



REPUBLIC OF KENYA



KENYA LAW
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**Kibe & another v Chief Land Registrar & 9 others (Judicial Review
Application 1 of 2020) [2025] KEELC 432 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 432 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW APPLICATION 1 OF 2020
JA MOGENI & AM COCKAR, JJ
FEBRUARY 10, 2025
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS
ACT NO. 4 OF 2015
AND
IN THE MATTER OF ATHE ORDERS OF THIS HONORABLE
COURT MADE ON 2ND MAY 2019 IN SIMON KIBE MWANGI
AND 4 OTHERS VERSUS THIKA GARISSA ROAD
DEVELOPERS LIMITED AND 5 OTHERS (ELC 279 OF 2017
CONSOLIDATED WITH THIKA ELC 212 OF 2017 (FORMERLY
NAIROBI ELC 110 OF 2013 AND NAIROBI ELC 212 OF 2017**

BETWEEN

ALICE NJOKI KIBE 1ST APPLICANT

SARAH MUMBI KAMANDE 2ND APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

COUNTY GOVERNMENT OF KIAMBU 3RD RESPONDENT

**ISHMAEL MURIITHI NGURINGA T/A ISMAEL & COMPANY
ADVOCATES 4TH RESPONDENT**

SIMON KIBE MWANGI 5TH RESPONDENT

JOSEPH NDUNGU WAIRIMU 6TH RESPONDENT

GEORGE KIMANI NGANGA 7TH RESPONDENT



JOYCE WANJIRU THUO 8TH RESPONDENT
MARY WAIRIMU MUIRURI (BEING SUED AS THE CHAIRPERSON,
VICE CHAIRPERSON, SECRETARY, TREASURER AND WOMEN REP OF
GACHAGI GROUP) 9TH RESPONDENT
ATTORNEY GENERAL 10TH RESPONDENT

RULING

1. The Application dated 3/03/2020 was filed seeking the following Orders:
 - a. Spent
 - b. That a Declaration do issue that the Applicants herein have a right to a Fair Administrative Action which is expeditious, efficient, lawful, reasonable and procedurally fair of the 1st Respondent establishing and/or causing the establishment of the Bona Fide members of Gachagi Group prior to the commencement of any transaction in the compliance with the Orders of this Honorable Court made on 2/05/2019 Simon Kibe Mwangi and 4 Others vs Thika Garissa Road Developers Limited and 5 Others (2019) eKLR
 - c. That a Declaration do issue that the Applicants herein have a right to a Fair Administrative Action which is expeditious, efficient, lawful, reasonable and procedurally fair of the 2nd Respondent monitoring and overseeing land use planning on land Parcel No. LR 4953/1855 in Thika Municipality in accordance with the provisions of Section 9 of the *Physical and Land Use Planning Act* No. 13 of 2019.
 - d. That a Declaration do issue that the Applicants herein have a right to a fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair of the 3rd Respondent preparing a local physical and Land Use Development Plan in accordance with Section 47 of the *Physical and Land Use Planning Act* No. 13 of 2019.
 - e. That a Declaration do issue that the Applicants herein have a right to a fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair of the 4th and 5th Respondent declaring their conflict of interest to the 1st Respondent prior to his actions in compliance with the orders of this Honorable Court made on 2/05/2019 Simon Kibe Mwangi and 4 Others Vs. Thika Garissa Road Developers Limited and 5 Others (ELC 279 of 2017 consolidated with Thika ELC 212 OF 2017 (formerly Nairobi ELC 110 of 2013 and Nairobi ELC 212 of 2017)).
 - f. That an order do issue setting aside all the actions taken by the Respondents herein jointly or in the alternative in respect of complying with the orders of this Honorable Court made on 2/05/2019 Simon Kibe Mwangi and 4 Others Vs. Thika Garissa Road Developers Limited and 5 Others (ELC 279 of 2017 consolidated with Thika ELC 212 OF 2017 (formerly Nairobi ELC 110 of 2013 and Nairobi ELC 212 of 2017)) and remitting the matter for reconsideration by the Chief Land Registrar the 1st Respondent herein with directions:
 - i. That the Chief Land Registrar (the 1st Respondent herein) establishes and/or causes to be established the bona fide members of Gachagi Group who are only descendants of Wamaitha Kiratu (deceased) Karaki Mwinyambiri (deceased) Njoki Karuku (deceased) Muturi Njuguna (deceased) Wambui Muturi (an elderly Kenyan



