



Republic v District Land Registrar Kajiado & 2 others; Kimani (Exparte Applicant) (Environment and Land Judicial Review Case 1 of 2024) [2025] KEELC 3683 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3683 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2024**

LC KOMINGOI, J

APRIL 24, 2025

**IN THE MATTER OF AN APPLICATION BY ENDRICE CHEGE KIMANI FOR
LEAVE TO APPLY FOR AN ORDER OF CERTIORARI AND MANDAMUS
AGAINST THE LAND REGISTRAR KAJIADO NORTH REGISTRY**

AND

IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER IF SECTION 18 OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF SECTION 12 OF THE ENVIRONMENT AND LAND COURT

ACT

AND

**IN THE MATTER OF SECTION 4(1), 7(1)(A) AND (B), 7(2), 9
AND 11 OF THE FAIR ADMINISTRATIVE ACTIONS ACT**

AND

IN THE MATTER OF THE LAW REFORM ACT SECTION 8 AND 9

BETWEEN

REPUBLIC APPLICANT

AND

THE DISTRICT LAND REGISTRAR KAJIADO 1ST RESPONDENT

THE DISTRICT LAND SURVEYOR KAJIADO 2ND RESPONDENT

ODYLIA MUHENJE 3RD RESPONDENT



AND

ENDRICE CHEGE KIMANI EXPARTE APPLICANT

JUDGMENT

Background

1. For determination is the Notice of Motion application dated 4th April 2024 brought pursuant to Sections 3, 12 and 13 of the Environment and Land Act, Section 8 and 9 of the Law Reform Act, Order 53 Rule 1(1), (2), (3), (4) and 3(1) of the Civil Procedure Rules (Amendment 2020). It seeks:
 - i. That an order of Certiorari do issue moving this Honourable Court for purpose of being quashed, the findings and the decision of the District Land Registrar, Mr. J.M. Mwambia, Ngong Land Registry made on 7th March, 2022 whereby it was adjudged that the Ex-parte Applicant and the 3rd Respondent should continue occupying less acreages of their Land Reference No. Ngong/Ngong/38136 & 38137 and Ngong/Ngong/38138 respectively as they exist on the ground irrespective of the relevant Survey Map.
 - ii. That this Honourable court do issue an order of Mandamus compelling the 1st Respondent to identify the beacons and fix the common boundaries of Land Reference No. Ngong/Ngong/38136 & 38137 and Ngong/Ngong/38138 as required by statute and in accordance with the Survey Map and the registered mutation forms dated 21st September 2006.
 - iii. That the costs of and incidental to this Application be borne by the Respondents.
2. The grounds are on the face of the Application and are set out in Paragraphs 1 to 7. The Application is supported by the Affidavit of Endrice Chege Kimani sworn on the 4th of April 2024. The Ex-parte Applicant claims that sometime in 2007 he purchased parcels Ngong/Ngong/38136 & 38137 from Richard Kipaa. These parcels were subdivision of parcel Ngong/Ngong/37184 which was subdivided on 21st September 2006. On or about February 2022, he wanted to erect a perimeter wall around the property but the 3rd Respondent protested claiming that he was encroaching on his land. This prompted him to bring in a land surveyor -Survtech Surveyors who established that the 3rd Respondent was the one encroaching on his property by 8 meters.
3. Following these findings, he applied to the 1st Respondent determine the boundary between the two parcels of land and the 3rd Respondent's LR No. Ngong/Ngong/38138. The 1st and 2nd Respondents visited the site and took measurements using a measuring tape and a handheld GPS and found that that indeed the total ground area of the ex parte applicants parcels of land was 0.246Ha against the registered area of 0.31Ha while the 3rd Respondent's land measured 0.317Ha against 0.155Ha.
4. On 7th March 2022, the 1st Respondent in his Ruling established that the boundary between these parcels had been interfered with and the acreage of each parcel differed on the ground compared to the mutation forms and the area survey map. However, the 1st Respondent ruled that the ex parte applicant and 3rd Respondent should continue occupying their parcels as they were, this is despite them occupying less acreage on the ground.
5. Therefore, the 1st and 2nd Respondents failed to consider evidence adduced and arrived at a flawed, illegal and improper decision. The decision should thus be quashed and the 1st and 2nd Respondents be compelled to determine the dispute a fresh without infringing on other people's rights.



6. The 3rd Respondent in her Replying Affidavit contested this application stating that she purchased her property Ngong/Ngong/38138 also from Richard Kipaa in 2006 before the Ex-parte Applicant. The original parcel was subdivided in 2006, measurements determined and beacons placed long before the Ex-parte Applicant purchased his plots. She thus could not have encroached on the Ex-parte applicant's land. She confirmed that when the 1st and 2nd Respondents visited the ground and carried out measurements, they found a disparity between the acreage used in the mutation form and the acreage available on the ground and in the ruling dated 7th March 2022 it was held that both parties had lost acreage of their lands because the mutation form dated 21st September 2006 did not use the correct land sizes available on the ground. It would therefore be unfair to punish her for mistakes of the surveyor and the same mistake had befallen the Ex-parte Applicant. She added that the suit should have been instituted against the vendor and that this application was against the doctrine of exhaustion because the Ex-parte Applicant ought to have appealed against the decision and not filed as a Judicial review because it did not meet the threshold.
7. These applications were canvassed by way of written submissions.

