



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Commissioner of Lands & another; Mulwa (Interested Party); Nguyo (Exparte)  
(Judicial Review Application 27 of 2020) [2022] KEELC 3650 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3650 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**JUDICIAL REVIEW APPLICATION 27 OF 2020**  
**A NYUKURI, J**  
**MAY 18, 2022**  
**IN THE MATTER FOR LEAVE TO APPLY FOR ORDERS OF**  
**MANDAMUS**  
**AND**  
**IN THE MATTER OF KINGI NZYOKI NGUYO**  
**AND**  
**IN THE MATTER OF TRANSFER OF LAND PARCEL**  
**REGISTRATION NUMBER MACHAKOS/MUA HILLS/203 FROM**  
**KINGI NZIOKI NGUYO AND JOHN MULWA NZIOKI TO BERNARD**  
**MUTINDA MULWA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COMMISSIONER OF LANDS ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR MACHAKOS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**BERNARD MUTINDA MULWA ..... INTERESTED PARTY**

**AND**

**KINGI NZIOKI NGUYO ..... EXPARTE**



## RULING

### Introduction

1. *Vide* a chamber summons application dated July 23, 2020, anchored on sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 53 of the [Civil Procedure Rules](#), sections 8 and 9 of the [Law Reform Act](#) and sections 9 and 10 of the [Land Registration Act](#), the *ex parte* applicant sought for the following orders;
  - a. That leave be granted to the *ex parte* applicant to apply for orders of *Mandamus* to issue to the Land Registrar, Machakos County to supply the *ex parte* applicant with;
    - i. Certified copies of the duly filed application for consent of Land Control Board to transfer land parcel registration number MACHAKOS/MUA HILLS/203, allegedly executed by Kingi Nzioki Nguyo and John Mulwa Nzioki in favour of Bernard Mulwa Nzioki which application led to entry No 4 in the register for MACHAKOS/MUA HILLS.
    - ii. A certified copy of the duly filled out form for transfer of land, for land parcel registration number MACHAKOS/MUA HILLS/203 allegedly executed by Kingi Nzioki Nguyo and John Mulwa Nzioki in favour of Bernard Mulwa Nzioki which led to the disposition of interest exhibited as entry no 4 dated November 13, 2017 in the register for Machakos/Mua Hills.
  - b. That the costs of this application be in the cause.
2. The application is supported by the grounds on its face as well as the supporting affidavit sworn by the *ex parte* applicant, the statutory statement and the affidavit verifying facts all dated July 23, 2020. The *ex parte* applicant averred that John Mulwa Nzioki and himself were registered as tenants in common in respect of parcel No Machakos/Mua Hills/203; that the *ex parte* applicant filed ELC CMCC NO 4 of 2018 for cancellation of title on account of fraud; that the Land Registrar, Machakos County is in possession of copies of the original application for consent of the Land Control Board and transfer forms of the suit property that resulted in entry No 4 on the register thereof; that the *ex parte* applicant intends to subject the said documents to the scrutiny of a handwriting/fingerprint expert examiner in support of his pending case and therefore the documents ought to be produced by the 2<sup>nd</sup> respondent.
3. The application was canvassed by way of written submissions and on record are the *ex parte* applicant's submissions filed on November 12, which I have considered.

### Analysis and determination

4. I have considered the chamber summons application, the supporting affidavit, the statutory statement as well as the verifying affidavit. Order 53 rule 1 sub rule (1) and (2) of the [Civil Procedure Rules](#) provides that no application for judicial review orders of *Mandamus*, *prohibition* and *certiorari* shall be made unless leave thereof has been granted; and the application for leave is made *ex parte* to a judge in chambers and must be accompanied by affidavits verifying the facts and statutory statement.
5. The purpose of an application for leave is to do away with frivolous claims and allow only an application which is proper for the court's consideration. In the case of [Hydro Waterwell \(K\) Limited v National Water Conservation & Pipeline Corporation](#) (2019) eKLR, the court held that the purpose of leave for judicial review is first to eliminate at an early stage any applications for judicial review which



are either hopeless or frivolous and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for consideration.

6. In the instant matter, the applicant has stated that the transfer of the suit property to Bernard Mulwa Nzioki was fraudulently done. He asserts that for the Land Registrar to make entry No 4 in the register of the suit property, he must have been supplied with the original consent of the Land Control Board and a transfer form. He states that he filed Machakos ELC CMCC No 4 of 2018 to claim his land which was fraudulently transferred. It is his position that the original transfer document and consent letter ought to be subjected to the handwriting/fingerprint expert examiner to confirm his averment. He therefore seeks for leave to apply for orders of mandamus to compel the Land Registrar to avail the said documents.
7. Having considered the documents in support of the *ex parte* applicant's application. The Land Registrar is presumed to have custody of all documents that result in a new entry in the register. I am therefore, satisfied that the *ex parte* applicant has made out a *prima facie* claim against the 2<sup>nd</sup> respondent and therefore his application is merited as the court ought to consider the substantive application.
8. In the premises I find and hold that the application dated July 23, 2020 has merit and the same is allowed as follows;
  - a. That leave be and is hereby granted to the *ex parte* applicant to apply for orders of *Mandamus* to issue to the Land Registrar, Machakos County to supply the *ex parte* applicant with;
    - i. Certified copies of the duly filed application for consent of Land Control Board to transfer land parcel registration number MACHAKOS/MUA HILLS/203, allegedly executed by Kingi Nzioki Nguyo and John Mulwa Nzioki in favour of Bernard Mulwa Nzioki which application led to entry No 4 in the register thereof.
    - ii. A certified copy of the duly filled out form for transfer of land, for land parcel registration number MACHAKOS/MUA HILLS/203 allegedly executed by Kingi Nzioki Nguyo and John Mulwa Nzioki in favour of Bernard Mulwa Nzioki which led to the disposition of interest exhibited as entry no 4 dated November 13, 2017 in the register thereof.
  - b. The *ex parte* applicant to file the substantive motion in 21 days of this ruling.
  - c. That the costs of this application shall abide the determination of the substantive motion.
9. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 18<sup>TH</sup> DAY OF MAY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of;**

Mr. Mbindyo for the Exparte Applicant

No appearance for the Respondents

No appearance for the Interested Party

Kevin Kimari – Court Assistant