who needs assistance Njoki Hiuhu (deceased) Njoki Mahuti (deceased) Wathoni Mwangi Njeri Kimari (deceased) Mwihaki Karumba Njogu Babu (deceased) Joseph Wambua Muteti (an elderly Kenya who needs assistance) and who was brought in Gachagi by the Local Government Kariuki Gacheru (deceased) Eunice Njoki (an elderly Kenyan who needs assistance) Lilian Nyambura Kamau (deceased) Wairimu Kiambo (deceased) Kalu Ndambuki (deceased) Njeri Hamisi (deceased) Wanjiru Mathu (deceased) Njeri Waithaka (deceased) Milka Njeri Machuki Wanjeri Gitonga (deceased) Muthoni Gikubu (deceased) Wanjiru Ndathe (deceased) Mbairi Muchoki (deceased) Wangari Gachore (deceased) Kaiekye Nzioka (an elderly Kenyan who needs assistance) Tabitha Wanjira (an elderly Kenyan who needs assistance) Mary Nyambura Ndiga (deceased) Muthoni Kimemia (deceased) Mary Wairimu Kariuki (deceased) Mwangi Wanjie (deceased) Mutheki Muhia (deceased) Nyandia Kiambo (deceased) Waithira Kagiri (deceased) Naomi Muthoni Mwangi

ii. That the Chief Land Registrar (the 1st Respondent herein) complies and/or causes to be complied with the provisions of Sections (9)(a), 20(d) (i) & (j), 37 (b), (c), (e) & (g) and 47, of the *Physical and Land Use Planning Act* No. 13 of 2019 in the cause of complying with the orders of this Honorable Court made on 2/05/2019 Simon Kibe Mwangi and 4 Others Vs. Thika Garissa Road Developers Limited and 5 Others (ELC 279 of 2017 consolidated with Thika ELC 212 OF 2017 (formerly Nairobi ELC 110 of 2013 and Nairobi ELC 212 of 2017).

g. That the cost of this Application be provided for

2. The Application is unopposed. The Respondents despite being served did not file any responses.

Brief History

3. On 2/05/2019, this Honorable Court issued a declaration that the Applicant/Plaintiff (Gachagi Group) had acquired prescriptive rights to the entire suit property being land parcel number 4953/1855 and cancelled any leases issued to the 1st Defendant or third parties or to members of the 6th Defendant over the said parcel of land. The Court also ordered that the Applicant/Plaintiffs are entitled to be registered as proprietors of the suit property for the remainder of the leasehold interest period.
4. At the same time the 2nd Defendant was directed to issue the Applicant/Plaintiff with leasehold documents and the Defendant restrained from interfering with the Applicant/Plaintiff.
5. It is this order that is the subject of this Application since the Applicant claims that the Court order has never been implemented by the 2nd Respondent. This prompted the Applicant to move to this Court and filed the current Judicial Review/Notice of Motion.
6. The Applicant is seeking a declaration that the Applicant is entitled to an expeditious and efficient implementation of this Court's order issued on 02/05/2019.
7. As already stated the Respondents, and especially the 1st Respondent has failed to offer any explanation or to give reason(s) as to why notwithstanding the Court Order, no procedure has been initialized to signal the onset of initialization of processes for issuance of leases to the Applicant group.
8. Despite efforts by the Applicant to serve the Application upon the Respondents, no response was filed in Court.



