



**Republic v Chief Land Registrar (Ardhi House Nairobi) & another; Mui Annex Properties Limited (Exparte Applicant); Equity Bank Limited & 2 others (Interested Parties) (Environment and Land Judicial Review Case E006 of 2023) [2025] KEELC 419 (KLR) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 419 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E006 OF 2023**

**MD MWANGI, J**

**FEBRUARY 5, 2025**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDER OF MANDAMUS AND PROHIBITION BY M/S MUI ANNEX PROPERTIES LIMITED.**

**AND**

**IN ACCORDANCE WITH ORDER 53 RULE 3 OF THE CIVIL PROCEDURE RULES**

**AND**

**(PURSUANT TO LEAVE GRANTED ON 27TH SEPTEMBER 2023 BY THE HON. JUDY OMANGE JUDGE IN MILIMANI HIGH COURT ELCJR/E009/2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CHIEF LAND REGISTRAR (ARDHI HOUSE NAIROBI) ..... 1<sup>ST</sup> RESPONDENT**

**CHAIRPERSON (NATIONAL LAND COMMISSION) ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MUI ANNEX PROPERTIES LIMITED ..... EXPARTE APPLICANT**

**AND**

**EQUITY BANK LIMITED ..... INTERESTED PARTY**

**MOSS ENTERPRISES LIMITED ..... INTERESTED PARTY**

**VILLA IMARA PROPERTIES LIMITED ..... INTERESTED PARTY**



## JUDGMENT

### Background

1. This judgment is in respect to the Notice of Motion dated 11<sup>th</sup> October 2023 wherein the ex parte Applicant prays for orders:-
  - a. That this Honourable Court be pleased to issue an order of judicial review in the nature of a mandamus directed to the Chief Land Registrar or officers acting under him to avail the parcel file for L.R. 209/12678 and cause the transfer of the same to M/S. Villa Imara Properties Limited the 3<sup>rd</sup> Interested Party unconditionally and without let or hindrance.
  - b. That this Honourable court be pleased to issue an order of judicial review in the nature of mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to immediately make available the parcel file for L.R. 209/12678 for further transaction at the Lands Registry, Nairobi.
  - c. That this Honourable Court be pleased to issue an order of judicial review in the nature of prohibition directed to the 2<sup>nd</sup> Respondent (the chairperson of the National Land Commission) barring him from interfering with the constitutionally guaranteed right to property of the ex-parte Applicant and the disposal of such property freely.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Joel Kihara Njau sworn at Nairobi on 11<sup>th</sup> October 2023.
3. The Ex parte Applicant avers that it is the registered owner of the suit property which is also charged in favour of the 1<sup>st</sup> Interested Party; Equity Bank Limited. By a consent between the ex-parte Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, it was agreed that the suit property be sold and the proceeds applied to liquidate various obligations owed to the 1<sup>st</sup> Interested Party. Accordingly, the ex-parte Applicant entered into a sale agreement with the 3<sup>rd</sup> Interested Party for the sale of the suit property. The 2<sup>nd</sup> Interested Party was in agreement.
4. However, the ex-parte Applicant avers that it became impossible to complete the transaction due to the missing parcel file at the Nairobi Lands Registry as well as the illegal registration of a caution despite the fact that the suit property was already charged in favour of the 1<sup>st</sup> Interested Party, a process overseen by the 1<sup>st</sup> Respondent.
5. The ex parte Applicant claims that the 2<sup>nd</sup> Respondent has purported to declare the suit property a public property. Enquiries from the 2<sup>nd</sup> Respondent on that issue have however gone unanswered.
6. The ex parte Applicant asserts that it has not at any time been informed or involved in any enquiry or proceedings before the 2<sup>nd</sup> Respondent took the alleged administrative action. The refusal by the 2<sup>nd</sup> Respondent to give information, and or clarify the status of the subject parcel is oppressive and illegal.
7. In the supporting affidavit, the deponent deposes that the ex-parte Applicant bought the suit property in November 2013 from Parbat Premji Patel and Maran Premji Patel, the private owners of it. The ex-parte Applicant proceeded to charge the suit property to M/S Equity Bank Limited who financed the purchase.
8. The land was allegedly invaded by some individuals sometimes in December 2015 posing as squatters which caused extended eviction proceedings that caused the ex-parte Applicant to default in repayment



