



**East African University v Land Registrar –Kajiado County (Environment and Land
Judicial Review Case E004 of 2025) [2025] KEELC 1160 (KLR) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1160 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2025**

MD MWANGI, J

MARCH 4, 2025

**IN THE MATTER OF: AN APPLICATION FOR
A JUDICIAL REVIEW ORDER OF MANDAMUS**

AND

IN THE MATTER OF: LAND REGISTRATION ACT NO. 8 OF 2012

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2025

**IN THE MATTER OF: RECONSTRUCTION OF THE DEED FILE RELATING TO ALL THAT
PIECE OF LAND KNOWN AS LAND REFERENCE NO. KAJIADO/KAPUTIEI-NORTH/5489**

BETWEEN

THE EAST AFRICAN UNIVERSITY APPLICANT

AND

THE LAND REGISTRAR –KAJIADO COUNTY RESPONDENT

RULING

(In respect of the chamber summons dated 22nd January 2025 brought under the provisions of Order 53 rule 1(2) of the Civil Procedure Rules)

Background

1. The chamber summons application dated 22nd January 2025 is brought under the provisions of Order 53 rule 1(2) of the Civil Procedure Rules, Sections 8 and 9 of the *Law Reform Act* and Sections 1A, 1B and 3A of the *Civil Procedure Act*. The ex parte Applicant seeks leave to apply for an Order of mandamus directed at the Respondent, the Land Registrar –Kajiado County, compelling him to reconstruct the Deed File and register for the parcel of land known as Kajiado/Kaputiei-North/5489 in accordance with the provisions of Section 33(5) of the *Land Registration Act*.



2. The ex parte Applicant has a 2nd prayer which I consider premature at this initial stage of seeking leave. It prays that the court be pleased to issue an order of waiver of the requirement to issue a notice of sixty (60) days in the gazette. I say it is premature because, at this point the only issue for the court to consider is whether leave is to be granted to the ex parte Applicant to apply for an order of mandamus and nothing more
3. The application is accompanied by a statement setting out the name and description of the Applicant, the relief sought and the grounds upon which the relief is sought. It is further accompanied by an affidavit sworn by one Professor Marcelin Kitambala verifying the correctness of the facts relief on in accordance with the provisions of Order 53 rule 1(2) of the Civil Procedure Rules.
4. This court exercising its discretion as provided under rule 1 of Order 53 directed service of the application upon the Respondent for purposes of hearing inter partes.
5. The Applicant duly complied with the orders on service. On 3rd March 2025, when the application was scheduled for inter partes hearing, Ms. Chimau, State Counsel, appeared on behalf of the Respondent. Though she informed the court that she had filed grounds of opposition on behalf of the Respondents, there is nothing filed on Court's Case Tracking System (CTS) portal up to the point of delivering this ruling.
6. The application is therefore unopposed.

Issues for Determination.

7. Off course, the only issue for consideration is whether the ex parte Applicant should be granted leave to file an application for an order of mandamus to compel the Land Registrar Kajiado to reconstruct the Deed File and Register for parcel of Land Known as L.R No. Kajiado/Kaputiei-North/5489.

Determination

8. The main reason for leave as explained by Waki J (as he then was) in the case of Republic –vs – County Council of Kwale & another Ex parte Kondo HCMCA No. 384 OF 1996, is to ensure that an Applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case for further consideration.
9. The factors that a court must consider at the preliminary stage as enumerated in the book titled, Judicial Review:- Principles and Procedures, by Jonathan Au burnet al, includes (but not limited to);
 - a. Whether the action, decision, or failure to act that is being challenged is amenable to judicial review;
 - b. Whether the claimant has sufficient interest to bring a claim for judicial review;
 - c. Whether the particular challenge brought by the claimant is one that maybe brought by the Judicial review procedure, and whether it is appropriate to bring it under that procedure;
 - d. Whether the claim is otherwise an abuse of the process of court;
 - e. Whether the claim has been brought promptly; and
 - f. Whether there are any discretionary grounds that justify the refusal of permission in exercise of the court's discretion.



10. The *Fair Administrative Action Act* (FAAA) provides other and further grounds that a court must consider including whether the Applicant has exhausted the statutory mechanisms including internal mechanisms for appeal or review and all the remedies available under any written law.
11. The grant of leave is not therefore a matter of course or a mechanical exercise for that matter. In considering whether to grant leave, the court must however not delve deeply into the arguments of the parties. The court should instead make a cursory perusal of the evidence before it and make a decision as to whether an Applicant's case is sufficiently meritorious to justify leave as rightly stated in the case of Njuguna -vs- Ministry of Agriculture (2001) 1 EA as quoted in the case of Uwe Meixner & ano -vs- Attorney General (2005) eKLR.
12. In this case, the court having perused the application by the Applicant herein is persuaded that the failure by the Registrar to act is amenable to and appropriate for judicial review. I accordingly grant leave to the Applicant to apply for an order of mandamus as sought in the chamber summons dated 22nd January 2025.
13. The Applicant's advocate has submitted on the urgency of the application to allow the Applicant, who is a university, to meet an inspection deadline by the Commission of University Education (CUE). With that in mind, I direct that the Applicant files and serves the substantive application for an order of mandamus in the next seven (7) days. The Respondent will have 10 days within which to file a response to the substantive motion, after service. The parties will appear before the court on expiry of the above timelines for directions on the hearing of the substantive motion.
14. As I stated earlier on, the prayer for waiver of the 60 days' notice is premature. It is therefore disallowed.
15. The costs of this application will be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4TH DAY OF MARCH 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Masibo for the ex parte Applicant

N/A for the Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

