Order to the effect that “any dealings in Nairobi Block 110 be verified from this record before registration of any land by the Respondent.”
20. The court had duly considered this prayer in the application filed by the Applicant and, in its place, directed as follows, “that the typed and certified copies once deposited with the two institutions shall be made accessible to the public and stakeholders.” I therefore must state from the outset that it was not a mistake nor an error that the court failed to issue the order as prayed.
21. The court framed the four issues which it will address as hereunder;
  - a. Whether there is legal basis for granting the orders sought by the Applicant herein under the various legal regimes dealing with land matters in Kenya.**
22. The Applicant prays that an order issues directing that any dealings in Nairobi Block 110 be verified from this record before registration of any land by the Respondent.”
23. Such an Order, if it were to issue as framed, as correctly observed by the President of the Law Society of Kenya, Mr. Theuri, would be mandatory, compelling the Chief Land Register to solely use the records in the hands of the Applicant before registering any land. The President observed that Prayer 2 might create a conflict with the law. He proposed that more discussions be done between the Ministry and all stakeholders in regard to the suit property. That for good order, prayer No. 2 should not be couched in mandatory terms.
24. The order sought is equivalent of an order of mandamus. What the Applicant had filed before the court however was neither an ordinary civil suit nor an application for judicial review. The applicant has not approached the court in the proper way; she has neither established grounds for the grant of that order. Such an order would only issue on concrete proof that the records held by the Applicant are the only genuine records in existence as regards the subject property. How is the court to establish that in these kinds of proceedings? I find no legal basis for the grant of this order.
25. The 1<sup>st</sup> Order already issued by the court suffices for purposes of preservation of the evidence, if that was the only intention.



**b. Whether the proposed action by the Applicant herein would interfere with the powers/functions of the Chief Land Registrar as by law established.**

26. The Chief Land Registrar has the statutory responsibility to maintain the register. The law further is categorical that the register shall be accessible to the public. In the event that any question arises with regard to the exercise of the powers conferred upon the Registrar, or in relation to the performance of the duties imposed, the Registrar, or an aggrieved person, may state a case for the opinion of the Environment and Land Court. In this regard, Section 86 provides as follows:

“(1) If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties.”

27. The Supreme Court of Kenya dealt with this issue In the Matter of the National Land Commission [2015] eKLR, Advisory Opinion Reference No. 2 of 2014. The Applicant is at liberty to move the court for an advisory opinion if dissatisfied with the exercise of any power or the performance of any duty conferred or imposed on the Registrar by the Law.

28. The court’s finding on the second issue is therefore in the affirmative. The proposed action by the Applicant herein would directly interfere with the powers/functions of the Chief Land Registrar as by law established. This Court rejects the invitation by the Applicant to direct the Chief Land Registrar how to conduct his statutory responsibilities.

**c. Whether the issuance of the orders sought by the Applicant would impact on previous decisions made by the courts and the various cases pending before the courts in respect to Nairobi/Block 110**

29. The Applicant states in her supporting Affidavit that she has been called as a witness in several matters relating to the suit property. The Court is aware of many other cases pending in regard to the subject matter, some before this court. Issuance of the 2<sup>nd</sup> order as sought by the Applicant herein, would literally open a ‘can of worms. The court has not been told whether all the previous decisions relating to the subject property were determined solely on the basis of the records she holds or otherwise.

**d. Whether granting the orders sought by the Applicant without involvement of all stakeholders, would amount to a violation of their constitutional rights, under Article 50 of the Constitution**

30. The issuance of the 2<sup>nd</sup> Order sought by the Applicant would impact on many people who are not represented in these proceedings. The shareholders, the purchasers of land, just but to name a few are some of the stakeholders whose views ought to be heard before such a drastic order is issued. The order is drastic because it would determine how registrations of any land originating from the subject property will be registered in future. The order would, if issued, impose a condition precedent to registration of any such land. The stakeholders have a right to be heard before such a decision is made.

31. The Court, in Pinnacle Projects Limited vs. Presbyterian Church of East Africa, Ngong Parish & another [2018] eKLR, had the following to say:

“... it is important that in any judicial process adjudication parties involved be given opportunity to present their case and have a fair hearing before the decision against them is



made by the respective judge or magistrate. It is not lost that procedural fairness is deeply ingrained in our administration of justice system.”

### **Final Disposition**

32. Based on the foregoing, the court’s finding is that the application dated 14th April, 2023 partially succeeds only in regard to the error in the description of the subject land. The court therefore issues the following Order;

I. The Deputy Registrar of this court is directed to rectify the Order of 16th March, 2023 on the description of subject property only to read as follows;

That typed and certified copies of the original register of shareholders and plot numbers relating to Nairobi Block 110 be deposited with the Law Society of Kenya (LSK) and the Ministry of Lands (the 2nd Respondent).

II. There shall be no orders as to costs.

It is so ordered

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER, 2023**

**M. D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms Vuchocho holding brief for Mungalo for the Applicant

Ms Kiunga holding brief for Mr. Theuri for the Interested Party, LSK

No Appearance for the Respondent

Yvette: Court Assistant

**M. D. MWANGI**

**JUDGE**

