



**Chimwaga & 4 others v Land Registrar Kwale County & another; National Land Commission & 2 others (Interested Parties) (Environment and Land Judicial Review Case E003 of 2024) [2025] KEELC 5838 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5838 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2024**

**LL NAIKUNI, J**

**JULY 11, 2025**

**BETWEEN**

**RAMA OMARI CHIMWAGA ..... 1<sup>ST</sup> APPLICANT  
SULEIMAN SAID TEYA ..... 2<sup>ND</sup> APPLICANT  
HATIBU MJAKA MTENGO ..... 3<sup>RD</sup> APPLICANT  
HASSAN RASHID MZINGA ..... 4<sup>TH</sup> APPLICANT  
RAMA NDORO NGOWA ..... 5<sup>TH</sup> APPLICANT**

**AND**

**LAND REGISTRAR KWALE COUNTY ..... 1<sup>ST</sup> RESPONDENT  
LAND ADMINISTRATION DEPARTMENT MINISTRY OF  
LANDS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY  
COUNTY GOVERNMENT OF KWALE ..... INTERESTED PARTY  
ASHBROOK LIMITED ..... INTERESTED PARTY**

**RULING**

**I. Introduction**

1. The Ruling of this Honorable Court relates to a determination of the Notice of Motion application dated 17<sup>th</sup> January 2025. It was brought by Ashbrook Limited, the 3<sup>rd</sup> Interested Party herein.



2. The application was premised under the provisions of Sections 1A,1B,3 and 3A,6 & 63[e] of the Civil Procedure Act Cap. 21, Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of the law.
3. Upon effecting service, and while opposing the aforesaid application, the Applicants/Respondents filed their replies in form of a Replying Affidavit dated 14<sup>th</sup> February 2025.

## II. The 3<sup>rd</sup> Interested Party/Applicant's case

4. The 3<sup>rd</sup> Interested Party/Applicant sought for the following orders: -
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. That this Honourable Court be pleased to stay proceedings in this matter pending the hearing and final determination Kwale ELC Land Petition No E004 of 2024 Ashbrook Limited v Chief Land Registrar, the Honourable Attorney General, Rama Omari Chimwaga, Adan Kassim Mkungu, Suleiman Said Teya, Hatibu Mjaka Mtengo, Hassan Rashid Mzinga and Rama Ngoro Ngowa which petition is currently before this court.
  - e. That this Honourable Court be pleased to issue such further orders as it may deem to be in the interest of justice
  - f. That the costs of this application be borne by the application.
5. The application was based on the grounds, the testimonial facts and the averments made out under the 27 Paragraphed annexed Supporting Affidavit of Niraj Shah the Applicant herein together with eight [8] annextures marked and compressed into one document as "NS – 1" annexed hereto. The Applicant averred as follows that:-
  - a. At all times material to the suit the 3<sup>rd</sup> Interested Party had been the registered proprietor of land title no Kwale/Diani Beach Block/1352 [Hereinafter referred to as "The Suit Land"] for a term of 50 years from 1<sup>st</sup> June 2002.
  - b. The said ownership was duly registered as per the Certificate of Lease dated 22<sup>nd</sup> May 2018
  - c. The Interested Party purchased the suit property from one Mr. Michael Alan Turner Sometimes in the year 2017 who was the then registered owner from 19<sup>th</sup> October 2017.
  - d. A historical search of the suit property established that the Commonwealth Development Corporation was the original lessee from the government of Kenya pursuant to a lease registered on 13<sup>th</sup> June 2006
  - e. Colobus Development Company Limited purchased the property from Commonwealth Development Corporation in the year 2007 and the property was then purchased by Mr. Michael Alan Turner in the year 2017.
  - f. The 3<sup>rd</sup> Interested Party acquired the suit property after carrying out due diligence on the property and complying with the requirements under the Land Registration Act No. 3 of 2012. It was listed under paragraph 5 of the affidavit.



