



REPUBLIC OF KENYA



KENYA LAW
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**Kivuva & 3 others v Katelembo Task Force & another; Kitata & 3 others
(Interested Parties) (Administrators of the Estate of Kitata Ngomo) (Judicial
Review Cause 1 of 2023) [2025] KEELC 474 (KLR) (3 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 474 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
JUDICIAL REVIEW CAUSE 1 OF 2023**

CA OCHIENG, J

FEBRUARY 3, 2025

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL
REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL
REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF THE LAND REGISTRATION ACT

BETWEEN

**JEREMIAH NZIOKA KIVUVA 1ST APPLICANT
LUCY MUKII MAKUMBI 2ND APPLICANT
TONIA MUTINDI KAKUTI 3RD APPLICANT
FELISTA MUENI MUSAU 4TH APPLICANT**

AND

**KATELEMBO TASK FORCE 1ST RESPONDENT
LAND REGISTRAR, MACHAKOS COUNTY 2ND RESPONDENT**

AND

**BENJAMIN MAKAU KITATA INTERESTED PARTY
HILLARY KILUU KITATA INTERESTED PARTY
DAVID MAINGI KITATA INTERESTED PARTY**



**SEBASTIAN MUTUKU KITATA INTERESTED PARTY
ADMINISTRATORS OF THE ESTATE OF KITATA NGOMO**

JUDGMENT

1. What is before Court for determination is the Ex parte Applicants' Amended Notice of Motion application dated the 29th January, 2024 where they seek the following Orders:
 1. That this Honourable Court be pleased to issue An Order Of Certiorari to remove into this Honourable Court and quash the decision of the 1st Respondent of cancelling Title Deed Athi River/ Athi River Block 1/722.
 2. That this Honourable Court be pleased to issue an order of Prohibition to prohibit the Land Registrar, Machakos County from cancelling the Title Deed No. Athi River/ Athi River Block 1/722 and registering the same in the name of the Interested Parties.
 3. That the Honourable Court be pleased to give further orders and/or directions to the application in the light of the urgent circumstances of the case herein.
 - 4.. That the Respondents pay the costs of this application.
2. The application is premised on the grounds on the face of it, annexed statement dated the 9th July, 2018, verifying affidavit sworn on the 9th July, 2018 by Jeremiah Nzioka Kivuva, Lucy Mukii Makumbi and Tonia Mutindi Kakuti.
3. The Respondents opposed the instant application and filed Grounds of Opposition and Notice of Preliminary Objection dated the 23rd May, 2024 contending that the instant Amended Notice of Motion application is time barred, incompetent, defective and the Court lacks jurisdiction to handle it.
4. The Administrators of the Estate of Kitata Ngomo (Interested Parties) opposed the instant application by filing a replying affidavit sworn by Benjamin Makau Kitata. He deposes that their late father was the legal owner of Plot No. 926 Katelembo Athiani Muvuti Ranching. Further, that he was member No. 2705. He explains that the membership card got lost but when a surveyor managed to locate the suit plot in 2016, they found it had been fenced by the 1st, 2nd and 4th Applicants. Further, that they reported the matter to Katelembo Athiani Muvuti Ranching Company hereinafter referred to as 'Katelembo' and this culminated in the constitution of a Taskforce to investigate the ownership of the suit land.
5. He highlights the identity of the members who constituted the Taskforce and confirms that it was only the Chairman of Katelembo who was incorporated, as he was to guide the said members in the internal matters of the society. He contends that the Taskforce established that the suit land belonged to Kitata Ngomo who was their member No. 2705 and had never been transferred to a third party. Further, that the alleged transfer was a mistake on the part of Katelembo and should not be visited upon innocent registered owners. He avers that the Applicants should pursue Katelembo for an alternative parcel of land. He reiterates that despite the decision from the Taskforce, the Applicants have continued to trespass on the suit land.
6. The Applicants filed a further affidavit sworn by Jeremiah Nzioka Kivuva where he reiterates their averments as per the affidavit and statement. He disputes the Administrators averments in the replying affidavit and contends that they failed to annex proof that the deceased was a member of Katelembo. Further, that the Administrators failed to annex a Copy of a Search Certificate to prove their claim.



