



**Republic v Director of Survey and Mapping & 4 others; Stayga Limited & 4 others (Exparte Applicants) (Environment and Land Case Judicial Review Application E001 of 2024) [2025] KEELC 4172 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4172 (KLR)

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

**L WAITHAKA, J**

**MAY 28, 2025**

**IN THE MATTER OF AN APPLICATION TO INSTITUTE  
JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF  
CERTIORARI, PROHIBITION AND MANDAMUS**

**AND**

**IN THE MATTER OF ARTICLES 2(1), 20, 21(1), 22(1),  
23(1), 40, 47, 50(1), 73, 162, 165 AND 232 OF THE  
CONSTITUTION OF KENYA 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DIRECTOR OF SURVEY AND MAPPING ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF LAND ADMINISTRATION ..... 2<sup>ND</sup> RESPONDENT**

**CABINET SECRETARY, STATE DEPARTMENT OF LANDS AND PHYSICAL  
PLANNING ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**STAYGA LIMITED ..... EXPARTE APPLICANT**

**MUNYAS VILLAS LIMITED ..... EXPARTE APPLICANT**

**DANIEL K CHEBURET ..... EXPARTE APPLICANT**



REBECCA J CHEMASE ..... EXPARTE APPLICANT  
DINAH J CHELAL ..... EXPARTE APPLICANT

## JUDGMENT

### Introduction

1. Pursuant to leave granted to the ex parte applicants on 18th November 2024 to institute judicial review proceedings against the decision of the respondents contained in letters dated 29th August 2024 and 29th October 2024, the ex parte applicants filed the notice of motion dated 26th November 2024 seeking the following orders:-
  - i. An order of Prohibition to prohibit the respondents from investigating, adjudicating, considering, determining, interfering in any way, cancelling survey records relating to the parcels of land known as Kabarnet Municipality/516, 519, 520, 521 and 522 (hereinafter referred to as the suit parcels) as already prepared in favour of the applicants;
  - ii. An order of Certiorari to bring to this court, for the purpose of being quashed the decision of the respondents contained in the letters by the 1st respondent dated 29th August 2024 and 29th October 2024 cancelling and expunging survey records including registry index maps relating to the suit parcels and in their place effecting registration of Kabarnet/ Municipality/654;
  - iii. An order of Mandamus to compel the respondents to reinstate all the survey records in favour of the ex parte applicants and to issue to the applicants duly registered certificates and all accompanying ownership documents relating to the suit parcels.
  - iv. Costs of the application be borne by the respondents.
2. As can be discerned from the grounds on the face of the application, the affidavit sworn in verification of facts relied upon and the statutory statement of the applicants, the application is premised on the grounds that they are the bonafide owners of the parcels of land known as Kabarnet Municipality/516, 519, 520, 521 and 522; that they acquired the properties by way of being allocated the properties by the County Council of Baringo sometime in 1998; that they complied with the terms of the letters of allotment issued to them and that survey was officially sanctioned upon making full payment including survey fees.
3. It is the applicants' case that by a letter dated 18th March 2023, the Director Land Administration as part of the procedures involved in land allocation and registration, wrote to the Land Administration Officer Kabarnet sub county seeking for a comprehensive ground report in respect of the parcels to enable processing of leases in their favour; that the Land Administration Officer Baringo County, proceeded to the ground, assessed all the parcels and furnished the 2nd respondent with ground reports regarding the parcels and that the parcels were surveyed and the Registry Index Map (RIM) amended to reflect the parcels. It is the applicants' further case that leases were processed in their favour and forwarded to the District Land Registrar Kabarnet for registration by the 3rd respondent.
4. The applicants lament that, in an unfortunate turn of events, before they could proceed to collect their lease documents, the 1<sup>st</sup> respondent vide a letter dated 15<sup>th</sup> May 2024, irrationally, maliciously and in utter violation of Article 47 of *the Constitution* of Kenya, wrote to the 2nd respondent claiming that the



lease documents prepared in their favour were based on fraudulent documents which were seemingly fake without giving particulars of the alleged fraud.

