



Republic v Land Registrar Kwale; Siriako (Ex parte) (Environment and Land Case Judicial Review Application E006 of 2024) [2025] KEELC 5851 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEELC 5851 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E006 OF 2024**

LL NAIKUNI, J

MAY 28, 2025

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR KWALE RESPONDENT

AND

BAHATI OMARI SIRIAKO EX PARTE

RULING

I. Introduction

1. Before the Honourable Court is a ruling on the filed substantive Notice of Motion application dated 7th October 2024 by the Ex – Parte Applicant herein – Bahati Omari Siriako. It was against the Respondent herein. It is significant to note that the suit herein was commenced by an application seeking leave to institute judicial review proceedings for orders against the Respondent. The application for leave was dated 11th October 2024.
2. Subsequently, leave was granted by this court on 4th December 2024 allowing the filing of the substantive motion subject of this ruling and 14 days granted to the Respondent to file a response to the application.
3. From the records, on 13th February, 2025, the Learned Counsel for the Ex - Parte Applicant intimated to court that Prayers numbers A and B of the motion being an order of Mandamus to issue compelling the Respondent to open land register for all that parcel of land registered as Kwale/Ramisi Phase 111/121 had already been dealt with. Indeed, the Respondent’s Counsel agreed to the sentiments and stated that they were not opposed to the notice of motion save for the prayer on costs against the Land Registrar.



II. The Ex – Parte Applicants Case

4. The Ex - Parte Applicant sought for the following orders:-
 - a. Spent.
 - b. That an order of Mandamus do issue compelling the Respondent to surrender/return the original title deed of all that parcel of land registered as Kwale/Ramisi Phase 111/121
 - c. That the costs of this application borne by S. N. Mokaya the Land Registrar who abdicated his statutory duties.
5. The Application was based on the grounds, testimonial facts and averments made out under 18 Paragraphed of Bahati Omari Siriako the Resident of Kwale County sworn on 11th October, 2024 and the eleven (11) annexed hereto. He averred as follows that:-
 - a. He was an adult male of sound mind and disposition and well versed with the facts herein hence competent to swear this affidavit.
 - b. He was the Ex - Parte Applicant and the registered owner of all that parcel of land registered as Kwale/Ramisi Phase III Scheme/121 situated in Ramisi area within Kwale County.
Annexed and marked as "BOS - 1" was a copy of the title deed.
 - c. On or around 8th August 2013, he was issued with a title deed for the above - mentioned subject property.
 - d. During the issuance of the title deed, the Respondent was to simultaneously open a green card for the said property.
 - e. Since the said title deed was issued together with many others for the entire scheme by the Government, the Respondent never manage to open all the green cards for the entire scheme.
 - f. The registered owners were to avail supporting documents to the Respondent so that it could an open the green cards.
 - g. On 6th May 2024, he applied for opening of the green card attaching proof of ownership of the subject property which included Chiefs letter dated 22nd April 2024, Affidavit dated 19th April 2024, Adjudication search dated 2nd May 2024 and Survey report dated 18th April 2024. Annexed and marked as "BOS - 2, 3, 4 & 5 were the said documents.
 - h. After payment of the prescribed fees, his Advocates lodged the application for opening of the green card at the registry. Annexed and marked as "BOS - 6, 7 & 8 were copies of the invoice and the payment receipt from Ardhisasa and official receipt from the Ministry of Lands.
 - i. Thereafter the Respondent rejected and returned the application with the following comments thereon- "RR Surrender TD to enable ourselves forward to the TR who signed it to sign the green card"
 - j. He was advised by his Advocates on record he later liaised with Mr. S.N. Mokaya the Land Registrar, Kwale who noted the comments therein he was further advised that the original title deed should be forwarded to the land registry for onward transmission to the Land Registrar who signed the said title deed.