- of the loan owing to the 1<sup>st</sup> Interested Party. The 1<sup>st</sup> Interested Party then purported to sell the suit property by public auction to the 2<sup>nd</sup> Interested Party on or about November 2017.
9. In the ensuing litigation, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties and the ex-parte Applicant entered into a consent to sell the suit property by private treaty. That is how the ex-parte Applicant ended up entering into a sale agreement with M/S. Villa Imara Properties Limited (the 3<sup>rd</sup> Interested Party herein) for sale of the suit property. A deposit of the purchase price was paid into an escrow account in the joint names of the ex-parte Applicant and the 2<sup>nd</sup> Interested Party domiciled at Equity Bank Limited.
  10. Before the conclusion of the transaction however, the ex-parte Applicant received information that the suit property was being claimed to be public land and had ostensibly been so declared. The deponent has attached a newspaper cutting in support of the allegation. A search and perusal of gazette notices of that period did not reveal any such declaration by the National Land Commission.
  11. Despite numerous enquiries, the 2<sup>nd</sup> Respondent has remained mum on the issue. The ex-parte Applicant asserts that it has not been involved in any proceedings or claim over the suit premises on the allegation that the suit property is public land.
  12. The ex-parte Applicant has been unable to conduct a search of the title to the suit property as the parcel file is said to be missing. The ex-parte Applicant learnt that the parcel file is being held albeit unlawfully by the National Land Commission for undisclosed reasons. This has frustrated the registration of the instrument of transfer in favour of the 3<sup>rd</sup> Interested Party to the detriment of the ex parte Applicant.

#### **Responses by the Respondents and the Interested parties.**

13. The 1<sup>st</sup> Respondent, the Chief Land Registrar did not reply to the ex parte Applicant's Notice of Motion under consideration.
14. On its part, the 2<sup>nd</sup> Respondent, replied to the Notice of Motion vide a replying affidavit sworn by one Brian Ikol at Nairobi on 13<sup>th</sup> February 2024.
15. The deponent of the replying affidavit filed on behalf of the 2<sup>nd</sup> Respondent asserts the National Land Commission (NLC) received a complaint from Mukuru Vumila Self Help Group and the Nairobi City County Government regarding allegations of grabbing of a plot earmarked for a public Market at Mukuru Kwa Njenga.
16. The deponent states that pursuant to Section 6 of the *National Land Commission Act*, National Land Commission invited all interested parties to attend public hearings which were scheduled for 15<sup>th</sup> June 2017, 27<sup>th</sup> June 2017 and another date in July 2018 whereby all interested parties presented their cases and submitted relevant documents. The National Land Commission in the meantime placed a restriction on the title to the suit property pending completion of the investigations through the public hearings. The deponent asserts that the ex parte Applicant was also present during the hearings and was given a chance to make presentations. The ex parte Applicant allegedly submitted that it had acquired the land through an auction and had proceeded to charge it favour of Equity Bank Limited.
17. The deponent further asserts that the National Land Commission made a determination based on the documents submitted by all the interested parties present. Its finding was that the suit property was earmarked for a car park and a public market at Mukuru Kwa Njenga area of the Nairobi City County.
18. It is the opinion of the deponent that the application by the ex-parte Applicant is unmerited because the proceedings before the National Land Commission were conducted in accordance with the provisions of Article 47 of *the Constitution*, the *Fair Administrative Action Act*, the *Law Reform Act* and the *National Land Commission Act*.



### **Response by the Interested Parties**

19. The 1<sup>st</sup> Interested Party too filed a response to the ex-parte Applicant's application by way of a replying affidavit sworn by one Kariuki Kingori on 20<sup>th</sup> June 2024.
20. The deponent deposes that Equity Bank granted a credit facility of Kshs. 33,750,000/- to the ex-parte Applicant for purposes of purchase of the suit property upon due consideration and evaluation which confirmed the bona fides of the ex-parte Applicant. The loan facility was secured by a legal charge over the suit property.
21. It is further deposed that the ex-parte Applicant defaulted in payment of the loan advanced and the bank proceeded to exercise its statutory power of sale. At no time was there a report that the suit property was public land.
22. Consequent to the sale by public auction in exercise of the statutory power of sale by the 1<sup>st</sup> Interested Party, there followed litigation which culminated into a consent between the parties. It was agreed that the ex-parte Applicant and the 2<sup>nd</sup> Interested Party sell the suit property by way of a private treaty to the 3<sup>rd</sup> Interested Party and share the proceeds. The consent was recorded in High Court Civil Case No. 391 of 2018 (formerly ELCC 443 of 2018).
23. A deposit of Kshs. 20 Million was paid under the sale agreement of 22<sup>nd</sup> February 2022. The amount is still held in an escrow account.
24. The registration of the title in the name of the 3<sup>rd</sup> interested party was interrupted by a notice alleging that the suit property was public land.
25. The deponent asserts that despite the 1<sup>st</sup> Interested Party's interests having been entered into the suit property's title, it was not consulted, informed nor heard before the unilateral decision to declare the suit property as public land. The decision was therefore illogical, unprocedural, unreasonable and ultimately unlawful.

