



**Republic v County Land Registrar, Nyandarua/Samburu Lands Registry; Mwai (Exparte Applicant); Mbuthia (Interested Party) (Environment and Land Judicial Review Case E002 of 2024) [2025] KEELC 3830 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3830 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2024**

**JM KAMAU, J**

**MAY 8, 2025**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE JUDICIAL  
REVIEW PROCEEDING FOR ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT, CAP 26  
LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 1A, 1B AND 3A OF THE CIVIL PROCEDURE  
ACT  
CAP 21, LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY LAND REGISTRAR, NYANDARUA/SAMBURU LANDS  
REGISTRY ..... RESPONDENT**

**AND**

**NJAMBI MWAI ..... EXPARTE APPLICANT**

**AND**

**PATRICK MBUGUA MBUTHIA ..... INTERESTED PARTY**



## JUDGMENT

1. Pursuant to leave obtained from this Court on 25.9.2024, the Ex Parte Applicant in the Amended Notice of Motion dated 4.2.2025 sought for an order of Mandamus to compel the Respondent, the Land Registrar, Nyandarua/Samburu Counties, to reconstruct Green Card and or the Title in respect of L.R. Nyandarua/Ndemi/743 and subsequently comply with the Court's order in Nyahururu C.M ELC CASE No. 222 of 2018 issued on 13.2.2023.
2. She also sought for costs of this Suit. She anchors her suit on the Grounds inter alia that:
  - a. The court in Nyahururu C.M.ELC No. 222 of 2018 issued an Order against the Respondent for the cancellation of the Title Deed issued to Patrick Mbugua Mbuthia, the Interested Party herein in respect to L.R. No. Nyandarua/Ndemi/743.
  - b. The same was to be registered in the name of the Ex- parte Applicant herein.
  - c. The Respondent was served with the said Order from the Subordinate Court together with the Application for the registration, transfer documents, duly executed by the Ex-parte Applicant on her part and the Executive Officer of the Court that gave the Orders on the part of the Interested party.
  - d. The Respondent refused and/or decline to act on the said Application on the premise that the Green Card and Title Deed of the land Parcel of Land was missing from the Land Registry.
  - e. This has disadvantaged the Ex-parte Applicant since she cannot benefit from the fruits of her otherwise successful litigation.
3. These grounds were repeated in her Affidavit in support of the Application sworn on even date. She depones that she was 99 years old when filing this Suit hence she is now 100 years. She was allocated the Suit Land on 8/12/1982 through balloting by the Settlement Fund Trustees upon payment of Kshs. 325 as deposit, settled her family therein until 2005 when her home was burned down and her Title documents were destroyed only to turn out that instead of her being issued with duplicate documents, the land was indeed registered in the name of the interested party who then filed a suit in Nyahururu against her but which he failed to prosecute and as a consequence, the Applicant successfully proceeded with her counter-claim. The same resulted into the aforesaid Judgment/Decree but which could not be actualized allegedly for lack of the Green card and Title Deed. This in spite of the Applicant having gone through the entire Motion of acquiring Consent of the Land Control Board, made all payments, filled transfer forms, acquired valuation of the land and paid the requisite Stamp Duty. The Applicant has attached documents as proof of the above in her Supporting Affidavit i.e. recent Status of the parcel of land dated 19/11/2015, Police Abstract for the loss of her Title Documents dated 19/4/2015, a letter from her area Assistant Chief (Ndemi Sub- Location) dated 18/4/2005, Decree from the Subordinate Court issued on 13.2.2023, Judgment of Honourable S Mwangi, Senior Resident Magistrate dated 12.1.2023, copies of Application and Consent of the Land Control Board, Kipipiri, the letter dated 19/9/2023, receipts for Stamp Duty, Transfer Forms duly executed and Application for Registration. In
4. a Supplementary Affidavit and a Replying Affidavit sworn on 7.2.2025 and on 21.1.2025 respectively the Interested Party deponed that he did file Nyahururu ELC Case No. 222 of 2018 (formerly HCC No. 8 A of 2012), ELC No. 411 of 2017 and CMCC No. 17 of 2018 seeking to evict the Ex-parte Applicant from the Suit land but that the same was heard in his absence and in the absence of his



Advocate. He only came to learn what the Judgment and the orders issued were on 10/8/2023. He made an Application dated 14/9/2023 to set aside the Judgment which application is still pending in court for a Ruling dated to be delivered on 13/3/2025 (now past). I gave the parties an opportunity to submit on the Application. The Applicant emphasized the contents of the Application and Supporting Affidavit while the Intended Party said that the Application as drafted is not capable of being granted since same orders did not relate to the Ex-parte Applicant. He said that there was no order in the Decree of the Lower Court for the reconstruction and that there is no delegation of duty. Annexures are challenged and that the orders sought are so wide.