5. The applicants explain that the basis of the letter by the 1st respondent was a complaint allegedly made by the firm of Adogo & Company advocates but claim that the letter was neither copied to them nor shared with them.
6. Terming the alleged fraudulent acquisition of lease documents by them absolute misrepresentation of facts which was irrationally acted upon by the 1st respondent without any notice to them and without any verification of its truthfulness or otherwise; the applicants blame the 1st respondent for cancelling their survey records without any colour of right, authority and/or probable cause.
7. The applicants' assert that the decision to cancel their survey records was irrational, arbitrary and without any lawful cause and ultra vires the powers vested in the 1st respondent.
8. Explaining that the process that led to issuance of allotment letters to them and the consequential preparation of leases in their favour had not been challenged before any court of law and that no adverse orders had been issued against them, the applicants maintains that the 1st respondent acted ultra vires his powers when he cancelled the survey records in respect of their parcels of land.
9. The applicants have further deponed that they are aware that the 1st respondent fraudulently and illegally procured and substituted their survey plan (F/R Plan.282/117) with an alleged F/R Plan No.712/81.
10. The particulars of the alleged fraud and illegally in substitution of the applicants' survey plan are as follows:-
  - i. Disregarding the fact that registration of F/R No.282/117 was undertaken on 7th August 1995 as opposed to the alleged registration of F/R 712/81 being undertaken on 20th August 2024;
  - ii. Disregarding that F/R 282/117 came first in time;
  - iii. Disregarding that F/R No.282/117 has comps. File No.34388 as opposed to F/R 781/81 that has comps. File No.83522;
  - iv. Disregarding the fact that the comps. File No.34388 came first in time;
  - v. Failing to authenticate by way of signature by the Director of Survey the alleged cancellation endorsed on F/R 282/1117;
  - vi. Disregarding the fact that F/R 282/117 was drawn on 6th April 1995;
  - vii. Erasing parcels 519, 520, 521 and 522 from the Registry Index map serial No.36/x.iv.a.2.3 and substituting it with registry Index Map number N.A.36/x.iv.a.3;
  - viii. Leaving parcels number 516, 517 and 518 without an F/R Plan;
  - ix. Having an anomaly whereby abutting boundaries of parcel numbers 518 are depicted on F/R No.712/81 as per Rule 91 of the Survey Act;
  - x. Erasing parcels numbers 516, 517, 518, 519, 520, 621 and 522 from aforesaid Registry Index Map Serial number N.A.36/x.iv.a.2.3;
  - xi. Conspiring with other persons to deprive the applicants their lawfully acquired property;



- xii. Deliberately failing to notify the complainants (applicants) of the purported irregular and illegal cancellations and
  - xiii. Concealing such cancellations from the applicants.
11. Terming the actions of the respondents complained of unconstitutional; the applicants lament that the 1st respondent made a decision affecting their rights without making any reference to them and without considering their complaint.
  12. In reply and opposition to the application, the respondents filed grounds of opposition dated 19th December 2024 through which they contend that the application is mala fides, devoid of merit and an abuse of the court process; that the applicants have not demonstrated by way of evidence or in any other way why the court should grant them the prerogative orders sought and that the applicants have not demonstrated even an iota of irregularity, irrationality, impropriety and/or illegality on the part of the respondents to warrant being granted the orders sought.
  13. Terming the orders sought untenable, it is the respondents' case that if granted, the orders would unreasonably and unjustifiably curtail the respondents from discharging their respective statutory mandates.
  14. Pursuant to directions given on 19th December 2024, the application was disposed off by way of written submissions.
  15. In their submissions filed on 7th February 2025 the applicants have basically rehashed their pleaded case and cited various authorities on the principles that undergird grant of judicial review orders and on the process of acquiring interest in land by way of land allocation. In particular, the applicants have cited the following authorities; Municipal Council of Mombasa vs Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007 (2002)e KLR; African Line Transport Co. Ltd vs. Hon. AG, Mombasa HCCC No. 276 of 2013; Judicial Service Commission v. Mbalu Mutava & another (2014)e KLR; Republic v Non-Governmental Organization Coordination Board Ex parte Evans Kidero Foundation (2017) eKLR; Onyango Oloo vs. Attorney General (1986-1989) EA 456; Commissioner of Lands vs. Kunste Hotel Limited; Civil Appeal No.234 of 1995 and Pastoli vs. Kabale District Local Government ...& others (2008) 2 EA 300.
  16. The respondents did not file submissions within the time given by the court and at all and if they did, the submissions were not placed in the court file.

### **Analysis and determination**

17. As pointed out herein above, the applicants filed this application seeking various judicial review orders against the respondents whom they accuse of having acted illegally and/or unlawfully in cancelling the survey records in respect of their parcels of land thereby adversely affecting their right. In particular, the applicants fault the 1st respondent of cancelling the survey record prepared in their favour on the basis of alleged fraud in acquisition of their land ownership documents without proof of the serious allegations levelled against them and without affording them opportunity to be heard on the serious allegations raised against them.
18. Despite the fact that the application filed by the applicant raises serious issues of fact that required to be contraverted by way of evidence, the respondent did not file an affidavit to controvert those issues. Instead they filed grounds of opposition, which cannot be sufficient response to the serious issues of fact raised by the applicants regarding the conduct of the respondents.