### **Supplementary affidavit by the ex-parte Applicant**

26. The ex-parte Applicant filed a supplementary affidavit sworn by Joel Njau Kihara on 18<sup>th</sup> June 2024 reiterating that it was not invited for any public hearing by National Land Commission as alleged. That the National Land Commission has conveniently not provided any evidence of an invitation in any manner or form in its replying affidavit to support its allegation to that effect.
27. The deponent points out that the determination by the National Land Commission attached as an annexure to its replying affidavit falls short of details including the names of persons who attended on behalf of the ex-parte Applicant, the venue of the alleged meeting and even the panelists making the decision have not been indicated.
28. The deponent further states that the findings of the National Land Commission have never been gazetted since 2019 when the decision was purportedly made and cannot therefore have the force of the law.

### **Court's direction.**

29. The court's directions were that the Notice of Motion be canvassed by way of written submissions. The ex parte Applicant, the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> and 3<sup>rd</sup> Interested Parties complied. The ex-parte Applicant filed supplementary submissions noting that the 2<sup>nd</sup> Respondent had filed its replying affidavit after they had already filed their submissions.



30. The court has had an opportunity to peruse the submissions filed by the parties which now form part of its record.

**Issues for determination.**

31. Having considered the application by the ex parte Applicant, the responses by the parties as well as the submissions filed herein, the issues for determination in the court’s opinion are;-
- a. Whether the National Land Commission had the mandate to review the grant in favour of the ex-parte Applicant.
  - b. Whether the ex-parte Applicant is entitled to orders of mandamus and prohibition.
  - c. what orders should issue in respect of the costs of these proceedings.

**Analysis and determination.**

**Whether the National Land Commission had the mandate to review the grant in favour of the ex parte Applicant.**

32. Judicial review is primarily concerned with the decision making process. The Supreme Court of Kenya in the case of Judges and Magistrates Vetting Board-vs- Centre for Human Rights and Democracy (2014) eKLR, noted that;

“When courts conduct judicial review, they are in essence ensuring that the decisions made by the relevant bodies are lawful. Consequently, should they find that the decision made is unlawful, courts can set aside that decision. Judicial review, therefore, can be said to safeguard the rule of law, and individual rights, and ensures that decision makers are not above the law, but have taken responsibility for making lawful decisions, in the knowledge that they are reviewable.”

33. In OJSC Power Machines Limited, Trans Century Limited and Civicon Limited (consortium) -vs- Public Procurement Administrative Board of Kenya and 2 others (2017) eKLR, the Court of Appeal stated that;

“The law on the jurisdiction of the High Court to entertain judicial review proceedings is encapsulated in several decisions...The law, from these decisions is to the following effect; That the purpose of judicial review is to ensure that a party receives fair treatment in the hands of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceeding. Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision had the jurisdiction, whether the persons affected by the decision were heard before the decision was made and whether in making the decision, the public body took into account irrelevant matters or did not taken into account relevant matters.”



34. In the Ugandan case of Pastoli -vs- Kabale District Local Government Council and others (2008) 2 EA, the court discussed the criterion for the grant of judicial review orders and stated that,
- “In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.”
35. As it appears from the prayers sought by the ex-parte Applicant in this case, and the grounds on the face of the application, the ex parte Applicant was not aware of the determination by the National Land Commission, reviewing its grant over the suit property at the time of filing the substantive application for orders of judicial review. The complaint by the ex-parte Applicant was the unavailability of the parcel file in respect of the suit property and the illegal registration of a caution/restriction that frustrated or prevented the registration of the transfer in favour of the 3<sup>rd</sup> Interested Party pursuant to a ‘private treaty’ between the ex parte Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.
36. The issue of review of the grant and the alleged determination only arose after the reply by the National Land Commission to the application by the ex-parte Applicant. This is the reply that was filed after the ex parte Applicant had already filed its submissions without leave of the court and without any explanation for the non-compliance with the timelines issued by the court. What comes out from the evidence before the court is that the decision by the National Land Commission has not been published to date in the Kenya Gazette. No wonder the Applicant and interested parties are unaware of it.
37. The alleged review of the grant in favour of the ex parte Applicant by the National Land Commission turns out to be the reason behind the unavailability of the parcel file and the registration of the restriction over the title to the suit property. It then becomes an issue for determination. In fact, the main issue for determination in this matter.
38. Article 10 of *the Constitution* expounds on the National Values and principles of governance. The Article is categorical that the said National values and principles bind all state organs, state officers, public officers and all persons whenever any of them –
- a. Applies or interprets *the constitution*;
  - b. Enacts, applies or interprets any law; or
  - c. makes or implements public policy decisions.
39. Amongst the National values and principles under Article 10 of *the Constitution* is rule of law, good governance, integrity, transparency and accountability. The National Land Commission is a state organ created under Article 67 of *the Constitution* and like all other state organs is bound by the National values and Principles of governance in executing its constitutional and statutory mandate.
40. Article 68 of *the Constitution* commanded Parliament to enact legislation to amongst other things enable the review of all grants or dispositions of public land to establish their propriety or legality. Pursuant to the provisions of Article 68 cited above, Parliament enacted the *National Land Commission Act*, 2012, Section 14 of which made provisions for review of grants and dispositions. Subsection 1 of Section 14 mandated the commission to within five years of the commencement of the Act, on its own motion or upon a complaint by the National or a County government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.