5. The Applicant said the Orders of 13.3.2025 were issued and Application to set aside the Judgment dismissed. The execution was consequently destined to proceed.
6. That being the case, I have not been graced with the Order from the Ruling on Application dated 14.9.2023 nor any evidence that the said Application was not dismissed. I will therefore not put any weight on the same. What is before me as a fact and with evidence is the Judgment dated 12/1/2023. The Decree reads as follows:
  - a. That an order be and is hereby issued to the Land Registrar Nyandarua/Samburu County for cancellation of the title deed issued to Patrick Mbugua Mbuthia for L.R. Nyandarua/Ndemi/743.
  - b. That an order be and is hereby issued to the land Registrar/Nyandarua /Samburu County for registration of L.R. Nyandarua/Ndemi/743 in the name of Njambi Mwai.
  - c. That the Defendant be and is hereby awarded costs of the main suit and of the counterclaim.
  - d. That an order be and is hereby issued that the money deposited in court amounting of Kshs. 223,200/= as per Honourable Justice Mulwa's orders of 24<sup>th</sup> May 2016 be released to the Defendant.
7. The Decree having been issued, the Green Card and Title Deed could not be found at the Land Registry (allegedly). It is also interesting that the Applicant's documents were destroyed through a fire to her house. Again, this by coincidence. We are meant to believe that. But that is water under the bridge. I must say from the beginning that no orders will be issued by a court in vain. Secondly, on 13.2.2023 the Honourable trial Magistrate in Nyahururu C.M ELC Case No. 222 of 2018 gave very clear orders for cancellation and rectification of the Title deed in respect to L.R. Nyandarua/Ndemi/743. The same Title Deed is to be cancelled (from the name of the Interested party) and to be registered in the name of the Ex-parte Applicant. Unfortunately, the Respondent has failed to explain his part of the story. He has not even written to the Applicant to the effect that the requisite documents are missing at the Land Registry. He ought to have done so. Failing to do so must have been deliberate. Public Servants are supposed to respond to such a serious issue in writing, I fail to understand how the Parcel File in respect to Nyandarua/Ndemi/743 can disappear from the Land Registry without trace for all this period. And in the absence of any evidence or any word from the Land Registrar to the effect that the Parcel file, Green Card and/or Title Deed in respect to Nyandarua/ Ndemi/743 are missing or that a long wind came and blew them from the Land Registry, I refuse to believe that the same are missing. If they are missing then it would be deliberate. Members of the Public including the Applicant herein have no access to the Registry where their documents are kept. Land Personnel therefore have a duty to ensure that the land documents are securely kept and available to them when sought for any necessary action.
8. Article 35(ii) requires that any Citizen is entitled to any information concerning them. The Law also requires the Land Registrar to demand that the Interested Party returns the Title Deed in his possession



for cancellation. That he has not done. Why? It would have helped the Land Registrar to prepare the Green Card, reconstruct the land parcel and re-issue a Title Deed in accordance with the Court Order.

9. An Applicant must exhaust all the avenues open to him and particularly at the first port of call. In this case Section 30 of the *Civil Procedure Act* provide that:

“ A Decree may be executed either by the court which passed it or by the court to which it is sent for execution”

10. Thus, under Section 31 of the *Civil Procedure Act*, a Decree from the Subordinate court can only be sent to a Court of equal status or an inferior Court with competent jurisdiction and not a Court higher than the court that passed the Decree. To suggest so would be a stretch of imagination.

11. The Rules governing execution are to found in Order 22 of the Civil Procedure Rule and under Rule 6 where the Holder of a Decree desires to execute it, he shall apply to the Court which passed the Decree or if the Decree has been sent under the provisions herein before contained to another Court then to such court or to the proper Officer thereof. Further regulations are made under Rule 48. Accordingly, it was not necessary to file this Suit as there are sufficient Rules governing execution by the Court that passed the Decree to be executed and I would have referred the Applicant back to the Court that passed the Decree herein as it was unnecessary for her to go the long way of Mandamus. But due to the peculiar circumstances of her advanced age, expediency is crucial and consequently I will order that the Respondent, the Land Registrar, Nyandarua/Samburu Count, do reconstruct the Green Card and the Title in respect of L.R. Nyandarua/Ndemi/743 and subsequently comply with the Honourable Senior Resident Magistrate’s Court order in Nyahururu C.M ELC Case No. 222 of 2018 issued on 13.2.2023 as follows:

- a. That an order be and is hereby issued to the Land Registrar Nyandarua/Samburu County for cancellation of the title deed issued to Patrick Mbugua Mbuthia for L.R. Nyandarua/Ndemi/743.
- b. That an order be and is hereby issued to the land Registrar/Nyandarua /Samburu County for registration of L.R. Nyandarua/Ndemi/743 in the name of Njambi Mwai.

I also grant the Ex Parte Applicant the costs of this suit.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 8TH DAY OF MAY, 2025.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: .....Samson.

Ms Mwangi H/B for Ms Wambui Ng’ang’a..... for the Applicant.

Ms Kerubo H/B for Mr. Mwiti..... for the Respondent

