



East African University v Lands Registrar, Kajiado County (Environment and Land Judicial Review Case E004 of 2025) [2025] KEELC 3502 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3502 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2025**

MD MWANGI, J

APRIL 30, 2025

**IN THE MATTER OF: AN APPLICATION FOR
A JUDICIAL REVIEW ORDER OF MANDAMUS**

AND

**IN THE MATTER OF: LAND REGISTRATION ACT NO. 8 OF 2012
IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2025**

**IN THE MATTER OF: RECONSTRUCTION OF THE DEED FILE
RELATING TO ALL THAT PIECE OF LAND KNOWN AS LAND
REFERENCE NUMBER KAJIADO/KAPUTIEI-NORTH/5489**

BETWEEN

THE EAST AFRICAN UNIVERSITY APPLICANT

AND

THE LANDS REGISTRAR, KAJIADO COUNTY RESPONDENT

JUDGMENT

Background

1. This judgment is in respect of the notice of motion dated 10th March 2025 brought under the provisions of Sections 8 and 9 of the *Law Reform Act*, Section 7 and 8 of the *Fair Administrative Action Act*, Articles 48 and 165 of *the Constitution* and Section 33(5) of the *Land Registration Act*. The ex parte Applicant prays for an order of mandamus to issue against the Respondent (the Land Registrar – Kajiado County) compelling him to, his agents, servants or persons acting through him to reconstruct the Deed File and Register for property L.R. No. Kajiado/Kaputiei-North/5489 in accordance with the provisions of Section 33(5) of the *Land Registration Act*. The ex parte Applicant further prays for an order for waiver of the requirement to issue a notice of 60 days in the Gazette for the reconstruction of the Deed File in relation to property L.R. No. Kajiado/Kaputiei-North/5489.



2. The application is premised on the grounds on the face of it, the statutory statement filed together with the application for leave and the verifying affidavit of Professor Marcelin Kitambala. The main ground in support of the application is that the Deed File/Register for L.R. No. Kajiado/Kaputiei-North/5489 cannot be traced in the Kajiado Lands registry.
3. The Applicant avers that its officials have visited the Kajiado Land Registry with the intention of conducting a search but they have been informed that the Deed File/Register is missing and they have been unable to secure a search for L.R. No. Kajiado/Kaputiei-North/5489.
4. The Applicant asserts that the Commission for University Education routinely conduct inspection regarding university programs and facilities; key among them being ownership of title where the university is located. A missing title is likely to lead to a university not being cleared by the Commission for University Education.
5. The Applicant avers that it made an application for reconstruction of the Deed File/Register to the Land Registrar in accordance with the provisions of Section 33(5) of the Land Registration Act but the Land Registrar has failed, refused and or neglected to act on its application hence the institution of these proceedings for an order to compel the Land Registrar to reconstruct the Deed File. The Applicant exhibited a copy of its title to the suit property confirming its ownership and the letter dated 19th December 2024 to the Land Registrar requesting for the reconstruction of the Deed File and register for the suit property.

Response by the Respondent.

6. The Respondent who was represented by the office of the Attorney General, in response to the application herein relied on the grounds of opposition dated 27th February 2025 filed in response to the application for leave to file for judicial review proceedings dated 22nd January 2025.
7. The grounds listed were to the effect that;
 - a. Section 33 (5) of the Land Registration Act provides for the procedure of reconstruction of lost land registers and the Applicant should follow the said procedure.
 - b. The Applicant should follow the procedure for reconstruction of lost registers set down under Regulation 28 of the Land Registration (General) Regulations, 2017.
 - c. There is a clear procedure for reconstruction of lost registers set down under the Land Registration Act and the Land Registration (General) Regulations, 2017 and as such, where there is a clear procedure for the redress of any particular grievances prescribed by an Act of Parliament, that procedure should be strictly followed.
 - d. The application is misconceived, mischievous and an abuse of the court process.

Court's directions.

8. The court's directions were that the application be canvassed by way of written submissions. The Respondent relied on submissions dated 16th March 2025, filed in opposition to the application for leave to institute these proceedings. The ex parte Applicants' submissions are dated 24th March 2025.
9. The court has had an opportunity to read and consider the said submissions which now form a part of its record.



Issues for determination.

10. Having carefully considered the application herein, the response by the Respondent and the submissions by the parties, the issues for determination in this court's opinion are;
 - A. Whether the ex parte Applicant is entitled to an order of mandamus to compel the Land Registrar to reconstruct the Register for the suit property.
 - B. Whether there is basis for the waiver of the 60 days' notice under Section 33 (5) of the [Land Registration Act](#).

