



Republic v National Land Commission & 2 others; John Mihiu Kimani, Patrick Kangere Kimani and Edith Nduta Kimani (Suing as the Administrators of the Estate of Stephen Kimani Mihiu - Deceased) (Exparte Applicant) (Judicial Review Application 11 of 2017) [2025] KEELC 3118 (KLR) (1 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3118 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW APPLICATION 11 OF 2017**

BM EBOSO, J

APRIL 1, 2025

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

COUNTY GOVERNMENT OF KIAMBU 3RD RESPONDENT

AND

JOHN MIHIU KIMANI, PATRICK KANGERE KIMANI AND EDITH NDUTA KIMANI (SUING AS THE ADMINISTRATORS OF THE ESTATE OF STEPHEN KIMANI MIHIU - DECEASED) EXPARTE APPLICANT

JUDGMENT

Introduction

1. Falling for determination in this Judgment is the notice of motion dated 7/11/2017. The motion was brought by the late Stephen Kimani Mihiu. The motion was initially heard by Gacheru J and Judgment was rendered on it on 16/11/2018. Subsequent to that, the County Government of Kiambu brought an application dated 30/10/2023 seeking a post-judgment order of joinder to the case and an order setting aside the Judgment on the ground that whereas the County Government was a necessary party to the case, it was left out of the proceedings and orders that affected it adversely were made in the case in their absence. Upon hearing the application by the County Government, the Court [Eboso J] rendered a ruling dated 25/6/2024 through which it joined the County Government to the case and



- set aside the Judgment that had been procured in its absence. The motion was subsequently heard a fresh and now falls for determination.
2. Upon the death of Stephen Kimani Mihiu, his estate made an oral application for his substitution by the three administrators of the estate, namely;
 - (i) John Mihiu Kimani;
 - (ii) Patrick Kangere Kimani; and
 - (iii) Edith Nduta Kimani. There was no objection to the oral plea. Vide an ex-tempore ruling rendered on 4/3/2024, the Court [Eboso J] granted the plea for substitution. It is for this reason that the exparte applicant is at this point indicated as represented by the three administrators of his estate.
 3. The three key issues that fall for determination in the motion are:
 - (i) Whether the impugned decision by the National Land Commission was made without the deceased being accorded a fair hearing;
 - (ii) Whether the 1st respondent's mandate had already lapsed at the time it made the impugned decision; and
 - (iii) Whether there was mistaken identity with regard to the property that was the subject matter of the impugned decision by the National Land Commission. Before I analyse and dispose the three issues, I will briefly outline the parties' respective cases.

Applicant's Case

4. The application was premised on the grounds set out in:
 - (i) the motion dated 7/11/2017;
 - (ii) the supporting affidavit;
 - (iii) the statement of facts together with the verifying affidavit; and
 - (iv) the submissions tendered in support of the application. In summary, the case of the ex-parte applicant is that the deceased purchased land parcel number Ruiru Township/20 [the suit property] measuring 0.0465 hectares in July 2012 from one Jackson Kabingu Gichuhi at a purchase price of Kshs 4,300,000. The purchase was made through an agreement for sale dated 10/7/2012. At the time of purchase, the land was registered in the name of Jackson Kabingu Gichuhi. Prior to purchasing the land, the deceased carried out appropriate due diligence.
5. The ex-parte applicant contends that in April 2017, Varsityville Residents Association lodged a complaint with the 1st respondent and invited the 1st respondent to review the ex-parte applicant's title under Article 68(c)(v) of *the Constitution* and Section 14 of the *National Land Commission Act*. The deceased attended two scheduled hearing sessions on 6/4/2017 and 11/4/2017 but the hearing did not take off on both days. Subsequently, Varsityville Residents Association withdrew their complaint on the ground that their complaint related to land parcel number Ruiru/Ruiru East Block 7/20 and not Ruiru Township/20 which belonged to the deceased.
6. The ex-parte applicant adds that the deceased was surprised when he subsequently saw a notice in the Kenya Gazette issue of 17/7/2017 indicating that the 1st respondent had conducted a grant review hearing relating to the suit land and had made a decision directing the 2nd respondent to revoke the deceased's title and vest the suit property in the County Government of Kiambu for specific use



according to the approved subdivision plan. The ex-parte applicant contends that the deceased was not made aware of any other hearing relating to the suit property. It is the ex-parte applicant's case that the deceased was condemned unheard, adding that the actions of the 1st respondent violates the provisions of Section 14 of the *National Land Commission Act*.

