



**Republic v Land Registrar, Nyandarua & Samburu Counties & another;  
Irungu & 7 others (Exparte) (Environment and Land Judicial Review Case  
E001 of 2020) [2022] KEELC 13355 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 13355 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2020**

**YM ANGIMA, J**

**SEPTEMBER 29, 2022**

**IN THE MATTER OF THE LAW REFORM ACT READ  
WITH ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, NO.4 OF 2015**

**AND**

**IN THE MATTER OF AN APPLICATION FOR  
JUDICIAL REVIEW ORDERS OF MANDAMUS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAND REGISTRAR, NYANDARUA & SAMBURU COUNTIES .... 1<sup>ST</sup>  
RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ANN WANJIRU IRUNGU ..... EXPARTE**

**RAPHAEL GITIMU ..... EXPARTE**

**SAMUEL NDUNGU MUTONYA ..... EXPARTE**

**LYDIA WANGARI MAINA ..... EXPARTE**

**JAMES MAINA MAAMI ..... EXPARTE**

**LABAN KINUTHIA MBURU ..... EXPARTE**

**KENNETH NJUGUNA MUIRURI ..... EXPARTE**



## JUDGMENT

### A. The Applicants' Case

1. By a notice of motion dated November 19, 2020 grounded upon Sections 8 and 9 of the Law Reform Act (Cap 26) and Order 53 rules 3(1) & (3) of the Civil Procedure Rules 2010 the *ex parte* applicants (the applicants) sought the following orders:
  - a. An order of *mandamus* to remove into this honourable court and compel the 1<sup>st</sup> respondent to complete the registration of the applicants' grant of lease over the parcels of land known as Nyahururu Municipality Block 7/518, Nyahururu Municipality Block 8/908, Nyahururu Municipality Block 8/909, Ol Kalou Municipality Block 3/340, 341, and 342 belonging to the 5<sup>th</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup>, 4<sup>th</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants respectively and to release the respective leases and lease titles/certificates thereof to the said applicants forthwith or within a period of time to be prescribed by the honourable court.
  - b. An order of *mandamus* to remove into this honourable court and compel the 1<sup>st</sup> respondent to issue the 5<sup>th</sup> and 8<sup>th</sup> applicants with the respective green cards for their respective parcels of land being Nyahururu Municipality Block 8/916 and 917 forthwith or within a period of time to be prescribed by the honourable court.
  - c. An order of *mandamus* to remove into this honourable court and compel the respondent to forward the lease for LR No Nyahururu Municipality Block 8/819 that is in the names of the 1<sup>st</sup> applicant to the Chief Land Registrar for correction forthwith or within a period of time to be prescribed by the honourable court.
  - d. Costs of and incidental to the application be provided for and such further and other relief that the honourable court may deem just and expedient to grant.
2. The said application was supported by the statutory statement dated October 19, 2020, the verifying affidavit of James Maina Maami sworn on the same date together with the exhibits thereto. The application was also supported by the supplementary sworn by James Maina Maami on June 14, 2020.
3. The applicants contended that they were the owners of Title Nos Nyahururu Municipality Block 7/518, Block 8/908, Block 8/909, Ol Kalou Municipality Block 3/340, 341 and 342. It was contended that despite the Chief Land Registrar having forwarded the relevant leases to the 1<sup>st</sup> respondent for registration, he had refused or failed to complete the registration process and issue the respective owners with certificates of leases without any lawful justification.
4. The applicants who were the registered proprietors of Title Nos Nyahururu Municipality Block 8/916 and 917 contended that although the 1<sup>st</sup> respondent had registered them as proprietors, he had refused to issue any certificate of official search with respect thereof with the consequence that they were unable to sell or lease the said properties.
5. The proprietor of Nyahururu Municipality Block 8/819 contended that even though his lease had been registered, there was a mistake in the parcel number and that the 1<sup>st</sup> respondent has refused to return the same to the Chief Land Registrar for correction without lawful justification or excuse.