9. I have carefully considered the Applicant's Application noting that the fact that the Application is not opposed means that the Applicant's evidence remained unchallenged and uncontroverted and there would be no reason as to why the Court should not believe it. See the case of *Shaneebal Limited Vs. County Government of Machakos* (2018) eKLR, where the Court cited the case of *Karuru Munyororo Vs. Joseph Ndumia Murage & Another*, Nyeri HCCC No.95 of 1988, where the Court held that:-
- “The Plaintiff proved on a balance of probability that she was entitled to the orders sought in the Plaint and in the absence of the Defendant's and or their Counsel to cross examine her on evidence, the Plaintiff's evidence remained unchallenged and uncontroverted. It was thus credible and it is the Kind of evidence that a Court of law should be able to act upon.”
10. Even with the above, the Court still has an obligation to interrogate the Plaintiff's evidence and determine whether the same is merited to enable the Court come up with logical conclusion as exparte evidence is not automatic proof. The Plaintiff has to discharge the burden of proof. See the case of *Kenya Power & Lighting Company Limited Vs. Nathan Karanja Gachoka & Another* [2016] eKLR stated:
- “I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a Defendant, and that a Court should not take it truthful without interrogation for the reason only that it is uncontroverted. A Plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”
11. Further in the case of *Gichinga Kibutha Vs. Caroline Nduku* (2018)eKLR, the Court held that:-
- “It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
12. This Judicial Review Application has been brought pursuant to the provisions of the *Fair Administrative Action Act* of 2015. This Act was enacted pursuant to the provisions of Article 47 (3) of the *Constitution*. Article 47(1) of the *Constitution* provides as follows:-
- “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”
13. The question which then falls for determination is whether the 1st Respondent's action of not implementing the Court order of 02/05/2019 which was granted to the Applicant.
14. Section 41(3) of the Physical Planning Act provides as follows:-
- “Where in the opinion of a local authority an Application in respect of development, change of user or sub-division has important impact on contiguous land or does not conform to any conditions registered against the title deed of property, the local authority shall at the expense of the Applicant publish the notice of the Application in the Gazette or in such other manner as it deems expedient, and shall serve copies of the Application on every owner or occupier of the property adjacent to the land to which the Application relates and to such other persons as the local authority may deem fit.”
15. The above quoted sections do not give power to the 1st Respondent or the 2nd to 6th Respondents to disregard the orders that had been granted. Section 41(3) is clear that the Respondent in its discretion



had the option of asking the Applicant to convene a meeting of all the Gichagi members to address their leases and ensure all members are registered in their individual capacities.

Determination

16. From the material and evidence on record, it is my finding that the Applicant's Application has merit. It is not disputed that the Applicant has a Judgment that directed the Respondents to prepare leasehold ownership documents in the name of the Applicant's members. Section 14 of the [Land Registration Act, 2012](#) that repealed among others the Registration of Titles Act, Chapter 281 Laws of Kenya provides as follows:-

“ 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) cause oaths to be administered or declarations taken and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration; and
- (e) order that the costs, charges and expenses as prescribed under this Act, incurred by the office or by any person in connection with any investigation or hearing held by the Registrar for the purposes of this Act shall be borne and paid by such persons and in such proportions as the Registrar may think fit.”

17. Section 79(1), (a), (b) and (c) of the said Act on the other hand provides as follows:-

79.(1) The Registrar may rectify the register or any instrument presented for registration in the following cases-

- (a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
- (b) in any case and at any time with the consent of all affected parties; or
- (c) if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel.



18. It is my finding that the 1st Respondent's inaction leading to failure to implement the Court decision is unfair to the Applicant. This being the case the Applicant's Application is merited and I therefore find that the Applicant's Judicial Review is merited in part and issue the following orders:-

- a. A Declaration is hereby issued that the Applicants have a right to a Fair Administrative Action which is expeditious, efficient, lawful, reasonable and procedurally fair of the 1st Respondent to cause commencement of transactions in the compliance with the Orders of this Honorable Court made on 2/05/2019 Simon Kibe Mwangi and 4 Others Vs. Thika Garissa Road Developers Limited and 5 Others (2019) eKLR.
- b. A Declaration is hereby issued that the 2nd Respondent should monitor and oversee the Land Use Planning on land Parcel No. LR 4953/1855 in Thika Municipality in accordance with the provisions of Section 9 of the Physical and Land Use Planning Act No. 13 of 2019 in accordance with the Court Order of 2/05/2019.
- c. A Declaration is hereby issued that the 3rd Respondent prepares a local Physical and Land Use Development Plan in accordance with the Physical and Land Use Planning Act No. 13 of 2019 in accordance with the Court Order of 2/05/2019.
- d. Each party to bear their own costs.

19. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF FEBRUARY, 2025.

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MOGENI J

JUDGE

In the presence of:

1st Applicant – Alice Njoki Kibe – In person

2nd Applicant – Sarah Mumbi Kamande – In person

1st, 2nd and 3rd Respondents – Absent

Ms. Wairimo holding brief for Mr. Tumu for 4th Respondent

Ms. Wairimo holding brief for Mr. Chiiru for 5th Respondent

Mr. Melita - Court Assistant

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MOGENI J

JUDGE