41. Amongst the facts that courts in this country are supposed to take judicial notice of under Section 60 of the Evidence Act are all written laws, and all laws, rules and principles, written and unwritten, having the force of law, whether in force or having such force as aforesaid before at or after the commencement of the Evidence Act in any part of Kenya.
42. This court takes judicial notice that the National Land Commission Act, 2012 was assented to on 27<sup>th</sup> April 2012 and its commencement date was 2<sup>nd</sup> May 2012. The jurisdiction of National Land Commission to review grants and dispositions was time bound – five years of the commencement of the Act. The mandate therefore automatically lapsed on 2<sup>nd</sup> May 2017 by application of the law on the expiry of the five years.
43. Therefore at the time when it was convening public hearings and making a determination on the legality or the propriety of the title to the suit property, the National Land Commission had no such jurisdiction.
44. Jurisdiction flows from either the constitution or legislation or both. The National Land Commission cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law. This is one of the dictates of the principle of rule of law.
45. In Republic -vs- Karisa Chengo (2017) eKLR, the Supreme Court of Kenya stated that,

“Where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing.”
46. The same reasoning applies to the jurisdiction of the National Land Commission or any other public body for that matter. Any decision arrived at without jurisdiction however precisely certain and technically correct is a mere nullity and not only voidable, it is void and has no effect either as estoppel or otherwise.
47. Lord Denning M.R. in the case of Macfoy –vs- United Africa Co. Limited (1961) 3 All ER, 1169, was more pronounced and stated that;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding that is founded on it is bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
48. I need not say more. The purported review of grant by the National Land Commission in respect to the suit property is a nullity, null and void. Automatically it amounts to nothing.
49. To add insult to injury, the purported review was done without notice to the ex parte Applicant, and the 1<sup>st</sup> Interested Party, the chargor. Both have a legal interest in the grant or disposition concerned. The deponent of the replying affidavit on behalf of National Land Commission merely stated that the ex parte Applicant was notified of the public hearings without providing any evidence of such notice. What was so difficult with attaching the notice as an annexure if indeed one was issued as alleged? What about the 1<sup>st</sup> Interested Party who was a chargor?



50. Mativo J (as he then was), in the case of Sceneries Limited –vs- National Land Commission (2017) eKLR, had occasion to discuss the issue of such a notice of the hearing by the National Land Commission. He categorically stated that,
- “The right of a person to defend him/herself in the face of a decision potentially affecting his/her rights necessarily implies that the person must receive prior notice of the facts on which the decision will be based. The notice must be communicated to the Interested Party, preferably in writing. In addition to specifying the date and place of the hearing, the notice must be sent in a timely manner (sufficiently in advance of the hearing) adequately describing the relevant facts and allegations so that party may respond to them and outlining who will be present at the hearing, what the hearing will entail and the possible effects the decision may have on the rights and interests of the person.”
51. The learned judge cited with approval the decision in Republic –vs- Ontario Commissioners where Justice Haines emphasized that a notice that complies with the principles of Natural Justice means,
- “A written notice setting out the date and subject matter of the hearing, grounds of the complaint, the basic facts in issue and the potential seriousness of the possible result of such a hearing.”
52. In this case, it is obvious that no notice was served upon the ex parte Applicant or the 1<sup>st</sup> Interested Party. The details of the complaint were not availed to them in advance either. The 2<sup>nd</sup> Respondent surely violated the rules of natural justice.
53. The consequences of violating the rules of Natural Justice are dire. The Court of Appeal in the James Kanyita case emphasized that;
- “There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”
54. Lord Wright in General Medical Council –vs- Spackman (1943) 2 ALLER 337 stated that;
- “If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of departure from essential principles of justice. The decision must be declared a no decision.”
55. Justice Lenaola (as he then was) in Mandeep Chanhani -vs- Kenyatta National Hospital & 2 others (2013) eKLR, was of a similar view that any law or decision that contravenes the rules of natural justice is null and void and of no effect.
56. That said, I now proceed to determine the 2<sup>nd</sup> issue, i.e. whether the ex parte Applicant is entitled to the reliefs sought.
57. I begin with the order of mandamus sought directed at the Chief Land Registrar to avail the parcel file for L.R 209/12678 and cause the transfer of the same to M/S Villa Imara properties Limited, the 3<sup>rd</sup> Interested Party herein. Further to compel the Chief Land Registrar and the 2<sup>nd</sup> Respondent to immediately make available the parcel file for further transaction at the Lands Registry at Nairobi.