- k. His Advocates forwarded the original title deed vide letter dated 31st May 2024. Annexed and marked as "BOS - 9" was a copy of the said letter and in addition demanded to be copied the letter that would be forwarding the said title deed for purposes of follow up in future but the same was not copied and he could not be in a position to confirm whether the same were ever forwarded to the respective Land Registrar to sign the title deed.
- l. Later on 24th June, 2024, his Advocates wrote a letter to the Respondent seeking confirmation if the green card had been opened and demanded for the surrender of the original title deed. Annexed and marked as "BOS - 10" was a copy of the said letter.
- m. The Respondent responded vide letter dated 27th June 2024 informing his lawyer that they were yet to get the title deed and the opened green card. Annexed and marked as "BOS - 11" was a copy of the said letter.
- n. Further his Advocates wrote a letter dated 23rd August 2024 requesting for an update and the said letter had never elicited any response to date.
- o. He had reasons to believe that the Respondent never forwarded the requested title deed to any Registrar and he had failed to perform his statutory obligations by registering the said application that was lodged before him.
- p. The inaction of the Respondent was in bad faith, unreasonable and it was an abdication of his duties and there was a likelihood he may never perform his duties unless compelled by this Honorable Court.
- q. No explanation had been furnished to him on the reasons for the unreasonable delay by the respondent in performing his duties.

III. Submissions

- 6. On 13th February, 2025 while all the parties were present in Court they were directed to have the application disposed off by way or written submissions. Both parties complied. Pursuant to that, the Honourable Court reserved the 8th April, 2025 as the date to deliver the Ruling. However, the date having fallen during the High Court April Vacation, the ruling was eventually delivered on 28th May, 2025 accordingly.

A. The Written Submissions by the Ex - Parte Applicant.

- 7. The Ex – Parte Applicant filed their written submissions through the Law firm of Messrs. Mungai Kamau & Company Advocates dated 7th October, 2024. Mr. Mungai Advocate commenced the submissions by a brief recap on the history of the application before court and the orders so far made.
- 8. On the issue of costs and which is the gist of the ruling, the Learned Counsel for the Applicant made reference to the provisions of Section 27 of the *Civil Procedure Act* Cap. 21 and the holding by Mativo J in the case of *Republic v Rosemary Wairimu Munene [Exparte Applicant] v Ibururu Dairy Farmers Cooperative Society Limited* Judicial Review No 6 of 2004.
- 9. Additionally, the Counsel submitted that the court ought to be guided by the case of *Morgan Air Cargo Limited v Everest Enterprises Limited* [2014] eKLR, where the Court outlined the considerations to be taken into account when granting costs. Counsel stated that the applicant had made the application to the land registry where the Land Registrar had the mandate to carry out his duties as had been sought by the Applicant but failed to discharge the same hence infringing upon the Applicant's right to information.



10. The Applicant averred that the Respondent violated the provisions of Articles 35 and 47 of the constitution despite being a Public Officer entrusted to discharge duties in compliance with the provisions of the law. That the Land Registrar's actions were a gross abuse of the powers entrusted to a Public Officer and contempt of members of the public whom he was expected to serve.
11. The court was urged to order that Mr. S. N. Mokaya the County Land Registrar to personally bear the costs of this suit for subjecting the Ex-parte Applicant to unnecessary costs and litigation and for abdicating and refusing to perform his duties until compelled by this Court as was in the instant suit. The court is asked to compel the Land Registrar to pay the costs as sought in the application.