- g. The 3<sup>rd</sup> Interested Party acquired an indefeasible right to ownership of the property which was protected under the provision of Article 40 of *the Constitution* of Kenya, 2010 and Section 26 of the *Land Registration Act* No. 3 of 2012.
- h. The 3<sup>rd</sup> Interested Party had further maintained sea facing cottages with 3 and 4 bedrooms operated under its trade name.
- i. Sometimes in the year January 2024 one of the 3<sup>rd</sup> Interested Party's client informed them that she had made rent payment to the new owners and she would not be liable to any payment to the 3<sup>rd</sup> Interested Party.
- j. Upon investigations, the 3<sup>rd</sup> Interested Party was served with a Certificate of official search indicating the proprietors of the suit property as being Rama Omari Chimwanga, Adan Kassim Mkungu, Suleiman Said Teya, Hatibu Mjaka Mtengo, Hassan Rashid Mzinga and Rama Ngoro Ngowa.
- k. The 3<sup>rd</sup> Interested Party established that the above named parties had been fraudulently registered as owners of the suit property vide a lease issued on 26<sup>th</sup> January 2024 and the lease had been changed to 99 years from 50 years.
- l. Consequently the 3<sup>rd</sup> Interested Party filed a Constitutional Petition before this court being "Kwale ELC Petition no. E004 of 2024" seeking several orders including a declaration that the 3<sup>rd</sup> Interested Party was the lawful and registered proprietor of the suit property and that the transfer to the applicants was fraudulent.
- m. The Petition was filed on 12<sup>th</sup> June 2024 and served upon all the parties on 24<sup>th</sup> June 2024. However despite of them having the knowledge of the instant Petition, the Applicants went ahead to file the suit before court.
- n. The 3<sup>rd</sup> Interested Party averred that it was apprehensive that the instant suit was an attempt to circumvent the proceedings in land Petition and to legitimize the alleged illegal registration of the suit property in the names of the Applicants.
- o. It was in the interest of justice that this matter was stayed pending the outcome of the Petition in which the court would determine whether the Applicants were the rightful owners of the property and whether they were deserving of any judicial review sought in this matter.
- p. The Applicants had the liberty to move the court in the Petition for any interim orders of protection. Further that this court sitting as a judicial review court could not determine the legality of the applicant's title and that it was important for the same to first be determined in the Petition.

### III. The responses by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Respondents/Applicants

- 6. While opposing the application, the 1<sup>st</sup> to 5<sup>th</sup> Applicants/Respondents filed a 18 Paragraphed Replying Affidavit in response to the application dated 17<sup>th</sup> January 2025. It was sworn by the 3<sup>rd</sup> Applicant Hatibu Mjaka Mtengo and dated 14<sup>th</sup> February 2025. He averred as follows that:-
  - a. The Applicants had been in occupation of the suit property for a period exceeding 100 years together with their families and had even constructed structures thereon.



- b. The 3<sup>rd</sup> Interested Parties claim of being the sole proprietors of the suit property was flawed as the Applicants made an application for allotment of the land to the National Land Commission and they were issued with the Letter of Allotment.
- c. The Letter of Allotment was then forwarded to the Ministry of Lands and which culminated in the issuance of a Certificate of Lease in favour of the Applicants.
- d. However the Land Registrar cancelled the titles and published a degazettment notice no. 10517 citing that the suit was not available for allocation.
- e. In doing so, the Land Registrar usurped the powers of the ELC Court and acted ultra vires as the Registrar had no powers to extinguish a title.
- f. Thus, the 1<sup>st</sup> Respondent's actions was in violation of the Applicant's rights to property ownership and fair administrative action under the provision of Article 47 of *the Constitution* of Kenya, 2010.
- g. According to the Applicants, the purported ownership of the suit property by the 3<sup>rd</sup> Interested Party was by falsified documents as the it happened after the land had already been leased to the Applicants for 99 years.
- h. The reliance of the 3<sup>rd</sup> Interested Party on the doctrine of priority and their request for stay of the JR application in "ELC Petition E004/2024 - Ashbrook Limited v Chief Land Registrar Nairobi & others" was misleading and factually incorrect.
- i. The allegation that the Judicial Review application was filed on 27<sup>th</sup> September 2024 a day after the court had issued directions in the Petition filed on 11<sup>th</sup> June 2024 and more than 3 months after they were allegedly served with the Petition.
- j. In reality the application was filed on 22<sup>nd</sup> August 2024 well after the claimed date, the 3<sup>rd</sup> Interested Party only joined in the matter several months later after the proceedings commenced.
- k. The 3<sup>rd</sup> Interested Party was awaiting the court of appeal decision for stay in civil application no E083 of 2024 but the said appeal was dismissed.
- l. Thus the 3<sup>rd</sup> Interested Party involved itself in this suit and joined 4 months after its institution. They did not hold any direct claim in the suit as they were merely spectators.
- m. The 3<sup>rd</sup> Interested Party were neither the Land Registrar nor the Applicants whose title was cancelled and as such they possessed no legal standing to alter or control the course of the proceedings herein.
- n. There was no direct connection between the two legal suits/proceedings – "ELC JR No E003 of 2024" and "ELC Petition E004 of 2024". The issues in both cases were distinct and the 3<sup>rd</sup> Interested Party could not be granted substantive relief within the matter as their claim was unrelated and legally unfounded.

