



Republic v Land Registrar Nairobi & another; Medallion Properties Limited (Exparte Applicant) (Environment and Land Judicial Review Case E030 of 2024) [2025] KEELC 3352 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3352 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E030 OF 2024**

CG MBOGO, J

APRIL 24, 2025

IN THE MATTER OF ILLEGAL RESTRICTIONS LODGED OVER PROPERTIES I.R. NUMBER 248380, I.R. NUMBER 248382, I.R. NUMBER 248379, I.R. NUMBER 248381, I.R. NUMBER 243961, I.R. NUMBER 248377, I.R. NUMBER 248376, AND I.R. NUMBER 106486/1

BETWEEN

REPUBLIC APPLICANT

AND

THE LAND REGISTRAR NAIROBI 1ST RESPONDENT

THE CAPITAL MARKET'S AUTHORITY 2ND RESPONDENT

AND

MEDALLION PROPERTIES LIMITED EXPARTE APPLICANT

JUDGMENT

1. Pursuant to leave granted on 21st November, 2024, the ex parte applicant filed the substantive notice of motion dated 22nd November 2024, expressed to be brought under Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 53 Rule 3 (1) of the Civil Procedure Rules seeking the following orders:-
 - a. That by way of judicial review, an order in the nature of certiorari does issue compelling the respondents to remove and bring into this honourable court for purposes of being quashed the proceedings, findings and/or decisions of the respondents with respect to the respondent's impugned and illegal decision to lodge restraints to dispositions in land in the nature of restrictions on the ex-parte applicant's properties I.R. Nos. 248380, 248382, 248379, 248381, 243961, 248377, 248376 and 106486/1 on 23rd September, 2024.



- b. That by way of judicial review, an order in the nature of mandamus does issue directed to the respondents to revoke their decisions to lodge restraints to dispositions in land in the nature of restrictions on the exparte applicant's properties I.R. Nos. 248380, 248382, 248379, 248381, 243961, 248377, 248376 and 106486/1 and compelling the respondents to pay the exparte applicant general damages including aggravated damages for emotional, financial and economic stress caused upon the exparte applicant.
 - c. That by way of judicial review, an order in the nature of prohibition do issue prohibiting the respondents by themselves, or their agents or servants from taking any further proceedings or actions founded on their impugned decision to lodge restraints to dispositions in land in the nature of restrictions on the exparte applicant's properties I.R. Nos. 248380, 248382, 248379, 248381, 243961, 248377, 248376 and 106486/1 on 23rd September, 2024.
 - d. That the costs of this application be borne by the respondents.
 2. The substantive motion is premised on the grounds inter alia that on 8th October, 2024, the exparte applicant engaged prospective purchasers with the intent of selling its properties and to its shock, it came to their attention that restrictions had been registered on the properties, and as such could not be sold.
 3. The motion is supported by the verifying affidavit of Michael Gitonga-the director of the exparte applicant sworn on 29th October, 2024. In his affidavit, the exparte applicant deposed that it purchased the suit properties in the year 2022, and was issued with the title deeds by the 1st respondent making it the indefeasible owner, with lawful possession. Further, it was deposed that they needed to settle some of the loan facilities, and engaged purchasers to sell I. R. Nos. 243961 and I.R 248376, but before they could proceed with the transaction because the respondents had registered restrictions on the suit properties at the behest of the 2nd respondent.
 4. The exparte applicant deposed that upon further enquiry, they discovered that the 1st respondent had registered a restriction over the suit properties on grounds that the 2nd respondent was conducting investigations on allegations of fraud. Further, that the 1st respondent registered the restrictions without following the due process laid down in Sections 76 (1) as read with Section 77 of the [Land Registration Act](#). It was further deposed that the 2nd respondent did not demonstrate sufficient grounds to warrant the restrictions, and that the respondents' actions are unlawful and violate its constitutional right to free enjoyment of the properties.
 5. The substantive motion was canvassed by way of written submissions. The exparte applicant filed its written submissions dated 3rd March, 2025 where it raised three issues for determination as listed below:
 - a. That the proper procedure was not employed in placing of the restrictions.
 - b. That the restrictions were improper, irregular, unfair and unlawful.
 - c. That the applicant is deserving of the orders sought.
 6. On the first issue, the exparte applicant submitted that as per the provisions of Section 76 of the [Land Registration Act](#), it was not notified by the 1st respondent of their intention to place a restriction on the suit properties, and that as the sole registered owner of the suit properties, it is a requirement that notices be given. Further, that the respondents' failure to issue prior notice of their intention to register restrictions was a violation of Section 43 (a) of the Fair Administrative Actions Act.