19. Whilst the affidavit evidence offered by the applicant suffices for purposes of proving that they were not accorded an opportunity to respond to the serious allegation that resulted in the cancellation of their survey records, from the pleadings filed by the applicants, I gather that there are serious issues of fact and law arising from the applicants' application which this court sitting as a Judicial Review Court may not be able to adequately address. These issues include the allegation by the applicants that they were allocated the suit properties in 1998 and that they complied with the conditions set out in the allotment letter. Though that allegation is not controverted by the respondents, noting from the pleadings that the applicants are accused of having obtained their documents fraudulently and further noting that there appears to be another survey plan prepared in respect of the parcels allegedly allocated to the applicants, it became necessary to review the evidence adduced in this application with a view of determining whether, it prima facie supports the applicants' allegation that they complied with the conditions set out in the letter of allotment.
20. A review of all the letters of allotment indicate that the applicants were required to accept the offer in writing and pay the consideration indicated therein within 30 days failing which, the offer would be considered to have lapsed. The documentary evidence relied on by the applicants suggests that the offer was not accepted and paid for within the time indicated in the letters of offer. The receipts attached to the application in support of the application indicates that payment in respect of the letters of allotment was made in 2023. The applicants have not offered any explanation of the circumstances upon which the payments were made in respect of offers that were made more than 30 years ago.
21. In the case of *Waterfront Holdings Limited V. Kandie & 2 others* (Civil Appeal 88 of 2019) (2023) KECA 1223 (KLR) (6 October 2023) (Judgment), the Court of Appeal stated:-
- “The legal position is not once issued, the letter of allotment lasts indefinitely. There must be acceptance of the offer to allot the land by the allottee fulfilling the conditions specified for the said allotment. To that extent, we associate ourselves with this court's decision in *Fidelity Commercial Bank Limited v Kenya Grange Vehicles Limited* (2017)e KLR which express the general law in contractual matters.
- “It is elementary learning that for there to be a contract, there has to be acceptance of an offer and such acceptance must be unconditional, unequivocal and absolute, accompanied by consideration.”
22. In the circumstances of this case, it would appear that, if there was acceptance of the terms of the offer the same was done in 2024, long after the offer had lapsed. The applicants have not offered any explanation for late payment of the consideration. Mere payment and acceptance of the payment may not automatically resuscitate the offer.
23. In the circumstances of this case, where it appears that some other person or persons, who are not parties to this suit, are also claiming interest in the suit properties, this court cannot grant orders that may affect the interests of those persons without affording them an opportunity to be heard .
24. As was observed in *Waterfront Holdings Limited v. Registrar of Titles Mombasa & another; Kandie (Interested Party)* supra, judicial review orders are granted at the discretion of the court. Courts therefore have the discretion to refuse to grant such orders even where a foundation has been laid for the same although such discretion has to be used sparingly.



25. That position was underscored in *Blueseas Shopping Mall Limited vs City Council of Nairobi & others* C.A Civil Appeal No.129 of 2013 (Nairobi), where the Court of Appeal stated/held:-

“In administrative law matters, courts have discretion to withhold a remedy of Judicial Review even where a substantive foundation has been laid because administrative law remedies are inherently discretionary.”

The court further stated:-

“Courts are slow to deny a remedy. The discretion to refuse to grant Judicial Review orders where they are merited must be very sparingly exercised.”

26. In the circumstances of this case/application, where the issue of ownership of the suit properties is contested by a person or persons who have not been made parties to the suit/application and where the issue of ownership may require to be heard and determined in a civil suit between the applicants and the others persons with an interest in the suit properties, I decline to grant the orders sought as granting them in the manner sought may prejudice interests of persons who are not parties to the suit.

27. The upshot of the foregoing is that the notice of motion dated 26th November 2024 is dismissed with no orders to costs.

**DATED, SIGNED AND DELIVERED AT KABARNET THIS 28<sup>TH</sup> DAY OF MAY, 2025**

**L. N. WAITHAKA**

**JUDGE**

Judgment delivered virtually in the absence of:-

N/A for the Plaintiff

N/A for the Defendant

N/A for the Interested party.

Court Assistant: Lilian