#### **IV. Submissions**

7. While in the presence of all parties herein, they were directed to have the Notice of Motion application dated 17<sup>th</sup> January 2025 disposed of by way of written submissions. Pursuant to that, all the parties complied. Thus, a ruling was to be delivered on 11<sup>th</sup> July, 2025 accordingly.



### **A. The Written Submissions by the 3<sup>rd</sup> Interested Party**

8. The 3<sup>rd</sup> Interested Party through the Law firm of Messrs. Hamilton Harrison & Mathews filed their written submissions dated 4<sup>th</sup> March 2025. Mr. Andiwo Advocate commenced his submissions by holding that he would be relying on two issues for determination.
9. Firstly, whether the proceedings in this suit should be stayed. The Learned Counsel submitted that the principles for stay of proceedings were set out in the case of: “Re Global Tours and Travels Winding Up Cause 43 of 2000” cited with approval in the case of “Abdiaziz Sheikh Maad & 3 Others v Governor Mandera County & 2 Others”. He argued that the whole purpose of such stay was when the court opined that there would be two conflicting decisions and thus embarrassing the court and wasting its time.
10. The Learned Counsel admitted that it was not in dispute that there was a land Petition on ownership of the suit property and also the instant Judicial Review challenging the Land Registrar’s decision to cancel title issued to the Applicants. However, he argued that the judicial review was just a disguise in hiding the real issues the Applicants were after which was determination of the proprietorship rights. That the Petition preceded the judicial review and therefore, it was in the interest of justice that it was stayed first.
11. Secondly, the court was asked to award the costs of the application to the 3<sup>rd</sup> Interested Party given that the Applicants had attempted to circumvent justice by filing the judicial review proceeding during the pendency of the land petition.

### **B. The Written Submissions by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Applicants**

12. Through the Law firm of Messers. O.G Makowade filed submissions dated 1<sup>st</sup> April 2025 on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> Applicants herein. Mr. Kowade Advocate in his submissions identified one issue for determination. This was whether the stay of judicial review proceedings should issue. The Learned Counsel submitted that stay was an equitable relief as per the provision of Section 6 of the *Civil Procedure Act*, Cap. 21 which established “the doctrine of sub judice”.
13. According to the Learned Counsel the doctrine of sub judice was elaborately discussed in the case of: “Republic v Paul Kihara Kariuki, Attorney General & 2 Others ex parte Law Society of Kenya [2020] eKLR and in the Supreme Court case of “Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others [Interested Parties] [2020] eKLR” where the court held that it could not proceed with two similar matters with the same subject matter in two separate courts at the same time.
14. Similarly, the issue was discussed over several sub - headings. If there is more than one suit over the same subject matter; it was submitted that the suit properties in this Judicial Review application were two parcels being Land Reference Numbers Kwale/Diani Beach Block/1352 and 1351 while in the Petition the suit property was only one parcel Land Reference Number Kwale/Diani Beach Block/1352. Further the issues for determination were substantially different in that in this JR application, the Certificate of Lease for the Applicants for properties numbers 1351 and 1352 were unilaterally cancelled via a Degazettement Notice No. 10517 a process of cancellation unknown to the law.
15. The issues in this JR application were if the 1<sup>st</sup> Respondent [the Land Registrar] actions was arbitrary, ultra vires and procedurally unfair amounting to an abuse of power. Further whether the said Land Registrar had or lacked the authority to revoke a lawfully issued title. And if the said Land Registrar



had usurped the powers only reserved to the Environmental and Land Court to extinguish an existing right to a title deed.