The Ex-parte Applicants Submissions

8. On whether the ex parte Applicant was entitled to the orders sought, counsel submitted that Judicial Review was concerned with the decision-making process and not the merits of the decision as held in *Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd* [2002] eKLR and *Republic vs Kenya Revenue Authority ex parte Yaya Towers Ltd* [2008] eKLR. For Judicial Review orders to be issued, there must be evidence that the administrative action was illegal, irrational or procedurally improper as held in *Samuel Njoroge & 4 others vs Attorney General & another* [2017] eKLR. It was submitted that the 1st and 2nd Respondents arrived at an illegal and flawed decision by failing to consider the evidence adduced despite the glaring inconsistencies and confirmation that the ground acreage was different from the acreage on available documents. The 1st Respondent therefore failed to adhere to procedural rules and made an unlawful finding citing *Republic vs Land Registrar Kajiado North District & 3 others* [2018] eKLR.
9. On the second factor whether the 1st Respondent's decision was irrational, it was submitted that the determination that the parties should continue occupying their portions despite the error in acreage was irrational and unreasonable as held in *Republic vs National Water Conservation & Pipeline Corporation & 11 others* [2015] eKLR. This unreasonableness constituted to a procedural impropriety warranting a review. An order of certiorari should therefore issue to quash the decision and compel the 1st and 2nd Respondents to identify beacons and fix boundaries on the suit properties. To support the grant of certiorari and mandamus orders, reference was made to the following cases: *Gerald Wanjohi & another vs The District Forest Office, Koibatek District* (2011) eKLR, *Stephen Kiguta Gichinga & 6 others vs Independent Electoral and Boundaries Commission & another* [2017] eKLR and *Kenya National Examinations Council vs Republic ex parte Geoffrey Gathenji Njoroge & others*.

The 3rd Respondent's submissions

10. At the time of writing this Ruling, the Respondents had not filed their submissions.

Analysis and determination

11. I have considered the application, submissions, relevant authorities and statutes and find that the issues for determination are:



- i. Whether the Ex-parte Applicant is entitled to the orders of certiorari and mandamus as prayed;
 - ii. What reliefs should issue;
 - iii. Who should bear the costs of this application?
12. The Ex-parte Applicant has approached Court seeking quashing of the decision and Ruling dated 7th March 2022 by the 1st Respondent on grounds that it was arrived at illegally, irrationally, unjustly and through procedural impropriety.
13. Article 47 (1) and (2) of *the Constitution* provides that:
 - (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.
14. The Supreme Court in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* [2021] KESC 39 (KLR) held as follows regarding judicial review:
 102. "...The purpose of the remedy of judicial review was concerned with reviewing not the merits of the decision in respect of which the application for judicial review was made, but the decision-making process itself..."
15. The question is whether the decision arrived at by the 1st Respondent in the Ruling dated 7th March 2022 was unlawful, unreasonable or procedurally unfair.
16. Section 18 and 19 of the *Land Registration Act* mandates the Land Registrar with the duty to determine and fix boundary disputes. I note that this was duly done and a Ruling dated 7th March 2022 delivered.
17. In the Ruling, it is on record that the Ex-parte Applicant and the 3rd Respondent were both given an opportunity to make their statements. In determining the dispute, it is indicated that the 1st Respondent considered the mutation form in order to use it to fix the boundary since the three parcels in question originated from the mutation and not original boundaries. It was also determined that the parcels in question were subdivisions of parcel Ngong/Ngong/37184 which according to its registration measured 0.501Ha but on ground, it measured 0.47Ha.
18. It is clear that the actual ground measurements and documented evidence was taken into consideration in arriving at the determination.
19. In the Ruling, the Land Registrar observed, "However upon taking measurements using handheld GPS and measuring tape, it was found out that the total ground area for land parcels number 38136 and 38137 combined is 0.264ha against the registered 0.31 ha (combined). While 38138 measures 0.137ha against 0.155ha. The measurement showed that the existing mutation form was not drawn as per the ground meaning it provided more measurements than on ground. Therefore, it couldn't be used to determine the dispute. It had not been drawn to scale..."
20. However, the Ex-parte applicant sought that the 1st Respondent be compelled to identify the beacons and fix the common boundaries of Land Reference No. Ngong/Ngong/38136 & 38137 and Ngong/Ngong/38138.
21. From the Ruling, it was also observed that even the original parcel before subdivision had an error in measurement and its ground acreage was smaller than the acreage on paper. Since the original



parcel was equally smaller on ground, then the mistake was neither the Respondents nor the ex parte applicant. This was clearly a historical mistake which altering some beacons on some parcels would affect the other parcels acreage. Not unless land can be expanded, correcting the Ex-parte Applicant's boundaries to mirror what is on the mutation form would mean divesting off the 3rd Respondent of her property which was no fault of her own. Therefore, issuing the orders sought by the ex parte would be an illegality because it is on record that the actual ground measurements are smaller than the measurements recorded in the documents held.

22. This Court thus finds no illegality, irrationality or procedural impropriety in the decision / ruling dated 7th March 2022.
23. In conclusion, I find no merit in this Application and the same is dismissed with costs to the 3rd Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF APRIL 2025.

L.KOMINGOI

JUDGE

In the presence of:

Ms. Muthoni for Mr. Ngaruiya for the Ex-parte Applicant

N/A for the 1st and 2nd Respondents

Ms. Esami for the 3rd Respondent

Court Assistant: Mutisya

