



**Republic v County Land Registrar, Mombasa; Omallah (Exparte Applicant) (Miscellaneous Civil Application E002 of 2024) [2025] KEELC 4364 (KLR) (9 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4364 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
MISCELLANEOUS CIVIL APPLICATION E002 OF 2024  
FM NJOROGE, J  
JUNE 9, 2025**

**BETWEEN**

**THE REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY LAND REGISTRAR, MOMBASA ..... RESPONDENT**

**AND**

**SALIM JUMA OMALLAH ..... EXPARTE APPLICANT**

**JUDGMENT**

1. This judgment is in respect of Notice of Motion dated 14/2/2024 brought under Order 53 Rule 3 of the Civil Procedure Rules. The Ex Parte Applicant prays for Orders as follows:
  - a. That an order of mandamus do issue to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to reconstruct and or reconstitute the register and or provide the records in respect of Land Parcel No. MN/III/1XX4 CR NO. 19X24 the Ex Parte Applicant;
  - b. That an order of mandamus do issue to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to provide the Ex-Parte Applicant with copies of the records in the Parcel file in respect to the suit property and execute and register all documents requisite to reconstruction and or reconstitution of the register in compliance with the applicable legal provisions;
  - c. That the costs be provided for.
2. The application is based upon on the following grounds:
  - a. That the applicant is a beneficial owner of the suit property by virtue of prescriptive rights over the suit property and as purchaser for value;



- b. That the Respondent has failed/or declined to produce the register and or copies of the records which by law are held in his custody in respect of the suit property since 2010 when the applicant applied for the same;
  - c. That the applicant has not been able to trace the records at the registry and the file and or register in respect of the suit property is missing;
  - d. That the Respondent has without any justification refused to accept for registration and a deed of indemnity executed by the Applicant for reconstruction of the register to enable further dealing over the suit property;
  - e. That the applicant has been residing on the property since the year 2005 and has been trying to complete and regularize his title to the property but cannot do so unless the Respondent avails to register and documents in respect of the suit property;
  - f. That the Ex parte Applicant's efforts to process title have been hampered/hindered by the Respondent's failure to grant him access to the register and or provide him with copies of the record and documents in respect of the suit property;
  - g. That the register and the original records are and ought to be in the custody of the Respondent;
  - h. That the failure and or refusal by the Respondent to grant the Applicant access to the register and to supply copies of the records and documents in respect of the suit property amounts to procedural impropriety and unfairness on the part of the Respondent to the Ex-parte Applicant;
  - i. That the Respondent's failure and or refusal to grant the Ex-parte Applicant access and or supply him with copies of the original records and or documents in respect of the suit property is contrary to the rules of natural justice;
  - j. That this is the only and the last recourse and avenue for the Ex Parte Applicant to seek redress.
3. The application is opposed. The respondent filed a Notice of Preliminary Objection dated 27<sup>th</sup> March 2025 stating that the applicant does not have the locus standi to file the application.
  4. The respondent was granted an opportunity to file a substantive response by way of replying affidavit setting out a facts of the case in his defence on 9<sup>th</sup> May 2024, 19<sup>th</sup> June 2024, 31<sup>st</sup> October 2024 and 13<sup>th</sup> February 2025. None had been filed as at the time of preparation of this judgment and it is taken that they wish to rely only on their notice of preliminary objection.
  5. As seen from the prayers, what the applicant seeks is to have the respondent be compelled to reconstruct and or reconstitute the register and or provide records in respect of land personal number MN / III/1XX4 - CR 19X24. He also seeks an order to compel the first and second respondent to provide him with a copies of the records in the parts of iron in respect of the smooth property and to execute and register or documents requisite for reconstruction and or reconstitution of the register in compliance with the applicable provisions.
  6. The basis on which the application is made is that the applicant claims to be the beneficial owner of the suit property by virtue of prescriptive rights over the suit property and as a purchaser of value. It is claimed that the respondent has refused produced the register and or copies of the records held in his custody as per the law since the year 2010 when the applicant applied for the same; that the file and or register in respect of the suit property is missing, that the respondent has without any justification refused to accept for registration a deed of indemnity executed by the applicant for reconstruction of



the register to enable further dealing over the suit property; that the applicant has been residing on the property since the year 2005 and has tried to regularize title to the property; however, he avers that he cannot do so unless the respondent avails the register and the documents in respect of the suit property. Therefore, the applicant's efforts to process title have been hampered by the respondent's failure to grant him access to the register or to provide him with copies of a records and documents pertaining to the suit property, and that the said action/omission on the part of the respondent amounts to procedural impropriety and unfairness.

7. In the statement of facts file with the motion the applicant reiterates that he has been in occupational properties since the year 2005 and that he wishes to acquire title to the property. He reiterates the narrative regarding the respondent's omissions.
8. In the verifying affidavit, he claims that he purchased the suit land from some farmers who were in occupation thereof and who were farming on the land. However, those farmers did not have any title to the property or any document, so they undertook to obtain and furnish him with the same from the land registry at Mombasa while they remained on the property and continued holding it on his behalf waiting for the processing of title. The applicant then obtained a survey map of the area and confirmed that the suit land is surveyed and that it has a title.
9. Attached to the verifying affidavit is a letter dated 10<sup>th</sup> November 2023 addressed to the Chief Land Registrar, Mombasa District Land Registry seeking an endorsement or an acknowledgement from the addressee that the file or register for suit land cannot be traced so that the applicant may executed deed of indemnity for purposes of reconstruction.
10. On 13<sup>th</sup> February 2025 this court ordered that the judicial review notice of motion should be disposed of by way of written submissions. Upon perusal of the court file as well as the e-filing platform this court has found that none of the parties filed any submissions.
11. Where an application has been ordered to be disposed of by way of written submissions and in no other manner, it behoves an applicant to comply with the orders of Court to facilitate disposal of the matter. Where there are no such submissions filed by an applicant as in the present case, the application cannot be deemed to have been prosecuted and it ought to be struck out want of compliance with Court orders.
12. However, even a cursory perusal of the application reveals glaring gaps that leave no doubt that the applicant lacks locus standi. He is not the registered owner of the suit land and he can not therefore claim that his rights to the suit land under the law relating to registration of land have been contravened. He alleges to have purchased the suit land from some unnamed farmer. Those farmers also had no documents. The farmers have also not been made parties to the present suit. The documents of sale vide which the applicant purchased the suit land from the said farmers have not been exhibited. Even without this court wanting to be seen as giving the false impression that occupation would entitle him to the prayers sought, the applicant avers that he has been in occupation of the suit land but he has not provided any evidence to support his claim.
13. Law Society of Kenya V Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000 defined locus standi as follows: -

“Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”.
14. Further, the status of the suit land has not been established. *The Constitution* of Kenya dictates that land be classified into three categories: public private or community land. The applicant has failed to



place the suit land firmly in the category of private land, the only category under which he may have, had he established ownership or purchase from a legally registered proprietor, been able to establish his locus standi in the matter.

15. This court is of the view that the applicant, not having established that he is either the registered proprietor of the suit land or a purchaser, has not established that he has locus standi to bring the present application. Without locus standi, the suit can not stand and the Notice of Motion application dated 14/2/2024 is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 9<sup>TH</sup> DAY OF JUNE 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