6. It was the applicants' case that the 1<sup>st</sup> respondent had a statutory obligation to register the 6 leases we had failed to register, a statutory obligation to issue certificates of official search for the 2 parcels which were already registered, and a legal obligation to return the lease for parcel 819 to the Chief Land Registrar for rectification. It was the applicants' contention that the 1<sup>st</sup> respondent had failed to perform or discharge his statutory duty hence the application for judicial review.

### **B. The Respondents' Response**

7. The respondents filed a replying affidavit sworn on March 16, 2021 by the Land Registrar, Charles M Ayienda in opposition to the application. It was contended that Parcel Nos 518, 908, 909, 916, 917, 919, 340, 341 and 342 (collectively called the suit properties) were illegally allocated to the applicants after being hived off public land. It was further stated that as a result of the said illegal allocations multiple green cards were opened as follows;
  - a. Parcel 908 had 2 green cards one in the name of Government of Kenya and the second in the name of Phaise Wangui Mutte.
  - b. Parcel No 909 had 2 green cards, one in the name of Government of Kenya and the second in the name of Ann wanjiku Maina.
  - c. Parcel 916 had 5 green cards one of which was in the name of James Maina Maami, one in the name of Daniel Njuguna Kamanga and 3 in the name of Government of Kenya.
  - d. Parcel 917 had 6 green cards; one on the name Marion Wambui Muiru, one in the name of Peter Maina Ndegwa, one in the name of Gerald Irungu Kingori and 3 in the name of Government of Kenya
  - e. Parcel 919 had 2 green cards; one in the name of Government of Kenya and the other in the name of Nyahururu Veterinary Industrial Supplies.
8. The respondents annexed copies of the said multiple green cards to the replying affidavit. They contended that in the circumstances the orders of judicial review would not lie to compel the Land Registrar to perpetrate illegalities and to aid the applicants in the illegal and irregular acquisition of public land. It was further contended that the County Government of Nyandarua had written a letter complaining about encroachment of its land by private developers and that the Applicants were some of the said persons.
9. The respondents further contended that the dispute surrounding the suit properties went beyond the issue of mere inaction as it went into the question of the legality of the ownership claimed by the applicants. It was the respondents' contention that issues of disputed ownership of land cannot be effectively adjudicated upon and determined in judicial review proceedings. The court was consequently urged to dismiss the application for judicial review.

### **C. Response by the 1<sup>st</sup> Interested Party**

10. The 1<sup>st</sup> interested party, Elizabeth Gathoni Karanja, swore a replying affidavit on April 12, 2022 in opposition to the said application for judicial review. She disputed that the 5<sup>th</sup> applicant was the legitimate owner of parcel 518. It was contended that the said parcel was previously known as UNS. Industrial Plot 'A' Nyahururu Municipality. It was further contended that the said parcel was initially allocated to Stanley Ngecha Karuri t/a Nyahururu Concrete Works who ultimately sold it to her late husband, Joseph Karanja Kangara. She consequently prayed for dismissal of the application for judicial review.



#### **D. The 2<sup>nd</sup> Interested Party's Response**

11. The 2<sup>nd</sup> interested party filed grounds of opposition dated February 4, 2022 in opposition to the application. It was contended that in exercise of its statutory mandate under section 11 of the [Ethics and Anti-Corruption Act 2011](#), the 2<sup>nd</sup> interested party was investigating allegations of illegal and irregular allocation of the suit properties. It was further contended that preliminary investigations had indicated that the suit properties constituted public land which was illegally or irregularly allocated to the applicants.
12. The 2<sup>nd</sup> interested party contended that the judicial review court was not the appropriate forum for resolving a dispute on the legality of allocation of public land hence the application should be disallowed.

#### **E. Directions on Submissions**

13. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the applicants filed theirs on March 18, 2022, the respondents on March 21, 2022, the 1<sup>st</sup> interested party on May 11, 2022 whereas the 2<sup>nd</sup> interested party filed on February 22, 2022.

#### **F. The Issues for Determination**

14. The court has considered the application for judicial review, the replying affidavits in response thereto, the grounds of opposition, as well as the applicants' supplementary affidavit. The court is of the opinion that the main question for determination herein is whether or not the applicants have made out a case for the grant of the various orders of *mandamus* sought in the notice of motion dated November 19, 2020.