16. It was submitted that in the civil case of: "ELCLPET/E004/2024: Ashbrook Limited v Chief Land Registrar Nairobi & Others" the Petition only canvassed the issue of if the Petitioners were the rightful Lessors of the property known as Land Reference Numbers Kwale/Diani Beach Block/1352. This were substantively different issues that proceeding with one could not affect another. That one suit was instituted before the other; That technically "ELCLPET/E004/2024: Ashbrook Limited v Chief Land Registrar Nairobi & Others" was filed in June 2024 but the 3<sup>rd</sup> Interested Party/Applicants herein had confirmed that they served the Applicants herein on the 9<sup>th</sup> September 2024.
17. The 3<sup>rd</sup> Interested Party had proceeded to misappropriate facts by lying to this court that this JR application was filed on the 27<sup>th</sup> September 2024 one day after the mention of the Petition. In actual fact, this judicial review application was filed on the 22<sup>nd</sup> August 2024 and subsequently leave and status quo order granted.
18. It was only service that could make a party aware of a matter. In this matter the 3<sup>rd</sup> Interested Party had admitted to serving their Petition which was filed in June 2024 in the 9<sup>th</sup> September 2024 way after this judicial review application had been filed and orders issued.
19. The second sub - heading was whether such a party claim their suit is priority? The answer was in the negative. It was submitted that the prayer for stay of a suit was an equitable relief. Therefore the doctrines of equity demanded that he who comes to equity must come with clean hands. The 3<sup>rd</sup> Interested Party was trying to use lies and dishonesty to achieve an equitable relief which automatically disqualified them from getting this relief.
20. The issue was whether the suits were between the same parties or their representatives. It was submitted that the applicants admitted to being the Respondents in "the ELCLPET/E004/2024: Ashbrook Limited v Chief Land Registrar Nairobi & Others" a fact that came to their attention after they were served on the 7<sup>th</sup> September 2024 way after this JR application had been filed but denied in toto that they were substantive parties in this judicial review application. The 3<sup>rd</sup> Interested Party was never a party to this JR application at the inception of the suit on 22<sup>nd</sup> August 2024 as could be confirmed from the records. They were only enjoined in these proceedings via a Notice of Motion application dated 30<sup>th</sup> November 2024, with their joinder being allowed on 9<sup>th</sup> December 2024—a full four months after the suit had already been filed. Clearly, this demonstrated that they were not originally part of the dispute and only sought to involve themselves at a much later stage that could be seen as an afterthought.
21. The Counsel submitted that the inclusion in these proceedings was not as a substantive party since they were neither the Land Registrar that ultra vires and procedurally cancelled titles nor were they the parties whose titles were cancelled. They were enjoined merely as an interested party. This meant they never held any direct claim in this suit, nor possessed the legal standing to alter or control the course of the proceedings beyond the limited scope of their joinder spectators.
22. In Conclusion, it was submitted that the Interested Parties herein [Applicants] had not demonstrated how their Petition E004 of 2024 would be rendered nugatory unless a stay of proceedings was granted. The threshold for a stay of proceedings was high as showed below. That threshold had not been met herein. To this end, the Honourable Court was referred to an excerpt in Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 37 at p. 330: and in the case of: "Kenya Wildlife Service v James Mutembei [2019] eKLR" whose contents this court has duly noted.



## V. Analysis and Determination

23. I have carefully read and considered the pleadings herein by the 3<sup>rd</sup> Interested Party and the Applicants herein, the myriad of cases cited herein by parties, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
24. In order to arrive at an informed, just, equitable and reasonable decision, the Honourable Court has two [2] framed salient issues for its determination. These are: -
  - a. Whether the 3<sup>rd</sup> Interested Party/Applicant has met the conditions necessary for the grant of stay of proceedings
  - b. Who bears the costs of the application?