He argues that the Taskforce Committee was not representative enough to determine issues of land, which had been sold by Katelembo. Further, that no evidence was tendered to prove ownership of the land by the deceased. He insists that the members of the Taskforce were biased as they did not invite all the parties who were involved in the transaction in respect to the suit land. He avers that it is Katelembo that sold land to the 4th Applicant on 19th October, 2010 for Kshs. 250,000/=, whereby the Sale Agreement was signed by the officials. Further, that the issue of conflict of interest was raised during the taskforce hearing but the committee rubbished it and failed to document it. They deny trespassing on the suit land and insist that they cannot trespass on what they own.

7. The instant Application was canvassed by way of written submissions.

Analysis and Determination

8. Upon consideration of the instant Amended Notice of Motion application including the Statutory Statement, respective affidavits, annexures and rivalling submissions, the only issue for determination is whether the ex parte Applicants are entitled to orders as sought.
9. The ex parte Applicants have sought for an Order of certiorari to remove into this Honourable Court and quash the decision of the 1st Respondent of cancelling Title Deed Athi River/ Athi River Block 1/722 and an Order of prohibition to prohibit the Land Registrar, Machakos County from cancelling the Title Deed No. Athi River/ Athi River Block 1/722 and registering the same in the name of the Interested Parties.
10. Lord Diplock in the case of Council for Civil Service Unions vs. Minister for Civil Service [1985] A.C. 374, at 401D clearly set the standards of judicial review and stated that:

“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.’

11. While in the Supreme Court in Baker v. Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6 it was held that:

“The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.”



12. Further, in the case of *Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd* Civil Appeal No. 185 of 2001, it was held that:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters... The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision... It is the duty of the decision maker to comply with the law in coming to its decision, and common sense and fairness demands that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but it a statutory body which can only do what is authorised by the statute creating it and in the manner authorised by statute.”

13. In the current scenario, the ex parte Applicants seek to challenge the administrative action of the Katelembo Taskforce that determined that the suit land belonged to the estate of Kitata Ngomo. On administrative action, Section 7 of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to— (a) a court in accordance with section 8; or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law. Subsection (2) provides that a court or tribunal under subsection (1) may review an administrative action or decision on any of the grounds listed in the said section.

14. *The Constitution* 2010 at Article 47 stipulates inter alia:

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
- (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
- (b) promote efficient administration.’

15. In this instance, the ex parte Applicants have sought for quashing of the Taskforce decision which directed for cancellation of their title claiming the Taskforce was bias in its decision. They contend that the Taskforce was not properly constituted, was bias and failed to consider their argument on conflict of interest. Further, that it is Katelembo that sold the suit land to the 4th Applicant.

16. From a perusal of the documents presented, I note the fulcrum of the dispute herein actually revolves around the root of a title and ownership to land. Further, from the proceedings annexed, I note the Applicants fully participated in the proceedings at the Taskforce and they have admitted so. Their only grievance is the presence of the Chairman of Katelembo as a member of the Taskforce and decision of the said Taskforce. I opine that the Respondents have explained his role therein. From the claim by the Applicants on how they acquired their title, noting that the Taskforce found that the root of the



title is plot No. 926 which emanated from Share No. 2705 Katelembo, that belonged to the estate of Kitata Ngomo, I opine that the Applicants should have filed a Civil Claim as there was indeed a need to tender viva voce evidence as well as production of documents; to prove the same.

17. However, based on the facts before me while relying on the legal provisions cited and associating myself with the decisions quoted, it is my considered view that orders of prohibition and certiorari sought cannot issue in vain and since the ex parte Applicants participated in the proceedings before the Respondent and they were indeed granted an audience. Since they seek for authentication of their title, they need to prove the root of the said title in a civil claim. In the circumstances, I do not find that there was any 'irrationality' or 'unreasonableness' on the part of the Respondents to warrant the orders sought.
18. In the foregoing, I find the instant amended Notice of Motion application unmerited and will proceed to strike it out.
19. Each party to bear their own costs.

DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2025

CHRISTINE OCHIENG

JUDGE

