



Republic v Registrar of Titles, Nairobi & another; Meron Limited (Exparte Applicant) (Judicial Review Application E001 of 2024) [2025] KEELC 475 (KLR) (5 February 2025) (Judgment)

Neutral citation: [2025] KEELC 475 (KLR)

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

MD MWANGI, J

FEBRUARY 5, 2025

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
CERTIORARI AND MANDAMUS BY MERON LIMITED**

AND

**IN THE MATTER OF CONTRAVENTION OF
ARTICLE 40 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF IRREGULAR CANCELLATION/REVOCATION
OF LEASE AND CERTIFICATES OF TITLES IN RESPECT OF;**

NAIROBI/BLOCK 219/48

NAIROBI/BLOCK 219/49

NAIROBI/BLOCK 219/50

NAIROBI/BLOCK 219/51

NAIROBI/BLOCK 219/52

NAIROBI/BLOCK 219/53

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF TITLES, NAIROBI 1ST RESPONDENT

LANGTON INVESTMENTS LIMITED 2ND RESPONDENT

AND

MERON LIMITED EXPARTE APPLICANT



JUDGMENT

Background.

1. By its Notice of Motion dated 16th February 2024, the ex parte Applicant, Meron Limited, seeks an order of Certiorari to remove into this court and quash the decision by the Registrar of Titles Nairobi to revoke and cancel the leases and certificates of titles in respect to parcels of land;
 - a. Nairobi/Block 219/48
 - b. Nairobi/Block 219/49
 - c. Nairobi/Block 219/50
 - d. Nairobi/Block 219/51
 - e. Nairobi/Block 219/52
 - f. Nairobi/Block 219/53
2. The ex parte Applicant further seeks an order of Mandamus to compel the Registrar of Titles to restore the registration particulars of the aforementioned parcels of land to the state that they were prior to gazette notices number 16350 and 16351 contained in the Kenya Gazette dated 1st December 2023.
3. The application is premised on the grounds on the face of it, the statement of fact and the affidavit verifying facts. The ex parte Applicant avers that it holds the valid ownership documents in respect to the aforementioned parcels of land. The Registrar of Titles however, vide gazette notices number 16350 and 16351 purported to cancel and revoke the leases and certificates of titles held by the Applicant.
4. It is the case of the ex parte Applicant that the purported cancellation and revocation of the leases and certificates of titles was done in excess of jurisdiction and without affording the ex parte Applicant a hearing. Further, that the action by the Registrar was unreasonable and illegal.
5. The grounds on the face of the application were repeated in the statement of facts dated 16th February 2024, as well as the affidavit verifying facts sworn by Anthony Wachira Njoroge on 16th February 2024.

Responses by the Respondents.

6. The 1st Respondent who was represented by the office of the Attorney General responded to the application by the ex parte Applicant by way of grounds of opposition dated 22nd April 2024. The 1st Respondent raised 9 grounds in opposition.
7. The 1st Respondent averred that he issued the ex parte Applicant with summons dated 9th November 2023 in respect of the subject titles pursuant to a complaint by the Directors of Langton Investment Limited. The 1st Respondent further stated that it notified the ex parte Applicant vide the summons dated 9th November 2023 that restrictions had been placed on the impugned titles and that the Chief Land Registrar was taking the necessary action to rectify the title to its original position as held by Langton Investment Limited, LR. 28401 I.R. 152720
8. The Chief Land Registrar called for surrender of the titles and issued a seven (7) days' notice. The Registrar further issued a notice to the effect that failure to return or surrender the said leases and titles



in custody of the ex parte Applicant the office of the Chief Land Registrar, he would proceed to gazette them as revoked and canceled under the *Land Registration Act* (General) Regulations, 2017.