### ISSUE No. A]. Whether the 3<sup>rd</sup> Interested Party/Applicant has met the conditions necessary for the grant of stay of proceedings

25. Under this Sub heading, the main substratum to be determined by this Court is on the granting of stay of proceedings hereof. The conditions of granting an order for stay of proceedings are similar to those of stay of execution and are provided under Order 42 Rule 6 of the Civil Procedure Rules, 2010 as follows:-

Order 42 Rule 6[1] of the Civil Procedure Rules: -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

26. From the foregoing, it is evident that the power to grant stay of proceedings is an exercise of the discretion of the Court on sufficient cause being shown by an Applicant. Therefore, the test from the above provision of law is one that sets out the following parameters for a Courts exercise in discretion, in deciding whether or not to grant a stay of proceedings as sought in this application:
  - a. Whether the Applicant has established that he/she has a prima facie arguable case; and
  - b. Whether the Applicant has established sufficient cause to the satisfaction of the court, that it is in the interest of justice to grant the orders sought.
27. In determining whether a prima facie case has been established by the Applicant, it is not in dispute that there are two suits involving the same parties and same subject matter herein being “Land Petition No E004 of 2024” and the instant case of “Judicial Review Case number E003 of 2024”. The instant application was filed by the 3<sup>rd</sup> Interested Party seeking that the instant Judicial Review proceedings be stayed pending the hearing and determination of the land Petition before this Honourable Court.
28. The Applicants/Respondents on the other hand state that the two suits herein are distinct in that the issues in dispute are not the same. According the Applicant, the Land Petition raises issues on proprietary rights and ownership of the suit properties herein while the judicial review proceedings are



premised upon the process and the decision by the Land Registrar to cancel the title deed to the suit property that had been issued to the Applicants.

29. For comparative purposes, I have critically perused the filed pleadings by the parties and the prayers sought in both suits. Specifically, in the land Petition, the 3<sup>rd</sup> Interested Party sought for the following orders:-
- a. A declaration be and is hereby issues that the Petitioner is the lawful and registered proprietor of the property title no Kwale/Diani Beach Block/1352
  - b. A declaration be and is hereby issued that the transfer and subsequent Certificate of Lease issued to Rama Omari Chimwanga, Adan Kassim Mkungu, Suleiman Said Teya, Hatibu Mjaka Mtengo, Hassan Rashid Mzinga, Rama Ndoro Ngowa, the 3<sup>rd</sup>-8<sup>th</sup> Respondents on 26<sup>th</sup> January 2024 is null and void ab initio
  - c. An order be and is hereby issued directing the 1<sup>st</sup> Respondent to revoke all the fraudulent transactions registered for title number Kwale/Diani Beach Block/1352, indicating Rama Omari Chimwanga, Adan Kassim Mkungu, Suleiman Said Teya, Hatibu Mjaka Mtengo, Hassan Rashid Mzinga, Rama Ndoro Ngowa, the 3<sup>rd</sup>-8<sup>th</sup> Respondents the owners of the property.
  - d. An order of permanent injunction be and is hereby issued restraining Rama Omari Chimwanga, Adan Kassim Mkungu, Suleiman Said Teya, Hatibu Mjaka Mtengo, Hassan Rashid Mzinga, Rama Ndoro Ngowa, the 3<sup>rd</sup>-8<sup>th</sup> Respondents, their agents, servants or any person acting on their instructions from interfering with the Petitioner's quiet enjoyment, use, ownership and interest over the property title number Kwale/Diani Beach Block/1352
  - e. An order of mandatory injunction directing Rama Omari Chimwanga, Adan Kassim Mkungu, Suleiman Said Teya, Hatibu Mjaka Mtengo, Hassan Rashid Mzinga, Rama Ndoro Ngowa, the 3<sup>rd</sup>-8<sup>th</sup> Respondents, their agents, servants and/or employees or any person to whom they have given right to occupy or own the land to vacate the property title number Kwale/Diani Beach Block/1352 forthwith.
30. Similarly, I have further looked at the prayers sought in the instant suit. They are as follows:-
- a. An order of Certiorari is hereby granted by this Honourable Court, quashing the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision through Kenya gazette notice no 10517 to cancel the applicants leases and Certificate of Lease for properties known as Kwale/Diani Beach Block/1351 and Kwale/Diani Beach Block/1352
  - b. An order of Mandamus is hereby granted calling the Respondents by Mandatory order of this court to reinstate the register, all and or any records interfered with subject to the unlawful decision that is subject of the proceedings herein and to within 7 days from this Judgement issue the Applicants certified copies of the Green Card and search certificates confirming reinstatement of the Applicant as the lessors of properties known as Kwale/Diani Beach Block/1351 and Kwale/Diani Beach Block/1352”
  - c. An order of Prohibition is hereby granted stopping the Respondents, their assigns, agents and/or successors from conducting any proceedings for the purpose of cancellation of the Applicants Certificates of Title and/or interfering with leases, ownership, registration, quiet possession and/or stopping the Applicant's from dealing or in interfering with the Applicants when as the legitimate registered lessors and lease Certificate holders dealing in the property known as Kwale/Diani Beach Block/1351 and Kwale/Diani Beach Block/1352”



