



Republic v National Land Commission; Kombe & 2 others (Interested Parties) (Judicial Review Miscellaneous Civil Application 16 of 2017) [2025] KEELC 4598 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 4598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
JUDICIAL REVIEW MISCELLANEOUS CIVIL APPLICATION 16 OF 2017
EK MAKORI, J
MARCH 5, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE NATIONAL LAND COMMISSION RESPONDENT

AND

CHARO KOMBE INTERESTED PARTY

PAUL MUTEKI INTERESTED PARTY

TERESI MWANGEKA INTERESTED PARTY

RULING

1. The Ex-parte Applicant submitted and delivered a Notice to Show Cause dated 6th September 2024, compelling the Land Registrar of Kilifi County to appear before the Court and explain why the Title Deed for property number Kilifi/Kadzongo Madzimhani/1163, issued in the name of the Interested Party, should not be recalled, canceled, nullified, and revoked within 30 days. This action is deemed necessary as it will accord with the Court’s Order issued on 20th November 2017.
2. Parties consented to the issues raised herein to be canvassed by affidavits and written submissions
3. The Respondent to the NTSC opposes the application, relying on the replying affidavit sworn by Mohamed Billow on 28th October 2024 and filed on 29th October 2024 with the attendant submissions.
4. The issues I frame for the courts' decision are:
 - a. Whether the Land Registrar has willfully disobeyed this Court’s Orders.
 - b. Whether the Court should grant the orders sought.



5. Mr. Munga, learned state counsel for the Land Registrar, submitted that the Applicant has alleged that the contemnor disobeyed the court order of 20th November, 2017. From a plain reading of the Land Registrar's replying affidavit, it is evident that the Land Registrar was not a party in the case and was never served the order. The Land Registrar only became aware of the order when the same was served with the Notice to Show Cause on 12th September, 2024. Further, from the records, the Land Registrar has provided the status of the suit property to assist the court come to a just determination. Therefore, the allegation that the Land Registrar willfully disobeyed a court order must fail since the Applicant has failed to prove that the order was served and was never complied with. There was therefore no willful disobedience by the Land Registrar to comply with the order dated 20th November, 2017.
6. Mr. Adhoch, for the 2nd Interested Party, submits that the orders issued by the learned judge were issued in the Interested Party's absence. Besides having been issued on 5th July 2018, the same preceded the orders issued by the judge.
7. He proceeds to state that even if the court were to go by those orders, the land fell within an adjudication section and that this court had no jurisdiction to deal with the matter, leave alone issue the orders in place. He cites several judicial authorities to support his averment.
8. Mr. Oluga for the Applicant contends that despite the order having been made in the presence of and by consent of the Respondent's counsel and subsequently served upon the Respondent and despite the order having been duly served and lodged in the Land Registry, the Land Registrar acted in utter disobedience of the court's order by issuing Title Number Kilifi/Kadzonzon/Madzimbani/1163 - the offending title in the name of the Interested Party on 5th July 2018 while the order was in force.
9. He states that the Land Registrar explained how the offending title was issued. He averred that the National Land Commission (NLC) revoked the Ex Parte Applicants' title through a Gazette Notice dated 17th July 2017, in which the NLC directed the Commissioner of Lands to revoke the Ex Parte Applicants' title. The Chief Land Registrar issued a letter dated 21st August 2017 directing the Kilifi Land Registrar to implement the recommendations of the NLC contained in the Gazette Notice, which this court had revoked.
10. The Land Registrar, Kilifi, responded via a letter dated 6th November 2018 requesting that the National Titling Center prepare and issue a title Deed to the Interested Party. The National Titling Center released the title deed and sent it to the Kilifi Land Registry, where it was issued.
11. He concludes that The Land Registrar confirmed at paragraphs 9, 10, 11 and 12 of his Replying Affidavit that the root and genesis of the offending title was the Gazette Notice dated 17th July 2017 issued by NLC which had directed that the Ex Parte Applicants' title be reevoked. This court quashed the Gazette Notice in its judgment, which was delivered on 30th July 2019. Despite the Gazette Notice having been revoked, on 21st August 2017 (about three weeks later), the Chief Land Registrar acted on the revoked Gazette Notice and directed the Kilifi Land Registrar to issue a title in the name of the Interested Party, which was done.
12. There is no doubt that the root of the 1st Interested Party's title is shaky because it stands on a Gazette Notice that this court revoked.
13. The title is illegal because it was issued pursuant to a Gazette Notice that this court had revoked and is therefore null, and void for all intents and purposes.
14. The history given by the Land Registrar in his replying affidavit leaves no doubt that the offending title is for revocation.