9. The Registrar of titles gazetted the revocation and cancellation of the leases and titles vide gazette notice no. 16350 having issued adequate notice to Meron Limited to surrender the same for cancellation under Section 14 (a) and Section 79(2) of the Act and the Regulations thereof.
10. Vide the gazette notice no. 16351 of 1st December 2023, the Registrar of Titles gazetted the deregistration of the lease and certificate of title in favour of the ex parte Applicant having been obtained and registered by false pretense and fraudulently.
11. The 1st Respondent termed the application by the ex parte Applicant an abuse of the court process, unprocedural and lacking in merit.
12. The 2nd Respondent on its part responded to the application by the ex parte Applicant by way of grounds of opposition dated 1st July 2024 and a replying affidavit sworn by David Mucai Kunyihia at Nairobi on 1st July 2024. In the grounds of opposition, the 2nd Respondent asserts that there is no excess of jurisdiction in the circumstances or at all since the 1st Respondent has the power to cancel a title under Sections 14 (a) and 79 (2) of the *Land Registration Act*. No order of Certiorari can issue since the Applicant did not obtain the titles lawfully.
13. The 2nd Respondent further avers that the suit property was illegally subdivided from the parcel of land known as L.R. No. 28401 and the ex parte Applicant asserts rights over the suit property on the basis of an illegally acquired title. Such a title according to the 2nd Respondent is null and void. The 2nd Respondent urges the court not to exercise its discretion in favour of the ex parte Applicant as its conduct is unconscionable.
14. The application by the ex parte Applicant, according to the 2nd Respondent is an abuse of the court process. The 2nd Respondent cites other cases filed against it with intent to and impede its efforts to safeguard its ownership rights and obstruct the administration of justice. There is therefore no factual or legal basis for the issuance of an order of Certiorari.
15. In the replying affidavit of David Mucai, the deponent narrates the history of the suit property, how the 2nd Respondent acquired it and enjoyed quiet possession until 7th July 2023 when its 5 director discovered the ex parte Applicant's fraudulent attempt to subdivide the original property.
16. The discovery by the deponent caused the 2nd Respondent to instruct its advocates to lodge a complaint with the Director of Criminal Investigations (DCI), Land Fraud Unit and the Director of Surveys. At the same time, the 2nd Respondent learnt of a gazette notice number 5664 of 2023 published by the Land Registrar stating that the original grant had been reported as lost and a provisional certificate of title had been issued in favour of the 2nd Respondent.
17. The deponent asserts that the original grant has never been lost. The 2nd Respondent has retained possession of the original certificate of title and has not transferred the suit property to the ex parte Applicant or to anyone else for that matter.
18. The 2nd Respondent lodged a complaint with the Chief Land Registrar by a letter dated 2nd November 2023. The Chief Land Registrar responded to the 2nd Respondent vide the letter dated 2nd November 2023, conveying that;
 - a. The issuance of the provisional certificate of title, subdivision and conversion of the suit property was irregular.



- b. They had placed a restriction over the suit property to safeguard it.
 - c. They have recalled the certificates of title for cancellation.
19. According to the deponent of the replying affidavit on behalf of the 2nd Respondent, the Chief Land Registrar also issued summons dated 9th November 2023 addressed to the ex-parte Applicant demanding the surrender of any leases and titles held in their custody. The ex-parte Applicant did not comply with the summons. Consequently, on 1st December 2023, vide the gazette notices number 16350 of 2023 and 16351 of 2023, the titles were revoked and cancelled by the Registrar of Titles.

Court’s directions.

20. The court’s directions were that the judicial review application be canvassed by way of written submissions. The ex parte Applicant and the 2nd Respondent complied and filed their respective submissions which the court has had an opportunity to read and consider in writing this judgement.

Issues for determination.

21. The issues for determination in this matter upon considering the application before the court and the responses by the Respondents as well as the submissions by the parties are;-
- a. Whether the Chief Land Registrar acted ultra vires by cancelling and revoking the titles, the subject matter of this suit.
 - b. Whether the reliefs of Certiorari and Mandamus are available to the ex parte Applicant.
 - c. What orders should issue on costs.

Analysis and determination.

A. Whether the Chief Land Registrar acted ultra vires by cancelling and revoking the titles the subject matter of this suit.

22. I need to state from the onset that I will be economical with my words in this judgement conscious of the fact that there are other pending matters pending determination in this and other courts as highlighted in the response and submissions by the 2nd Respondent in order not to embarrass the courts handling the matters or prejudice the case by any of the parties.
23. 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.”



24. 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.”

25. 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.”

26. The key question in this matter as brought out in the application by the ex parte Applicant is that the purported cancellation and revocation of the certificates of titles and leases was done in excess of jurisdiction. Counsel for the ex parte Applicant has made reference to a number of decided cases to demonstrate that the Chief Land Registrar does not have the mandate to cancel a title as he did in this matter.