31. Consequently, based on the afore - stated legal reasoning, I will now embark on making a determination on whether the instant proceedings should be stayed or not. Thus if a prima facie case has been established. Evidently, the instant proceedings are pegged on judicial review. In making a decision on whether the said Judicial Review ought to be stayed until the land Petition is heard and determined as sought in the instant application, it is imperative that I make reference to several authorities which discuss the tenets of judicial review.
32. The jurisprudence of Judicial Review is such a broad and complex legal subject. Primarily, it is concerned on the decision making process undertaken by any public officer or statutorily created quasi judicial bodies or institutions. The Judicial review checks that the said process is not one that is marred by ultra vires aspects, irregularities, irrationalities, biasness, capriciousness, Wednesbury unreasonableness, personal whims but one confined strictly on fairness, judicial consideration and merit. It is one whereby prerogative writs of “Certiorari”; “Mandamus” and “Prohibition” issued against public institutions or officers for that matter to ascertain or enforce certain administrative actions. Admittedly, it has drastically evolved with times. Initially, the Judicial Review under the common law was anchored on the provision of Sections 8 and 9 of the Law Reform Act, Cap. 26 of the Laws of Kenya. Resultantly, the procedure for the implementation of the Judicial Review was founded under the provision of Order 53 Rules 1, 2, 3, 4, 5, 6 and 7 of the Civil Procedure Rules, 2010. Upon the promulgation of the Constitution of Kenya, 2010, the concept of Judicial Review was advanced by holding it as a Constitutional right rather than a mere administrative action. These were founded under the provisions of Articles 22, 23 and 47 of the Constitution under the broad concept of fair administrative action. To enforce these constitution tenets there was enacted “The Fair Administrative Action Act, No. 4 of 2015.”
33. The purview of judicial review was clearly set out by Lord Diplock in the case of Civil Service [1985 AC 375 at 4010 when he stated that:-
 

“Judicial review has I think developed to a stage today when one can conveniently classify under three heads the grounds upo/n which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality, and the third “procedural impropriety... By illegality as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.... By irrationality,” I mean what can now be succinctly referred to as Wednesbury unreasonableness” It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it... I have described the third head as Procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected be the decision.”
34. In the case of:-“Municipal Council of Mombasa v Republic & Umoja Consultants Ltd Civil Appeal No 185 of 2001” was held:- “Judicial review is concerned with the decision making process, not with the merits of the decision itself: the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision.”
35. Additionally, in the case of: “Republic v Kenya Revenue Authority ex parte Yaya Towers Limited [2008] eKLR” it was held that the remedy of judicial review is concerned with reviewing not the merits



of the decision of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the individual judges for that of the authority constituted by law to decide the matter in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself, guilty of usurpation of power. See Halsbury's Laws of England 4<sup>th</sup> Edition Vol [1][1] para 60.