B. The Written Submissions by the Respondents

12. The Respondent filed their written submissions dated 26th February 2024. M/s. Mwanaszumba Monicah State Counsel submitted on behalf of the Respondent by stating that upon the prayers to open the register, the Land Registrar, Mr Mokaya returned the documentation to the Applicant with the comment

“surrender to enable ourselves forward to the RT who signed it to sign the green card”.
13. As indicated by the Applicant, he wrote to the Land Registrar seeking clarification and it was explained to him that the original title needed to be forwarded to the Land Registrar who signed the title to enable them sign the green card.
14. That the title to the suit property was prepared from Nairobi but whereby the green cards were never prepared. The administrative process of the land registry dictated that the Land Registrar who prepared the title deed ought to also prepare and sign the green card for uniformity and to avoid any issues of fraud where different Land Registrar's sign different land documents.
15. The Learned Counsel submitted further that the documents were sent to Nairobi as requested but it took some time for a response to be availed from Nairobi. That it was during this period that the Applicant filed the instant application before court despite being informed of the reasons for the delay.
16. It was the Respondent's submission that the Land Registrar had been diligent in carrying out his duties and the assertion that he delayed hence causing litigation costs was not warranted. Further that there had not been shown any malice on the part of the Respondent in discharging his duties.
17. The Learned Counsel submitted that costs was a discretion of the court as was stated by Mativo J in the case of *Republic v Rosemary Wairimu Munene [Ex - Parte Applicant] v Ibururu Dairy Farmers Co - operative Society Limited* Judicial Review No 6 of 2004. That any compensation in this case should be towards the Respondent as the Applicant was only supposed to be patient as he awaited the issue being resolved.
18. Further that the suit had only been in court for 5 months and it would be unfair for the court to grant costs to the Applicant herein under the current circumstances. For the above reasons the court is urged to order each party to bear its own costs.

IV. Analysis & Determination

19. I have considered the submissions by both parties herein, the informative authorities and provisions of statute and the constitution relied upon. In order to reach a just and informed decision, the following two (2) issue for determination arises:-



- a. Whether the Notice of Motion application dated 7th October, 2024 by the Ex – Parte Applicant has any merit whatsoever.
- b. Whether the Respondent S. N. Mokaya the Land Registrar should personally pay the costs of the application dated 7th October 2024.

Issue No. a). Whether the Notice of Motion application dated 7th October, 2024 by the Ex – Parte Applicant has any merit whatsoever.

20. As already indicated, by the consensus of the parties herein the prayers numbers A and B of the application were already dispensed with. In a nutshell, the application was partly settled and/or compromised. Thus, in the given circumstances, the only remaining issue from the said application was the one on costs to be meted upon the Land Registrar allegedly from his actions of omission or commission during the course of his execution of duties thereof.

Issue No. b). Whether the Respondent S. N. Mokaya the Land Registrar should personally pay the costs of the application dated 7th October 2024.

21. Under this sub – heading, the only subsisting issue in the notice of motion application is one on costs. It is now well established that the issue of costs is at the discretion of Courts. Costs mean the award that a party is granted at the conclusion of legal action or proceedings in any litigation. By virtue of the provision of Section 27 of the Civil Procedure Act, Cap. 21 holds as follows:-

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

By the events it means the outcome or result of the legal action.

22. In the case of Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others (2013) eKLR which cited with approval the words of Murray C J in the case of Levben Products v Alexander Films (SA) (PTY) Limited 1957 (4) SA 225 (SR) at 227 it was stated:

“It is clear from authorities that the fundamental principle underling the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion ...But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at.... In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”

23. The Court further in the case of:- Scherer v Counting Instruments Ltd [1986] IWLR 615 the English Court of Appeal set out the principles for the award of costs which are in essence not far distanced from our local jurisprudence. They are: -



