



**Republic v Director Land Adjudication & Settlement & 5 others; Mzungila
(Exparte Applicant) (Environment and Land Judicial Review Case E001 of 2024)
[2025] KEELC 3315 (KLR) (Environment and Land) (23 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3315 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2024**

EK WABWOTO, J

APRIL 23, 2025

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR LAND ADJUDICATION & SETTLEMENT 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

DISTRICT LAND REGISTRAR, TAITA TAVETA 3RD RESPONDENT

DEPUTY COUNTY COMMISSIONER, TAVETA 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

LYDIA KATHEKE MRUTU 6TH RESPONDENT

AND

MARTINA KALUMU MZUNGILA EXPARTE APPLICANT

JUDGMENT

1. By a chamber summons dated 20th June 2024, the exparte Applicant (hereinafter referred to as the Applicant) sought leave to apply for the Judicial Review Order of Mandamus to compel the 1st, 2nd and 3rd Respondents to implement the decision and or verdict made on the 5th May 2021 by the 4th Respondent.
2. Upon leave being granted, the Applicant filed the substantive motion dated 25th June 2024 seeking the following orders:



- i. That the Honourable Court be pleased to issue an order of Mandamus compelling the 1st, 2nd and 3rd Respondents to immediately and in any event not later than 30 days implement the decision and or verdict made on the 5th May 2021 by the 4th Respondent by registering and issuing a title deed to the Applicant over land parcel No. 5089 Challa/Njukini Adjudication section.
 - ii. That the Honourable Court be pleased to grant such or further orders it deems fit to grant in the interests of justice.
 - iii. Costs of the application be awarded to the Exparte applicant herein.
3. The application was contested by the Respondents and when the matter came up for directions, it was directed that the application for judicial review be canvassed through written submissions. The parties were given timelines within which to file and exchange their respective submissions.
4. The Application for judicial review was based upon the grounds set out in the motion, the statutory statement, and the verifying affidavit accompanying the same together with a Supplementary Affidavit sworn on 26th February 2025.
5. It was the Applicant's case that the subject parcel No. 5089 within Chala/Njukuni Adjudication Section was affected by several adjudication disputes within culminated to an appeal to the Minister being No. 162 of 2020 Martina Kalumu Nzungula vs Lydia Mruttu.
6. It was contended that the Appeal to the Minister was filed within time on the 29th January 2018 which was within the 60 days time limit and was heard on 4th May 2021 and a ground visit made on the 5th May 2021 when a decision was made to the effect that the subject land parcel be recorded in the name of the Applicant. The 4th Respondent vide a letter dated 5th May 2021, forwarded the proceedings and the verdict of the appeal to the Minister case No. 162 of 2020 to the 1st Respondent for implantation.
7. It was further contended that despite the finalization of the appeal to the Minister and in the absence of any orders staying the implementation of the verdict, the 1st, 2nd and 3rd Respondents have failed and by conduct refused to implement the said verdict since it was passed on 5th May 2021 and the same has gone against the Applicant's legitimate expectation. The same has also caused prejudice and inconvenience.
8. It was also averred that the inaction by the 1st, 2nd and 3rd Respondents are illegal, unjustifiable and discriminative since other parcels bordering the subject parcel have been issued with title deeds.
9. In her written submissions dated 26th November 2024, it was submitted that the application is merited for the reasons that the Respondents are public authorities vested with statutory obligations to ensure that land falling within their ambit is dealt with in accordance with the law upto the point of registration.
10. It was argued that Section 29 (1) & (2) of the [Land Adjudication Act](#) vests in the Minister or delegated authority the responsibility to hear appeals and remit determinations to the Director of Land Adjudication and the Chief Land Registrar. It was further argued that Section 29 (3) of the [Land Adjudication Act](#) mandates the Director of Land Adjudication to ensure that the duplicate adjudication register is updated and certified according to the determination of the appeals while Section 7 of the [Land Registration Act](#) imposes a duty on the Land Registrars to effect registration in conformity with the adjudication process.