7. The ex parte applicant further submitted that it is yet to be given reasons for the placing of the restraints to disposition of the properties and as such, the respondents stand in violation of its right to fair administrative action. To buttress on this submission, reliance was placed in the case of *Kioa v West* [1985] HCA 81.
8. On the second and third issue, and while relying on the cases of *Daniel Piranto Ole Nchani v Deputy County Commissioner Kajiado & 3 others Ex-parte Daniel Piranto Ole Nchani* [2019] eKLR, *Municipal Council of Mombasa v Republic and Umoja Consultants Limited* Civil Appeal no. 185 of 2001; [2002] eKLR, and *Republic v Attorney General & 3 others Ex-parte Concorde Co-operative Savings Credit & Society Limited* [2018] eKLR, the ex parte applicant submitted that the proper procedure was not employed in the lodging of the restrictions to the suit properties.
9. The respondents did not file their response to the motion, and as it is, the same stands unopposed. Be that as it may, it is the duty of this court to be satisfied whether there is merit or otherwise in the application before granting any orders. I have considered the substantive motion, the documents in support thereof, and the written submissions filed by the ex parte applicant. In my view, the issue for determination is whether the ex parte applicant is entitled to the orders of judicial review.
10. In the case of *Municipal Council of Mombasa v Republic Umoja Consultants Ltd* Civil Appeal No. 185 of 2001 [2002] eKLR the Court of Appeal held that: -

“The court would only be concerned with the process leading to the making of the decision, how was the decision arrived at. Did those who made the decision have power i.e. jurisdiction to make it. Were the provisions affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did the decision maker take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a court of appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself – such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of judicial review.”

11. 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/she 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.
12. Section 76 of the *Land Registration Act*, Cap 300 provides as follows: -

“(1) For the purposes of compulsory acquisition the prevention of any fraud or improper dealing or for any other sufficient cause, the registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—



- (a) for a particular period;
 - (b) until the occurrence of a particular event; or
 - (c) until a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.
- (2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.
- (3) The registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.”

13. Section 77 of the same Act further provides:

- “(1) The registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction.
- (2) An instrument that is inconsistent with a restriction shall not be registered while the restriction is still registered except by order of the court or of the registrar.”

14. The *exparte* applicant herein contended that while in its business of disposing off some of its properties to settle some loan facilities, it emerged that the 1st respondent had placed restrictions on the suit properties with the instructions of the 2nd respondent on allegations of fraud. The *exparte* applicant contended that there was no notice of the intention to register caveats on its properties, and this amounts to serious violations of its right to fair administrative action and the right to enjoy use of its properties. The *exparte* applicant annexed copies of the lease with respect to the suit properties. However, the claim by the *exparte* applicant appears not to be backed by sufficient evidence. While it claims that restrictions have been placed on the properties mentioned above i.e. I.R. Nos. 248380, 248382, 248379, 248381, 243961, 248377, 248376 and 106486/1 on 23rd September, 2024, the only caveat registered is on the title no. 243961. Further, the allegations of the 1st respondent acting on the instructions of the 2nd respondent has not been supplied either. It would thus be difficult for the court to be persuaded by the averments of the *exparte* applicant in the absence of such evidence.

15. In the case of *Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & Others* Civil Appeal No. 266 of 1996 [1997] eKLR the Court of Appeal held *inter alia* as follows:

“...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 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 of 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. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes



a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way... These principles mean that an order of mandamus compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a 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 but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of certiorari and that is all the court wants to say on that aspect of the matter.”

16. From the material supplied before this court, there is evidence to show that the 1st respondent indeed acted without jurisdiction, by abusing its powers to deny the exparte applicant the right to a fair hearing as anticipated by the provisions of Section 76 of the *Land Registration Act* in respect of IR No. 243961. There was no notice served upon the exparte applicant of such intention to place a caveat on the said property. It is my finding that the exparte applicant has proved its case and the substantive notice of motion dated 22nd November, 2024 is hereby allowed in the following terms:-

1. An order of certiorari is hereby issued to remove and quash the decision of the 1st respondent to register a caveat on the property known as I.R. Number 243961, registered on 24th September, 2024.
2. An order of prohibition is hereby issue prohibiting the respondents by themselves, or their agents or servants from any further dealings with respect to the exparte applicant’s property I.R. Number 243961.
3. The exparte applicant is hereby awarded costs to be borne by the respondents jointly.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 24TH DAY OF APRIL, 2025.

HON. MBOGO C.G.

JUDGE

24/04/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Ouko for the exparte Applicant – present