36. The Code of Civil Procedure, volume III pages 3652-3653 by Sir Dinshaw Fardunji Mulla states: "The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers should be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not ground for review. The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47, rule 1, Code of Civil Procedure...The review court cannot sit as an appellate court. Mere possibility of two views is not a ground of review. Thus, re-assessing evidence and pointing out defects in the order of the court is not proper."
37. The above authorities have clearly spelt out what judicial review is all about. From these precedents it can be deduced that the merits of the case are not to be discussed but what is for determination is the process leading to institution of the case. In the instant application, the Applicants are aggrieved by the cancellation of the title by the Land Registrar over the suit properties. A reading of the prayers sought indicate that the Applicants contest the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision through Kenya Gazette Notice no. 10517 to cancel the Applicants leases and certificate of lease for properties known as Land Reference Numbers Kwale/Diani Beach Block/1351 and Kwale/Diani Beach Block/1352.
38. Ideally, it cannot be said that issues of ownership of land forms the gist of the matter here as they clearly are not. Therefore, court in making its determination will be interested in only determining one issue. This is whether the Land Registrar acted ultra vires. A determination of this issue will then inform court on what orders would be proper to issue after that point.
39. Based on this, the court is not convinced that there exists "a prima facie case" has been established by the 3<sup>rd</sup> Interested Party to warrant the orders for stay of proceedings of the matters. As far as I am concerned, the land Petition and the judicial review proceedings are extremely distinct and stand out on their own feet. They are not similar at all. For that reason, each party should be allowed to ventilate the substantive issues from those matters separately as it is.
40. My attention has also been drawn to the Applicants contention that the 3<sup>rd</sup> Interested Party cannot seek for orders before this court as their role is to simply lead the court into having a clearer view of what is before it for determination. I fully concur. The 3<sup>rd</sup> Interested Party cannot purport to stop proceedings given that it is not a main party in the instant suit. In saying so, I seek refuge from the Black's Law Dictionary, 11<sup>th</sup> Edition at page 1351 an Interested Party is defined as "a party who has a recognizable stake [and therefore standing] in a matter".
41. The role and place of an interested party was well articulated in the case of:- "Marigat Group Ranch & 3 others v Wesley Chepkoimnt& 19 others [2014] eKLR" where the court held the view that:-"For purposes of one who wants to be enjoined as an interested party, I think, that such person needs to fit himself into the catch words "whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit..."



42. In the same case the court relied with approval on the case of: “Joseph Leboo v Director, Kenya Forest Service & Others [Eldoret ELC No 273 of 2013], wherein the following appears:

“It should be appreciated that an interested party is not strictly plaintiff or defendant. The contest in a suit is between plaintiff and defendant and if any person has a claim over the subject matter, then such party needs to apply to be enjoined and considered as plaintiff or defendant, and not as interested party. An interested party would be a person who has a close connection to the subject matter of the suit yet not claiming any rights over it “It follows therefore that applications seeking to join proceedings as interested parties ought to be handled with caution so that a person does not come to a suit, disguised as an interested party, while all along he/she wishes to agitate rights of his/her own over the subject matter of the suit.”

43. Therefore, I am in agreement with the Applicant’s sentiments, the 3<sup>rd</sup> Interested Party cannot agitate their rights at this point and in this particular suit given that it is not a main party in the suit and if anything what is contested is the decision by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and not ownership of the suit properties.

44. Lastly, as to whether the Applicant has established sufficient cause, to the satisfaction of the Court. It is the finding of this Honourable Court that no compelling reason has been offered as to why the proceedings in the instant suit should be stayed as has been extensively discussed above herein. The application cannot succeed.

#### **ISSUE No. b]. Who will bear the costs of the application**

45. It is well established that the issue of costs is at the discretion of the Court. Costs are the award that is granted to a party at the conclusion of any legal action or proceedings in any litigation. The provision of Section 27 [1] of the *Civil Procedure Act*, Cap. 21 holds that costs follow the event, By the event it means the result or outcome of the said legal action.

46. In the instant case, the 3<sup>rd</sup> Interested Party has not succeeded to establish its case in the matter. It follows therefore that the Applicants are entitled to the costs of this application.

#### **VI. Conclusion & findings**

47. Consequently, having caused an indepth analysis to all the framed issues herein, the Honourable Court proceeds to grant the following orders:-

- a. That the Notice of Motion application dated 17<sup>th</sup> January 2025 be and is hereby found to lack merit thus dismissed.
- b. That to be mentioned on 16<sup>th</sup> July, 2025 for further direction.
- c. That the Interested Parties granted 14 days to fully comply.
- d. That the costs of the application awarded to the 1<sup>st</sup> to 5<sup>th</sup> Applicants jointly and severally.

49. It Is Ordered Accordingly.

**RULING DELIVERED THROUGH THE MICROSOFT TEAMS**

**VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 11<sup>TH</sup> DAY OF JULY 2025**

**HON. MR. JUSTICE L.L NAIKUNI,**



## **ENVIRONMENT & LAND COURT**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Kowade Advocate for the Applicants.
- c. Mr. Andiwo Advocate for the 3<sup>rd</sup> Interested Party.
- d. Mr. Owiti Advocate for the 4<sup>th</sup> Interested Party.
- e. Mr. Ochieng Advocate for the 5<sup>th</sup>, 6<sup>th</sup> & 7<sup>th</sup> Interested Parties.