27. In the case of Republic- vs- Chief Land Registrar & another ex parte Yosabia Kerubo Manyara (2018) eKLR, the court pronounced itself in the following words,

“It is evident from the provisions of Section 79 that the Land Registrar’s powers of rectification are limited to rectifying errors, mistakes or omissions that do not materially affect the interests of any proprietor. Cancellation of a title quite clearly would materially affect the interests of the registered proprietor. In my view it is only the court that under Section 80 (1) of the [Land Registration Act](#), 2012 that has the power to direct the cancellation of a registration ...I therefore hold that the Land Registrar lacked the jurisdiction to cancel the Applicant’s title and in doing so he acted ultra vires and his actions are amenable to an order of Certiorari.”

28. The 2nd Respondent in its submissions insists that the Registrar of Titles acted within his mandate, in removing illegal entries from the register. Therefore, there was no excess of jurisdiction in the circumstances or at all. It affirmed that under Section 79 of the [Land Registration Act](#), the 1st Respondent may rectify or direct the rectification of a Land Register or document where the document in question has been obtained by fraud. Further that the 1st Respondent may rectify a Land Register without recourse to court in a case where registration has been obtained by fraud.



29. The 2nd Respondent made reliance on the decision in Soroya Investments Limited –vs- Registrar of Titles, where the court stated under that Section 79 (2) of the *Land Registration Act*, the Registrar now has power to rectify or direct the rectification of a land register or document, where the document in question has been obtained by fraud.
30. From a keen look at Section 79(2), there is a proviso to the power of the Registrar under Section 79(2); a mandatory requirement that a written notice of ninety (90) days be issued to the proprietor of such intention to make the alteration.
31. In his grounds of opposition, the Registrar (1st Respondent) averred that he issued a seven (7) days’ notice. Obviously, the Registrar was therefore not exercising his powers under Section 79(2) of the *Land Registration Act*.
32. The Court of Appeal in the case of Super Nova Properties Limited & another –vs- District Land Registrar Mombasa & 2 others; KACC & 2 others (interested parties) (2018) KECA 17 (KLR) (19th April 2018) (Judgement), rendered itself on the matter agreeing with the trial court that,
- “The Learned Judge held and correctly so, that the Registrar of Titles had no power to revoke a title.”
33. The decision of the Court of Appeal is binding on this court. I also agree with it fully as the correct interpretation of the provisions of Sections 79 and 80 of the *Land Registration Act*. The only institution with the mandate to cancel a title to land on the basis of fraud or illegality is a court of law.
34. The reasoning is sound considering that the standard of proof of fraud is well settled in law. It would require elaborate pleadings and strict proof. The Court of Appeal in *Kinyanjui Kamau vs. George Kamau* [2015] eKLR stated that:
- “It is trite Law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs. Ndolo* [2008], KLR (G & F) 742, wherein the Court stated that; “... we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary Civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases ...” In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”
35. Consequently, the court finds and holds that the 1st Respondent acted in excess of his jurisdiction by purporting to revoke and cancel the leases and certificates of titles. The action is amenable to an order of Certiorari.
36. The Court of Appeal in the case of *Republic –vs- KNEC ex parte Gathenji and 9 others* (1997) eKLR, stated that,
- “...an order of Certiorari will issue if the decision is without jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”
37. Having arrived at the finding that the decision of the Registrar was without jurisdiction, I hereby issue an order of Certiorari removing into this court and quashing the decision by the Registrar of Titles Nairobi to revoke and cancel the leases and certificates of titles in respect to parcels of land, Nairobi/



Block 219/48, Nairobi/Block 219/49, Nairobi/Block 219/50, Nairobi/Block 219/51, Nairobi/Block 219/52 & Nairobi/Block 219/53.

38. Off course the quashing of the decision by the Registrar will restore the register restore as it was prior to the issuance of the gazette notices purporting to revoke and cancel the leases and certificates of titles. I see no need to issue an order of Mandamus. The order of Certiorari suffices.
39. On costs, I award the costs of these proceedings to the ex parte Applicant as against the 1st Respondent only.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5TH DAY OF FEBRUARY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Otieno h/b for Mr. Bwire for the ex parte Applicant

N/A for the Respondents

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