Analysis and Determination

A. Whether the ex parte Applicant is entitled to an order of mandamus.

11. The scope of an order of mandamus was discussed by the Court of Appeal in the case of KNEC –vs- Republic: Ex Parte Geoffrey Gathenji Njoroge & others Civil Appeal No. 266 of 1996 (1997) eKLR. I find it appropriate to quote verbatim the pronouncement by the court as hereunder;

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal requiring him to or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode or redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform.

...an order of mandamus compels the performance of a public duty which is imposed on a person or a body of persons by a statute and where that person or body has failed to perform the duty to the detriment of the party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same.”

12. In *Muriithi & 2 others –vs- Attorney General & 4 others* (2006) 1KLR, the court stated that,

“A mandamus issues to enforce a duty the performance of which is imperative and not optional or discretionary.”
13. A party seeking an order of mandamus must therefore satisfy the court that the action he seeks to compel the Respondent to perform is a duty imposed by [the constitution](#) or law.
14. Section 33(5) of the [Land Registration Act](#) empowers the Registrar to reconstruct any lost or destroyed Land Register after making such enquiries as may be necessary and after giving due notice of sixty days in the gazette.
15. It is not in doubt that the Land Registrar has a statutory duty to reconstruct the Land Register where it is lost or destroyed. The ex parte Applicant assertion that he was informed that the Deed File or Land Register for the suit property could not be found has not been controverted by the Respondent. The ex parte Applicant is therefore justified to allude that the register is lost. The unavailability of the Land



register has denied the ex parte Applicant a current search of the title to the suit property which is one of the requirements for purposes of inspection of the Applicant, who is a university, to be cleared by the Commission of University Education.

16. The ex parte Applicant has demonstrated that it has applied for the reconstruction of the register in terms of the provisions of Section 33(5) of the [Land Registration Act](#) vide its letter of 19th December 2024 but the Land Registrar, Kajiado, has failed to perform his statutory duty of reconstructing the register, to the detriment of the ex parte Applicant.
17. I am persuaded that the ex parte Applicant is entitled to an order of mandamus to compel the Land Registrar reconstruct the Land Register for the suit property L.R. No. Kajiado/Kaputiei-North/5489.

B. Whether there is legal basis for the waiver of the 60 days' notice under Section 33(5) of the [Land Registration Act](#).

18. Section 33(5) of the [Land Registration Act](#) is explicit that the Land Registrar shall exercise his powers to reconstruct the register after giving notice of sixty days. The ex parte Applicant prays for the waiver of the sixty days' notice. I am aware of the two schools of thoughts as to whether the court has the power to waive the 60 days' notice under Section 33(5) of the Act.
19. The notice under Section 33(5), as the Court of Appeal observed in the case [Mbarak -vs- Freedom Limited \(Civil Appeal E028 of 2022\)](#){2024} KECA 160 KLR, invites all persons interested in the subject property to submit their views and any original records in their possession. It amplifies the integrity of the reconstructed register.
20. The provision of section 33(5) is mandatory. I do not see any room for the exercise of discretion either by the Registrar or the court.
21. The Land Registration (General) Regulations 2017 further explain the steps that the Registrar is required to take before embarking on the process of reconstructing a register. Regulation 29 provides that a person claiming to be a registered proprietor may apply to the Registrar for the reconstruction of the register in Form LRA 14, set out in the 6th Schedule. Such an applicant is in addition to making the application required to provide an indemnity. The Registrar then proceeds to notify the loss, to the general public at large, by notice in the Gazette in the prescribed form. It is only then and upon making the clarifications as under paragraph 4; and on condition that no objection is raised that the Registrar may reconstruct the Land Register.
22. My finding in respect of the 2nd issue therefore is that there is no legal basis for the grant of the prayer for waiver of the sixty days' notice under Section 33(5) of the [Land Registration Act](#).
23. The upshot is that the ex parte Applicant's application succeeds to the extent only that the court issues an order of mandamus compelling the Land Registrar, Kajiado to reconstruct the Land Register for property L.R. NO. KAJIADO/KAPUTIEI-NORTH/5489, in accordance with the provisions of Section 33(5) of the [Land Registration Act](#).
24. The court makes no orders as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF APRIL 2025.

M.D. MWANGI

JUDGE



In the virtual presence of:

N/A by the Parties

M.D. MWANGI

JUDGE