7. The ex-parte applicant further contends that the 5 year grants review jurisdiction of the 1st respondent lapsed in early May 2017 and that the 1st respondent had no grants review mandate outside the statutory period of 5 years. The ex-parte applicant urges the court to grant the judicial review order of certiorari sought in the motion.
8. The 1st and 2nd respondents did not file responses to the application. They similarly did not tender submissions in the cause
9. The 3rd respondent filed a replying affidavit sworn on 24/9/2024 by Charles Njonjo and written submissions dated 2/10/2024. The case of the 3rd respondent is that land parcel number Ruiru Township/20 is an alienated public land that was set aside for public use by the County Council of Kiambu and was subsequently vested in the Ruiru Town Council and more recently vested in the 3rd respondent at the advent of devolution. The 3rd respondent contends that the defunct County Council of Kiambu constructed rental houses on the suit property, adding that prior to devolution, for over 40 years, the local authority in charge of Ruiru Town was the owner of the suit land on which stood rental units occupied by tenants in the Kangangi Housing Estate within Ruiru Town.
10. The 3rd respondent adds that the ex-parte applicant does not have any letter of allotment nor extracts of minutes showing that the suit property was allocated to Jackson Kabingu Gichuhi. It is the case of the 3rd respondent that the title which the ex-parte applicant is holding and waving was acquired unprocedurally by the alleged Jackson Kabingu Gichuhi, adding that there was no approved development plan relating to the alleged allotment to Jackson Kabingu Gichuhi. The 3rd respondent urges the court to uphold the decision of the 1st respondent.

Analysis and Determination

11. The court has considered the motion, the 3rd respondent's response to the motion, and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. As observed in one of the introductory paragraphs of this Judgment, the three key issues that fall for determination in the motion are: (i) Whether the impugned decision by the National Land Commission was made without the deceased being accorded a fair hearing; (ii) Whether the 1st respondent's mandate had already lapsed by the time it made the impugned decision; and (iii) Whether there was mistaken identity with regard to the property that was the subject matter of the impugned decision by the National Land Commission. For clarity, I will make one observation before I analyse and dispose the three issues.
12. It is clear from the response and the submissions of the 3rd respondent that not all the parties who participated in the motion under consideration understood the tenor and import of the judicial review application dated 7/11/2017. The said judicial review application was brought under Order 53 of the Civil Procedure Rules. Much of the focus of the 3rd respondent was placed on the validity or legality of the title which the estate of the late Stephen Kimani Mihiu is holding and waving.
13. Regrettably, the judicial review motion under consideration only seeks an order of certiorari quashing the impugned decision. The judicial review motion does not provide this court with the platform on which to adjudicate questions relating to the validity or legality of the title held in the name of the late Stephen Kimani Mihiu. Neither is it a platform for asserting the legitimacy of the title. Any party seeking to ventilate the above issues is expected to institute a normal civil land case through a plaint and



join as parties to the case all those who stake ownership claims over the land, including the one who is alleged to have acquired the land from the local authority and subsequently conveyed it to the deceased. Suffice it to that, the notice of motion under consideration, which is a judicial review motion under Order 53 of the Civil Procedure Rules, is not available to any of the parties in this suit as a platform on which to ventilate the question relating to validity or legality of the title held in the name of the late Stephen Kimani Mihiu or on which to assert the legitimacy of the deceased's alleged ownership of the suit land. This clarification is necessary because the 3rd respondent devoted much of its response and submissions on the question of validity and legality of the title held in the name of Stephen Kimani Mihiu. I now turn to the first key issue.

14. Was the impugned decision made without the deceased being accorded a fair hearing? The ex-parte applicant contends so. For reasons that only the National Land Commission knows, they elected not to respond to the judicial review motion. The 2nd respondent too elected not to respond to the motion. Although the 3rd respondent responded to the motion, they did not controvert the ex-parte applicant's depositions that the decision was made without the deceased being given a fair hearing or any hearing at all.
15. In his affidavit sworn in support of the application for leave to initiate judicial review proceedings, the deceased contended that he was invited for a grant review hearing on 6/4/2017 and 11/4/2017 and on both occasions, the hearing did not take off. The deceased contended that subsequent to that, he received a letter dated 12/4/2017 through which the complainant [Varsityville Residents Association] withdrew their complaint, indicating that their complaint related to Ruiru/Ruiru East Block 7/20 and not Ruiru Township/20 [the suit property]. The deceased added that he was surprised when he subsequently came across the Gazette Notice containing the impugned decision. He was emphatic that no grant review hearing was conducted in relation to his title, and asserted that he was denied a chance to present his case. The depositions in the two affidavits of the deceased remain uncontroverted, because the 1st respondent elected not to respond to the judicial review motion. The logical conclusion, in the circumstances, is that the impugned decision, which adversely affected the deceased, was made without the deceased, being accorded a fair hearing.
16. In the discharge of its review mandate under Article 68 (c) (v) of *the Constitution* and Section 14 of the *National Land Commission Act*, the 1st respondent acted as a quasi-judicial tribunal and was expected to abide by the requirements of Articles 47 and 50 (1) of *the Constitution*, Section 14 of the *National Land Commission Act* and Section 4 of the *Fair Administrative Action Act* which all speak to the centrality of the right to a fair hearing. A violation of the requirements for a fair hearing renders the resultant decision untenable.
17. It is apparent from the above cited constitutional and statutory frameworks that the National Land Commission was commanded by *the Constitution* to be guided by the constitutional principles on fair administrative action under Article 47 of *the Constitution*. It is also clear from the wording of Section 14 of the *National Land Commission Act* that the legislature intended that the National Land Commission would adhere to the principle of fair hearing as set out under Article 50 (1) of *the Constitution*.
18. The centrality of the right to fair administrative action under Article 47 (1) of *the Constitution* was echoed by Githinji JA in *Judicial Service Commission v Mutava & another* [2015] eKLR in the following words:

“Article 47(1) marks an important and transformative development of administrative justice, for it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrances the right to fair administrative action in the



Bill of Rights. The right to fair administrative action is a reflection of some of the national values in Article 10 such as the rule of law, human dignity, social justice, good governance and accountability.”

19. For the above reasons, it is my finding that the impugned decision was made without the deceased being accorded a fair hearing.
20. Had the grant review mandate of the National Land Commission lapsed by the time they made the impugned decision? Article 68 (c) (v) of *the Constitution* obligated Parliament to enact legislation to enable the review of all grants or dispositions of public land to establish their propriety or legality. The *National Land Commission Act* was subsequently enacted by Parliament. The Act commenced on 2/5/2012. Section 14 (1) of the Act which contains the relevant framework on review of grants/ dispositions vested in the 1st respondent jurisdiction to review grants and dispositions relating to public land within 5 years from the date of commencement of the Act. The review jurisdiction of the 1st respondent therefore lapsed on or about 2/5/2017.
21. The impugned decision is contained in a Gazette Notice published on 17/7/2017. The National Land Commission elected not to step forward to disclose the exact date when the decision was made. In the absence of any evidence to the contrary, the presumption is that the decision was made on 17/7/2017, which is the day when it was published. This was clearly outside the 5 year period during which the Commission was to exercise the grants review mandate. Outside the 5 year period, the Commission had no mandate to exercise grants review jurisdiction.
22. The legal ramifications of the time-frame stipulated in Section 14 (1) of the *National Land Commission Act* were emphasized by the Court of Appeal in *Likizo Limited v Nasib Kashuru Limited & 5 others* [2023] KECA 1314 as follows:

“The substantive implications of non-compliance with the time limits in section 14(1) of the *National Land Commission Act* consequently, are that not only did the 2nd respondent act unlawfully, but also outside the scope of its powers and therefore without jurisdiction. It is notable in this respect that Section 14 (1) made it mandatory that the review be undertaken within five years of the commencement of the Act, and this interpretation is supported by the fact that Section 14(9) required the 2nd respondent to petition Parliament to extend the period for undertaking the review specified where it was necessary. Therefore, any action made outside the five-year period and without extension of time is unlawful and ultra vires. It is therefore our finding that the 2nd respondent’s determination on propriety of the appellant’s and 1st respondent’s title with respect to the suit property contained in Gazette Notice No. 6866 was published after the expiry of the 2nd respondent’s mandate to review grants and dispositions of public land and without jurisdiction, was therefore unlawful and null and void.”
23. For the above reason, it is the finding of this court that the impugned decision was made after the lapse of the grants review mandate of the 1st respondent. Put differently, the National Land Commission had no mandate to exercise grants review jurisdiction after the expiry of the 5 year period reckoned from 2/5/2012.
24. The last issue is whether there was mistaken identity with regard to the property that was the subject matter of the impugned decision by the National Land Commission. The ex-parte applicant contends that there was mistaken identity, adding that the complaint that the Commission was seized of related to land parcel number Ruiru/Ruiru East Block 7/20.



25. On the face of the impugned decision, the property that was the subject matter of the impugned decision was Ruiru Township/20. The ex-parte applicant, as the party alleging mistaken identity, had the obligation to exhibit a copy of the complaint that the Commission was seized of. He did not exhibit the complaint. Neither did he exhibit a copy of the invitation documents that were sent to him requiring him to attend the grant review hearing. Put differently, the ex-parte applicant did not provide conclusive evidence demonstrating that the complaint which culminated in the impugned decision related to a different title/property.

Conclusion and Disposal Orders

26. For the above reasons, the court finds that a case has been made for issuance of an order of certiorari in terms of prayer 1 of the notice of motion dated 7/11/2017. It is so ordered. For avoidance of doubt, the order of certiorari does not settle the dispute relating to the question of validity or legality of the title which is held in the name of the late Stephen Kimani Mihiu. The issue of validity or legality of the said title is to be adjudicated on the platform of a normal civil suit to be initiated by way of a plaint, inviting documentary and viva voce evidence.
27. Taking into account the alleged history of the suit land and the fact that the ex-parte applicant elected to leave out the party who allegedly acquired title to what is alleged to be public property, parties will bear their respective costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF APRIL 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Ms Kiabaila holding brief for Mr Mutiso for the Ex-parte Applicant

Mr. Mararo holding brief for Mr Ondere for the 3rd Respondent

Mr. Tupet – Court Assistant