15. This court is being addressed to decide on a matter that has already concluded and orders made by the judge. I am not sitting as an appellate court to revise the orders issued by my brother Olola J., as the submissions by the 2nd Interested Party suggest.
16. On 20th November 2017, this court (Olola J.) issued a significant order, staying the decision of the Respondent vide Gazette Notice No. 6862 contained in Vol. CXIX- No. 97 dated 17th July 2017. This order was a crucial step in the legal process, directing the Commissioner of Lands to revoke the Applicants' title over property known as Land Reference Number 17439 (Grant No. C.R. 212/1) pending hearing and determination of the Judicial Review Application.
17. The Court Order, which was pivotal in this case was issued on 20th November 2017, commanded the Respondent, whether by itself, its Chairman, Commissioners, Officers, Employees and Agents, and the Land Registrar, to be restrained from revoking Applicants' title over property known as Land Reference No.17439 (Grant No. C.R. 212/1) or issuing new title in the name of the Interested Parties or any other person pending hearing and determination of the application for Judicial Review Orders.
18. This Court made a final decision in its judgment dated 30th July 2019. It is reported as *Republic v National Land Commission & 3 others Ex parte Ashok Labhshanker Doshi & another* [2019] eKLR. This is what Olola J. said:

“A perusal of the impugned Gazette notice dated 17th July 2017 however identifies the Interested Parties herein and the Applicants as the parties that were interested in the claim.

21. As the Respondents tacitly concedes in the Replying Affidavit, I did not think they had jurisdiction to handle a matter regarding which the ELC had made a determination, such as this one. If the Interested Parties appeared before them, they were duty bound to inform the Respondent of the determination made by the Court in *ELC 79 of 2012* aforesaid.
 22. Otherwise, it is my view that the Respondent could not re-open the issue of the propriety or legality of the suit property once this Court had made a determination thereon.
 23. As it were, an order of certiorari is used to bring to the High Court the decision of some inferior tribunal or authority for it to be quashed or declared invalid for having been made ultra vires. The Respondent's impugned decision was clearly beyond its authority.
 24. Accordingly I will allow the Amended Notice of Motion dated 20th November 2017 as prayed.
 25. I make no order as to costs.”
19. In my ruling dated 4th of June 2024, this is what I said:

“The Respondent submitted that after rendering its decision, it became *functus officio*, and therefore, its officers cannot be cited for contempt. I agree that after the Respondent issued its opinion on the issues before it, touching on the suit property, it became *functus officio*. The letters that recommended the revocation of the title were issued before this matter was filed. The orders issued by this Court to stop further action on the suit property were to be implemented by the Chief Land Register via its Kilifi Land Registry. The Respondent was undertaking a quasi-judicial function subject to the Judicial Review Jurisdiction of this



Court. It was up to the Chief Land Registrar through the Land Registrar Kilifi to adhere to the Court orders that had quashed the decision arrived at by the Respondent as having been ultra vires since already a competent Court of jurisdiction in *Mombasa ELC 79 of 2012* had decided on the matter. I believe the orders sought to cite the Respondent for contempt will not be available under the circumstances of the case. What will be available is to summon the Chief Land Registrar through the Land Registrar – Kilifi County to appear before this Court and to show cause for recalling, canceling, nullifying, and revoking Title No. Kilifi/Kadzongo/Madzimbani/1163, issued in the name of the Interested Party herein within 30 days of this order, cannot be undertaken since the action undertaken by the name officers undermined this Court’s order made on 20th November 2017 as subsequently fortified by the judgment of this Court dated 30th July 2019,—no order as to costs.”

20. Flowing from the foregoing, the Land Registrar admits he now has the court orders.
21. The title to the Interested Party was issued well after the court stopped the NLC from implementing its recommendations. That title has to be cancelled and reverted to the Ex parte Applicant in consonance with the orders of Olola J. issued on 20th July 2017 and confirmed by the judgment dated 30th July 2019.
22. The final orders of this court are as follows:
 - a. This court's orders issued today, those issued on 20th November 2017, affirmed by the judgment of this court (Olola J.) on 30th July 2019, be served on the Land Registrar Kilifi for compliance within 30 days hereof.
 - b. Failure to act, this court will sanction the Land Registrar as being in contempt of lawful Court orders.
 - c. To check compliance, a mention should be provided within the 30 days provided for compliance.

DATED, SIGNED, AND DELIVERED AT MALINDI ON THIS 5TH DAY OF MARCH 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Machogu, for the Applicant

Mr. Kiilu, for the Respondent

Mr. Otieno H/B for Mr. Adhoch for the 2nd Interested Party.

Happy: Court Assistant

In the Absence of:

Mr. Munga for the Land Registrar in the NTSC

