



Republic v District Land Registrar, Kilifi & another; Mwazani (Exparte) (Judicial Review 4 of 2021) [2022] KEELC 15414 (KLR) (21 December 2022) (Judgment)

Neutral citation: [2022] KEELC 15414 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
JUDICIAL REVIEW 4 OF 2021
MAO ODENY, J
DECEMBER 21, 2022**

BETWEEN

REPUBLIC PLAINTIFF

AND

DISTRICT LAND REGISTRAR, KILIFI 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

PRISCA FIKIRINI MWAZANI EXPARTE

JUDGMENT

1. The Ex parte Applicant filed a Notice of Motion dated 31st January 2022 seeking the following orders;
 - a. That there be an order of Mandamus to compel the 1st respondent to issue the title deed of Chembe Kibabamshe 378 to the Ex parte Applicant Prisca Fikirini Mwazani
 - b. That costs of this application be in the cause.
2. The application is premised on the sworn affidavit of Prisca Fikirini Mwazani the Ex parte applicant who deponed that she made an application to the Lands department years ago and was allotted portion No. Chembe/Kibabamshe 378 which measures approximately 3.0 hectares to which application was responded to by the Director of Land Adjudication and Settlement vide a letter dated 2nd May 2014 directing that there be a ground report and record for the suit plot.
3. She further deponed that on 9th June 2014, the District Land Adjudication and Settlement Officer requested the District Lands Registrar to conduct an official search on the property.
4. It was her statement that on 8th December 2017, the National Land Commission confirmed to the Chief Land Registrar at Nairobi that following a meeting at Redcross in Malindi and there being no



- other claimant, the property was regularized to the effect that it belonged to her. Further that the District Land Adjudication and Settlement Officer on 17th February 2020 confirmed the details of the property in her name and directed that a file be opened to process discharge of charge and transfer.
5. The Applicant deponed that she paid Kshs. 50,000 on 14th March 2016 to the Settlement Fund Trustee and reported the loss of the original letter of offer and was issued with a police abstract, further that the Assistant Chief of Chembe Kibabamshe location confirmed her residence at the suit property where she has lived for years.
 6. The ex parte applicant further deponed that despite providing the documents listed to the District Land Registrar and directions from the Chief Land Registrar, the District Land Registrar has declined to register the property in her name stating that she is not entitled to the entire property thus the instant application seeking to compel the 1st Respondent to comply with the directions issued by the Chief Land Registrar.
 7. The respondents filed grounds of opposition dated 2nd March 2022 objecting to the application on the ground that despite the applicant having annexed a previous ruling of Malindi ELC No. 205 of 2018, Prisca Fikirini Mwazani V Land Registrar Kilifi & Another, she has not followed what the learned judge advised her to do in a subsequent suit save for bringing these proceedings as a Judicial Review Application.

Applicant's Submissions

8. Counsel reiterated the contents of the supporting affidavit by the applicant and submitted that despite the applicant complying with the requirements including paying prescribed fees, the 1st respondent has refused to register the property without any justification.
9. Ms Mwangi submitted that the Land Registrar has the discretion on whether or not to register documents presented to him which discretion should be exercised with fairness taking into account procedural fairness and the rules of natural justice and cited Section (14) (c) of the Land Registration Act 2012
10. Counsel relied on the case of *Republic v Attorney General & Another Ex Parte Joyce Muthoni Michuki* [2019] eKLR where the court held that in order for an Applicant to succeed in a judicial review application, the Court must also be satisfied that the rules of natural justice were not followed and therefore the decision by the Land Registrar not to register the transfers were improper and irrational.
11. Ms Mwangi submitted that despite the applicant furnishing the Land Registrar with all the requisite documents the 1st Respondent has refused to register her documents hence her submission that the 1st Respondent is irrational since he never gave any reason for his refusal or asked the Ex parte Applicant for additional information or document. Further that the Applicant has made numerous trips to the 1st Respondent's office but the same has born no fruits hence the filing of this application.
12. To explain the meaning of irrationality counsel relied on the case of *Pastorali v Kabale District Local Government Council and Others* [2008] 2 EA 300 where the court stated that "irrationality is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards"



13. Counsel further cited the case of *Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & Others* [1997] eKLR and urged the court to grant the orders as prayed as the applicant has met all the pre requisites.

Respondents' submissions

14. Counsel relied on the grounds in opposition to the application and stated that the applicant has not made a formal request to be registered as was advised by the court hence the application should be dismissed with costs.