58. Having already found that the purported determination by the 2<sup>nd</sup> Respondent amounts to nothing and is of no legal consequence, there is nothing to inhibit the ex parte Applicant and the Interested Parties from transacting and dealing with the title to the suit property as they wish. The National Land Commission has no business holding the parcel file or inhibiting the title to the suit property through a restriction. The Chief Land Registrar too is legally obligated to facilitate and enable the parties to transact as far as they have made all the requisite payments and followed the procedures.
59. An order of mandamus as stated in the case of Republic –vs- KNEC ex parte Gathenji and 9 others (1997) eKLR, cited by the 2d Respondent in its submission is,
- “...in form of a command issuing from the High Court of Justice directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing therein specifically which appertains to his or their office and is in the nature of a public duty.”
60. I find an order of mandamus appropriate and reasonable in this matter directed at the office of the Chief Land Registrar and the National Land Commission to avail the parcel file for L.R 209/12678 to allow the parties herein to transact at the Nairobi Land Registry and further directing the Chief Land Registrar to cause the transfer of the same to M/S Villa Imara properties Limited in accordance with the wishes of the parties.
61. In regard to the prayer, for an order of prohibition, the Court of Appeal expressed the opinion that an order of prohibition looks to the future so that if a tribunal were to announce that it would consider itself not bound by rules of natural justice, as an example, the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice.
62. The 2<sup>nd</sup> Respondent submits that a prohibition order cannot apply in this matter since it has already conducted a review of the grant and made a determination, in respect to the suit property. As I stated earlier on, the application by the ex parte Applicant does not seek to prohibit the review of grant. It was seeking to prohibit the Respondents from interfering with the transfer of the title to the suit property. It has been admitted by the deponent of the replying affidavit on behalf of the National Land Commission that it was the National Land Commission that put the restriction on the title pending conclusion of the investigations. Such acts are what the ex parte Applicant sought to prohibit.
63. Considering the circumstances of this case, am persuaded that an order of prohibition is necessary directed at the 2<sup>nd</sup> Respondent barring it from interfering with the rights of the ex parte Applicant over the suit property and the disposal of the said property. It is hereby issued.
64. Since the ex parte Applicant case succeeds against the Respondents, I grant him the costs of these proceedings.

### **Final Disposition**

65. The final orders are as follows;
- a. An order of mandamus be and is hereby issued directed at the office of the Chief Land Registrar and the National Land Commission to avail the parcel file for L.R 209/12678 and to allow the parties herein to transact at the Nairobi Land Registry and further directing the Chief Land Registrar to cause the transfer of the same to M/S Villa Imara properties Limited in accordance with the wishes of the parties.



- b. An order of prohibition be and is hereby issued directed at the 2<sup>nd</sup> Respondent barring it from interfering with the rights of the ex parte Applicant over the suit property and the disposal of the said property.
- c. The costs of these proceedings are granted to the ex parte Applicant against the Respondents.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5<sup>TH</sup> DAY OF FEBRUARY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kaka h/b for Ms. Mwirichia for the ex parte Applicant

Ms. Wanini for the 2<sup>nd</sup> Respondent

Ms. Oginda h/b for Ms. Nyabuto for the 3<sup>rd</sup> Interested Party & ex parte Applicant

N/A by the 1<sup>st</sup> & 2<sup>nd</sup> Interested Parties and the 1<sup>st</sup> Respondent

Court Assistant: Mpoye