#### **G. Analysis and Determination**

15. The court has considered the material and submissions on record. The applicants contended that they were entitled to have their respective leases registered as a matter of right and that they were entitled to obtain copies of certificates of official searches for Parcel Nos 916 and 917 and that the 1<sup>st</sup> respondent was legally bound to return the lease for parcel 819 to Nairobi for rectification of the parcel number. They relied on the provisions of sections 12, 14, 24, 30 and 34 of the [Land Registration Act 2012](#), section 4 of the [Fair Administrative Action Act, 2015](#) and article 47 of the [Constitution of Kenya, 2010](#) as well as case law in support of their application for judicial review orders.
16. The gist of the respondents' response was that the suit properties were illegally and irregularly allocated from public land and that the applicants obtained the leases irregularly as evidenced by the multiple green cards which were opened with respect to the suit properties. The respondents further contended that there were legitimate grounds for refusing to take the actions demanded by the applicants and that in the circumstances the judicial review application was not the appropriate mode of resolving a dispute on illegal and irregular allocation of the suit properties.
17. Although the 2<sup>nd</sup> interested party claimed that the suit properties were the subject of an investigation under the [Ethics and Anti-Corruption Act](#), the court is not satisfied that any credible evidence was placed on record to support this allegation. The allegation was not supported by any affidavit since the 2<sup>nd</sup> interested party did not file any replying affidavit in the matter. The court is of the opinion that such factual allegations cannot validly be conveyed through a statement of grounds of opposition. Factual



allegations ought to be placed before a court of law through an affidavit since placing them in grounds of opposition would be tantamount to adducing evidence from the bar.

18. The court is of the opinion that the nature of the dispute herein goes beyond resolution of mere inaction on the part of the 1<sup>st</sup> respondent to register the leases for the suit properties or to issue certificates of official search for some of them. It raises the deeper issue of the legality of the allocation of the suit properties to the applicants and whether due process was followed by the concerned authorities. It would appear that multiple green cards were opened for most of the suit properties with some having up to 6 sets for a given parcel. The court is thus of the opinion that such disputes can only be effectively and completely resolved through a normal civil suit where the concerned parties can adduce evidence and have it tested through cross-examination rather than on affidavit evidence alone.
19. The applicants referred the court to the case of *Republic v Land Registrar, Trans-Nzoia & Another Ex parte Mary Odhiambo & Another* [2019] eKLR where the court granted judicial review orders in almost similar circumstances. The court is, however, of the opinion that the case is distinguishable from the instant suit. The court has noted that there was no allegation in the cited case that the suit land had been illegally or irregularly allocated. There was no allegation that the suit land constituted public land which had been irregularly allocated. There was not adverse claim to the suit property by any other party. The only reason why the Land Registrar had refused to register the lease was that the lease was in a name different person from the one who was in possession.
20. Due to the foregoing reasons, the court is not satisfied that the applicants have made out a case for the grant of the judicial review orders sought. The court is not satisfied that the issues which emerge from the dispute can be effectively and completely resolved through judicial review proceedings. Accordingly, the court is not inclined to grant any of the orders sought by the applicants. The applicants are, however, at liberty to file a normal civil suit for vindication of their perceived rights over the suit properties.
21. The upshot of the foregoing is that the court finds no merit in the applicants' application for judicial review. Accordingly, the notice of motion dated November 19, 2020 is hereby dismissed in its entirety with no order as to costs.

Orders accordingly.

**JUDGMENT DATED AND SIGNED AT NYAHURURU THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Mr. Maina Kairu holding brief for Mr. Mathea for the Ex Parte Applicants

Ms. Chepkirui for the Attorney General for the Respondents

Mr. Kyeli for the 2<sup>nd</sup> Interested Party

Mr. Nderitu Komu for the 1<sup>st</sup> Interested Party

CA- Carol

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**Y. M. ANGIMA**

**JUDGE**