- a) The normal rule is that cost follows the event. The party who turns out to have unjustifiably either brought another party before the court, or given another party cause to have recourse to the Court to obtain his rights is required to compensate that other party in costs; but
 - b) The judge has an unlimited discretion to make what orders as to costs he considers that the justice of the case requires.
 - c) Consequently, a successful party has a reasonable expectation of obtaining an order for his costs to be paid by the opposing party, but has no right to such an order, for it depends upon the exercise of the Court's discretion.
 - d) This discretion is not one to be exercised arbitrarily, it must be exercised judicially, that is to say, in accordance with established principles and in relation to the facts of the case.
 - e) The discretion cannot be well exercised unless there are relevant grounds for its exercise, for its exercise without grounds cannot be a proper exercise of the judges' function.
 - f) The grounds must be connected with the case. This may extend to any matter relating to litigation, but no further. In relation to interim application, "the case" is restricted to the application, and does not extend to the whole of the proceedings.
 - g) If a party invokes the jurisdiction of the court to grant him some discretionary relief and establish the basic ground therefor, but the relief sought is denied in the exercise of discretion the opposing party may properly be ordered to pay his costs. But where the party who invokes the Court's jurisdiction wholly fails to establish one or more of the ingredients necessary to entitle him to the relief claimed, whether discretionary or not, it is difficult to envisage a ground on which the opposing party could properly be ordered to pay his costs.
24. In the instant case, the Ex – Parte Applicant averred that the Respondent herein failed to discharge his duties as a Land Registrar forcing the Applicant to file the instant suit. That it was after institution of the suit that the Land Registrar was conditionally complied with the orders sought. The Applicant maintains that the Respondent is expected to carry out his duties even without being directed or ordered by the court to do so.
25. The Respondent on the other hand stated that the orders sought could not be immediately granted as was sought. That the process was to be carried out by a different officer who had signed for the title deed. The same required that the necessary documents be submitted to Nairobi for signature and authentication. According to the Respondent, the Applicant ought to have exercised some patience but which he did not and instead opted to institute the suit. Regardless of all that, the Applicant's issues had already been sorted out and the issue of costs was not necessary as each party could bear their own costs.
26. Be that as it may, the Honourable Court has decided to seek solace from the general powers of a Land Registrar were listed under the provision of Section 14 of the [Land Registration Act](#), No. 3, Laws of Kenya, which provides that:-

“General Powers of Land Registrars.

- 14. The Chief Land Registrar, County Land Registrars or any other land registrars may, in addition to the powers conferred on the office of the Registrar by this [Act](#)—



- (a) require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;
- (b) summon any person to appear and give any information or explanation in respect to land, a lease, charge, instrument, certificate, document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation;
- (c) Refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;
- (d)
- (e)

30.

- (1) The Registrar may, if requested by a proprietor of land or a lease where no certificate of title or certificate of lease has been issued, issue to him or her a certificate of title or a certificate of lease, as the case may be, in the prescribed form showing, if so required by the proprietor, all subsisting entries in the register affecting that land or lease.”

27. From the above provisions, it is evident that the duties upon which the Land Registrar had been asked to carry out were well within his mandate. However, looking at the explanation given by the Respondent, the Honourable Court wishes to grant the Registrar some benefit of doubt. Based on all the surrounding facts and inferences, I think all the necessary steps were taken to ensure service was offered to the Applicant the delay notwithstanding. A response was promptly given to him as to why the process would delay and consequently the same has been carried out. In my humble view, having the Respondent cater for the costs as sought by the Applicant will be punitive as he has despite the delay which cannot be termed as inordinate, discharged his duties. I do not find any sufficient basis or ground upon which this court can grant the order sought.

V. Conclusion & Disposition

28. The upshot of this and having caused an indepth of the issues for analysis, the Honourable Court proceeds to make the following orders:-

- a. That the Notice of Motion application dated 7th October, 2024 be and is hereby found to have merit and thus partially allowed as far as Prayer numbers A and B are concerned.
- b. That the Prayer number C to have the Land Registrar settle the costs of this application be and is hereby disallowed.
- c. That each party to bear its own costs.

It is ordered accordingly.



**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED
AND DATED AT KWALE THIS 28TH DAY OF MAY 2025**

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**HON. MR. JUSTICE L.L NAIKUNI,
ENVIRONMENT & LAND COURT AT KWALE.**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Mungai Kamau Advocate for the Ex – Parte Applicant.
- c. M/s. Mwanaszumba for the Respondent.