Analysis and Determination

15. The issue for determination is whether the applicant has made out a case for judicial review orders of mandamus to compel the 1st respondent to register her documents.
16. The Applicant has sought for order of mandamus which circumstances under which it may be granted was considered by the Court of Appeal in the case of *Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & Others* [1997] eKLR (supra). The Court quoted from Halsbury's Laws of England (3rd Edition) 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 and 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.”

17. An order of mandamus would be 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. The Land Registrar is a public Officer who has a duty to register documents upon laid down verification procedures. If not satisfied with the documents presented, he/she has a duty to call for more documents for verification. Upon this being done then the Registrar is to register the documents and if he declines then should give reasons for such action.

18. Section (14) (c) of the Land Registration Act 2012 provides that

“The Chief Land Registrar, County Land Registrars or any other Land Registrars may, in addition to the power conferred on the office of the Registrar by this Act -

- a. ...
- b. ...



Refuse to proceed with registration if any instrument, certificate, document or plan or information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed.”

19. This section is not a blank cheque for the Land Registrar to decline to register documents presented to the Land Registry. There has to be procedural fairness in implementing their mandate as provided for under the Act. Parties should not be overburdened with court proceedings to compel public officers to carry out their duties which they ought to do as a matter of course.
20. The court is aware of the scrutiny of land registration documents which require toothcomb kind of scrutiny to avoid incidences of fraud and double allocation, but once an applicant has presented the requisite documents as per a checklist then there would be no reason not to register.
21. The Respondent has opposed the application on one ground that a request to register has not been made. What more request does the 1st respondent want the applicant to make. It is incumbent upon the Respondent to carry out its duty unless there are other compelling reasons as per Section 14 (c) of the Land Registration which reason has not been advanced. The Land Registrar is enjoined to act with fairness, rationality and just.
22. Wade in his book on Administrative Law Oxford University Press, 5th Edition states as follows regarding Mandamus:

“The commonest employment of mandamus is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him.”
23. Similarly, in *R -vs- Barker* 1762) 3 Burr.1265) Lord Mansfield stated that:

“It was introduced to prevent disorder from a failure of justice, and defect of police. Therefore, it ought to be used upon all occasions where the law has established no specific remedy and where in justice and good government there ought to be one. ... The value of the matter, or the degree of its importance to the public police, is not scrupulously weighed. If there be a right and no other specific remedy, this should not be denied.”
24. It is not in dispute that this matter falls within the realm of administrative action thus should be addressed by way of judicial Review. However, the question herein is whether the 1st Respondent’s acts of omission or commission are irrational.
25. The ruling by Hon. Olola J in ELC Case No 205 of 2018 dated 30th January 2020 was to the effect that there was no material placed before him to show that an official request had been made to the 1st defendant as it were to regularize the title as per the National Land Commission’s letter dated 8th December, 2017. The court observed in the ruling that this matter falls within the realm of Judicial Review and stated as follows:

“It was clear to me that the suit filed is premature as there is no proof of any prior request made to the Defendants to comply with. It was also clear that the complaint herein belongs in the realm of public administrative law and that the same can only be addressed if there is evidence of refusal to take action on the part of the Defendants, by way of judicial review.”
26. This is why the applicant made this application for mandamus. I also note that the 1st respondent is only hanging on the fact that the applicant was advised to file a judicial review but does not state in



the response why they have not either registered the documents, declined to register or given reasons for such action.

27. Section 4 of the *Fair Administrative Action Act* provides as follows:

1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
2. Every person has the right to be given written reasons for any administrative action that is taken against him.
3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—
 - a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to Section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine or where applicable; or
 - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.
4. The administrator shall accord the person against whom administrative action is taken an opportunity to -
 - a. attend proceedings, in person or in the company of an expert of his choice;
 - b. be heard;
 - c. cross-examine persons who give adverse evidence against him; and
 - d. request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
5. Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.
6. Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

28. I have considered the application, the submissions by counsel and the relevant judicial authorities and find that the application has merit and therefore grant the following order:

- a. An order of Mandamus is hereby granted compelling the 1st respondent to issue the title deed of Chembe Kibabamshe 378 to the Ex parte Applicant Prisca Fikirini Mwazani within 30 days.
- b. Costs of the suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 21ST DAY OF DECEMBER, 2022.



M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the *Civil Procedure Rules*.

