



**Kakenyi & another v Chief Land Registrar Nairobi & another (Environment and Land Judicial Review Case E021 of 2021) [2022] KEELC 15620 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15620 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E021 OF 2021  
LN MBUGUA, J  
DECEMBER 8, 2022**

**BETWEEN**

**JOSEPH MUOKI KAKENYI ..... 1<sup>ST</sup> EXPARTE**

**FAITH MUTHEU KASYOKI ..... 2<sup>ND</sup> EXPARTE**

**AND**

**CHIEF LAND REGISTRAR NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

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

**JUDGMENT**

1. For determination by this court is the *ex parte* applicants' substantive notice of motion dated November 4, 2021 filed pursuant to leave granted on November 3, 2021 to institute judicial review proceedings. The *ex parte* applicants seek orders of certiorari to quash the decision of the 1<sup>st</sup> respondent to place a caveat/restriction on the suit property LR No 18084/2 (the suit land) Karen area Nairobi county and an order of mandamus to compel the 1<sup>st</sup> respondent to remove the said caveat.
2. The application is based on grounds set out in the 1<sup>st</sup> *ex parte* - Applicant's supporting affidavit sworn on November 4, 2021. He depones that the *ex parte* applicants are the bonafide/registered proprietors of the suit land, having purchased the same with an intention to build residential and commercial houses.
3. He avers that on March 22, 2013, they secured a charge at Equity bank that was registered and money advanced to them by the bank but immediately after the said registration, the 1<sup>st</sup> respondent placed a caveat without informing them and when called upon to give an explanation, none was forthcoming.
4. He avers that reasonable time has lapsed since the caveat was placed thus curtailing their rights to use the suit property as registered proprietors. He further avers they have a right to fair administrative action, right to information and protection from arbitrary, irrational actions in regard to the 1<sup>st</sup> respondent.



5. The respondents did not file any response opting to leave it to the court to give appropriate orders, hence the suit is unopposed. The *ex-parte* applicants filed written submissions dated September 8, 2022. They submitted that the placing of the caveat/ restriction by the land registrar was done without issuing them with a notice and without reasonable explanation. They further submitted that the restriction is indefinite and has been in place since the year 2013, contrary to sections 77 and 78 of the [Land Registration Act](#) as read alongside articles 19,35,40 and 47 of the [Constitution of Kenya 2010](#).
6. I have considered all the issues raised herein including the submissions of the *ex-parte* applicants. In [Republic v Kenya Revenue Authority exparte Yaya Towers Ltd](#) (2008) eKLR, the Court held that:-

“The remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself. 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 has been subjected.....”
7. The question to determine is whether the process leading to registration of the caveat dated April 29, 2013 was lawful and whether judicial review orders of certiorari and mandamus should be granted.
8. The assertion made by the *ex parte* applicants that they are the registered owners of the suit land have not been rebutted.
9. Under section 116 of [GLA](#) cap 180 (repealed) the Registrar of Government Land was obligated to issue notice of registration of a caveat to a proprietor of land. Section 77(1) of the [Land Registration Act](#) states that;- “(1) The Registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction”.
10. In [Matoya v Standard Chartered Bank \(K\) LTD & others](#) [2003] I EA 140 cited in [Mukuria James Chacha & 2 others v Land Registrar Muranga](#) [2019] eKLR it was held that;

“A restriction is ordered to prevent any fraud or improper dealing with a given parcel of land and the land registrar does this whether on its own motion or if so asked by way of an application by the person interested in that land but before ordering the restriction the registrar is bound by law to make inquiries, send out notices and hear all those other people he may think fit first and he is not to move by whim, caprice or whatever influence personal or otherwise just to impose a restriction since he has a duty to inquire and be satisfied that his duty to order restriction is not hurting a person who was not heard and that indeed the restriction is in general good that frauds and other improper dealings are prevented”.
11. As rightly submitted by the *ex-parte* applicants, the failure to issue a notice coupled with the indefinite nature of the restriction is irrational, unreasonable, and is against the rules of natural justice; it also amounts to a breach of a legitimate expectation. The orders sought by the *ex-parte* applicants are therefore meritorious, hence the prayers sought in the substantive motion are allowed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**



**Odhambo for Applicant**

**Nyawira for Respondent**

**Court assistant: Eddel/Vanilla**