11. It was contended that the Respondents never responded to the letter dated 1st December 2023 requiring them to comply and hence the necessary order for this court to grant is the judicial review remedy of mandamus.
12. It was also submitted that the Applicant was never notified of another decision made by the 4th Respondent requiring the subject parcel to be shared equally between herself and the 6th Respondent, however that notwithstanding, she has no problem to the implementation of the said decision with a view of having the dispute settled amicably since the fundamental duty of the court is to do justice to the parties. Reliance was placed to the cases of *Wachira Karani vs Bildad Wachira* (2016) eKLR.
13. The 1st to 5th Respondents opposed the application vide a Replying Affidavit sworn on 11th November 2024 and a Further Replying Affidavit sworn on 20th February 2025 by Lilian Ogola, the Principal Land Adjudication on and Settlement Officer.
14. It was the 1st to the 5th Respondents case that the suit parcel had several cases being Land Committee Case No. 86 as per Section 20 and 21 of the *Land Adjudication Act* Cap 284, Arbitration Board Case No. AB/CLG/NJ/AB/B/5089/17, Objection Case No. 16 as per Section 26 of the *Land Adjudication Act* Cap 284 and Appeal to the Minister's case No. 162/2020 as per Section 29 of the *Land Adjudication Act* Cap 284.
15. It was averred that the appeal to the Minister was heard on 4th May 2021, a ground visit was done on the 5th May 2021 and judgment was made stating that the suit parcel be subdivided equally between the disputing parties. It was also averred that the said judgment was not implemented because the file had been misplaced but the 1st to 5th Respondents are now ready to implement the Appeal of the Minister's judgment as per their records. As to whether the appeal was filed within time, it was averred that that's only a fact that can be confirmed by the Applicant herself.
16. The 6th Respondent also contested the application vide her Replying Affidavit sworn on 29th August 2024 and a Supplementary Affidavit sworn on 3rd February 2025. The 6th Respondent also filed written submissions dated 21st February 2025 in opposition to the application.
17. It was averred that there are two conflicting decisions which has created a legal uncertainty as to their implementation. It was also submitted that the Minister's decision dated 5th May 2021 contravened both *the constitution* and the rules of evidence since her significant portion of her evidence that was submitted was disregarded and hence the decision itself was invalid.
18. It was further averred that the appeal filed to the Minister by the Applicant was filed out of time and hence the said proceedings remain a nullity.
19. Citing the Court of Appeal case in *Kibathi t/a Osoro Chege Kibathi & Co Advocates v Musti Investments Ltd (Civil Appeal E134 of 2022)* [2024] KECA 270 (KLR) (8 March 2024) (Judgment) cited with approval Lord Denning in *Lazarus Estates Ltd v. Beasley* [1956] 1 All ER 341, it was submitted that the Applicant has not offered an explanation as to how she obtained decision 1B and merely purports to wish it away by 'adopting' decision 1A. Once fraud is brought to the attention of the court, it must investigate it and unless the Applicant can demonstrate, and she hasn't, how and where she obtained the decision she based her application on, the adverse inference that must be drawn is that she falsified the said decision or that the 4th Respondent, in abuse of power, was complicit in the issuance of two conflicting decisions and as such she cannot benefit from the same.
20. It was also submitted that the Appeal to the Minister was filed out of time and the Minister had no jurisdiction to entertain appeal No. 162 of 2020 there being no evidence of an appeal before him within the 30 days period from 29th January 2018. It was also submitted that as the party that purported to



have filed the appeal, the onus lies squarely on the Applicant to prove that it filed an appeal as by law required and the same had not been discharged.

21. The court was urged to dismiss the application with costs.
22. The Court has considered the application for judicial review and the submissions filed by the Applicant. The court is of the opinion that the following key issues arise for determination herein; Whether the Exparte Applicant has made out a case for the grant of the judicial review order sought and who shall bear the costs of the application?
23. The court shall proceed to consider the said issues sequentially.
24. The principles that guide the Court when dealing with an application for judicial review remedy of mandamus was stated in the Court of Appeal case of Commission on Administrative Justice vs Kenya Vision 2030 Delivery Board & 2 others [2019] eKLR. Wherein the court stated as follows:

“As observed by the Judge and correctly so in our view, the principle that guides the High Court when dealing with the scope and efficacy of an order of mandamus was crystallized by the Court in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others (supra) namely:

“The order of mandamus is of most extensive remedial nature and is in the form of 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 of 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, and it may issue in cases where although there is an alternative remedy, yet the mode of redress is not convenient, beneficial and effectual.”

25. This position was reiterated in the English case of R vs Dudsheath, ex parte, Meredith [1950] 2 ALL E.R. 741 where it was stated as follows:

“It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it.”

26. From the foregoing it is apparent that the writ of mandamus will issue where there is a public duty to be performed by the Respondent and where no other appropriate remedy is available to the Exparte Applicant.
27. However, before this court considers whether the Applicant has met the threshold for grant of the reliefs sought, it is important to examine the proceedings leading to this matter. The Applicant commenced this suit vide an application dated 20th June 2024 seeking leave to commence the judicial review proceedings seeking an order of mandamus against the Respondents. The court upon considering the said application granted leave to the Applicant on 24th June 2024. The leave so granted was based on the information provided to this court by the Applicant. The Applicant subsequently filed the substantive motion dated 25th June 2024.
28. The Applicant never disclosed the existence of another decision to this court and only conceded to the same upon seeing the Affidavits filed by the Respondents. It is also curious to note that at the time of



filing her application for leave, the Applicant despite annexing the decision dated 5th May 2021 which listed the 6th Respondent as the Defendant, she had not included her as a party to the proceedings and the 6th Respondent had to file an application for her joinder to these proceedings. While the Applicant has stated that she was not aware of the second decision made on 5th May 2021 which required that the land be shared equally between her and the 6th Respondent, the record of the same confirms that she was present during the ground visit and even showed the members of the court various graves and structures on the suit parcel. As such she cannot claim to have been unaware. The Applicant's conduct in respect to these proceedings is wanting. A party seeking any remedies before a court of law must come to court with clean hands. The duty of truthfulness is subjective only intentional lies or intentional half-truths are prohibited. Violating this duty may result in the following negative consequences. Disregarding Asserted Facts: If the court finds that a party intentionally lied, it will evaluate this to the party's detriment. Courts always frown against such parties and as such this court cannot rely on the decision annexed by the Applicant in granting the prayers sought.

29. In view of the foregoing, it is the finding of this court that the Applicant is not deserving of the remedies sought and as such this court proceeds to dismiss the application dated 25th June 2024. Each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF APRIL 2025.

E. K. WABWOTO

JUDGE

In the Presence of:

Ms. Wambura for the Applicant.

Ms. Waswa for the 1st to 5th Respondents.

Mr. Nderitu h/b for Mr. Awele for the 6th Respondent.

Court Assistant: Norah Chao.

