



**Republic & another v Land Control Board Mukaa Subcounty & another; Deputy County Commissioner Mukaa Subcounty (Interested Party) (Environment and Land Case Judicial Review Application E003 of 2024) [2025] KEELC 4999 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4999 (KLR)

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

**EO OBAGA, J**

**JULY 3, 2025**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010 ACT**

**AND**

**IN THE MATTER OF LAND CONTROL**

**AND**

**IN THE MATTER OF LAND PARCEL NUMBER MACHAKOS/ULU/815,  
MACHAKOS/ULU/ 835, MACHAKOS/ULU/841, MACHAKOS/ULU/834,  
MACHAKOS/ULU/819, MACHAKOS/ULU/831 AND**

**MACHAKOS/ULU/833**

**AND**

**IN THE MATTER OF LAND CONTROL BOARD DIVISION  
APPLICATION FOR COSENT IN LAND PARCEL NUMBER  
MACHAKOS/ULU/815, MACHAKOS/ULU/ 835, MACHAKOS/ULU/841,  
MACHAKOS/ULU/834, MACHAKOS/ULU/819, MACHAKOS/ULU/831**

**AND MACHAKOS/ULU/833**

**AND**

**IN THE MATER OF ORDER 53 CIVIL PROCEDURE RULES 2010 AND  
ALL OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**



**LABAN NDUVA MASAI ..... EX PARTE APPLICANT**

**AND**

**THE LAND CONTROL BOARD MUKAA SUBCOUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DEPUTY COUNTY COMMISSIONER MUKAA SUBCOUNTY .... INTERESTED PARTY**

### **JUDGMENT**

1. The exparte Applicant (Applicant) filed a Notice of Motion dated 17<sup>th</sup> October, 2024 in which he sought the following orders:
  - a. That an order of mandamus be issued compelling the Respondents herein to grant consent to the exparte Applicant to transfer all those parcels of land known as Machakos/Ulu/815, 835, 841, 834, 819, 831, and 833.
  - b. That costs of this application be provided for.
2. The Applicant contends that he is the registered owner of LR Numbers Machakos/Ulu/815, 819, 831, 833, 834, 835 and 841. He applied for consent of the Land Control Board Mukaa Subcounty to transfer the said properties. The said properties were listed before the board on 29<sup>th</sup> February, 2024 but the board refused to grant him consent to transfer without giving him any reason for refusing to do so.
3. The Applicant states that he wrote to the Chairman of Board through his advocate but the Board did not act. It is on this basis that he is seeking for an order of mandamus to compel the Respondents to grant consent for the transfer of the aforestated properties.
4. The Applicant's application was opposed through a replying affidavit sworn on 27<sup>th</sup> July, 2025. The Chairman of the Land Control Bard Mukaa Subcounty contends that the consent of the Board has not been granted because there is a case pending in court touching on the suit properties and that they are awaiting determination of the said case before the Applicant's application for consent can be granted. He stated that the case is *ELC No. E040 of 2021*.
5. The Interested Party who is the Chairperson of the 1<sup>st</sup> Respondent further stated that the Board is aware that the properties in contention are subdivisions of Machakos/Ulu/28 which is the subject of litigation in Makueni *ELC No. E040 of 2021*. He goes on to stat that one of the prayers in the plaint is cancellation of the subdivisions arising from Machakos/Ulu/28.
6. The Respondent states that granting of consent before determination of the case before court will amount to interference of the court process. The Respondent further states that the Applicant's application was not brought within the timelines provided under Order 53 of the [Civil Procedure Rules](#). He further states that the [Land Control Act](#) gives the Board discretion to decide whether to grant consent or no and therefore in the circumstances, an order of mandamus cannot issue as prayed.
7. In a further affidavit sworn on 11<sup>th</sup> April, 2025, the Applicant contends that the court in Judicial Review No. E002 of 2021 ([Laban Nduva Masai v - Land Control Board Mukaa Subcounty & 2 others](#)) through orders granted on 7<sup>th</sup> April, 2021 and 25<sup>th</sup> February, 2021 compelled the interested Party to



grant consent in respect of LR Numbers Machakos/Ulu/450, 451 and 28 and that the properties in contention are subdivisions of LR. No. Machakos/Ulu/28 which decision has never been appealed against.

8. The parties were directed to file written submissions on 30<sup>th</sup> January, 2025. The Applicant was given 14 days to file and serve written submissions together with supplementary affidavit. The Respondents were given 14 days to file their submissions upon being served. As at 10<sup>th</sup> March, 2025, the parties had not filed their submissions. The Applicant sought for two days to file submissions. As at 8<sup>th</sup> June, 2025 when writing this judgment neither the Applicant nor the Respondent had filed their submissions.
9. I have considered the Applicant's application as well as the opposition to the same by the Respondents. The only issue for determination is whether the Applicant has made out a case for grant of mandamus order. Though the Applicant alleges that the Interested Party had been compelled by court to grant consent in *Judicial Review E002 of 2021* in respect of LR Numbers Machakos/Ulu/450, 451 and 28, the record of proceedings from that matter shows otherwise. The Applicant in this cause had been granted leave to file a substantive motion within 21 days from 7<sup>th</sup> April, 2021. The substantive motion was never prosecuted as it had been spent. There was no order given either on 7<sup>th</sup> April, 2021 or 25<sup>th</sup> December, 2021 compelling the Interested Party to grant consent as alleged.
10. The *Land Control Act* under Section 8 gives discretion to the Board to either grant or refuse to grant an application for consent. A party who is denied consent by the Board is at liberty to appeal to the provincial Land Control Appeals Board. There is a further appeal to the Central Land Control Appeal Board whose decision is not subject to question in any court. The Applicant did not exhaust the mechanisms given under the *Land Control Act*. He instead chose to come before this court by way of Judicial Review.
11. The law on grant of mandamus order is clear. An order of mandamus cannot be granted where the duty is discretionary or when a more appropriate legal remedy is available. An order of mandamus cannot also be given to compel the Respondent to act contrary to the provisions of a statute.
12. In the instant case, the Applicant has an alternative remedy as provided for under the *Land Control Act*. The Land Control Board provides that where the process set out under the Act is exhausted, the decision thereof is not subject to be questioned in any court of law. To grant an order of mandamus will be compelling the Respondent to act contrary to the provisions of the Land Control Board.
13. In the case of *R v Kenya National Examination Council ex parte Gethinji & 9 others* (1997) eKLR it was held as follows:

“.....that an order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of justice directed to any person corporation or inferior tribunal requiring them to do some particular thing therein specified which appertains his or their office and is in nature of public duty”.

“.....the order must command no more than the party against whom the application is made is illegally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Whether a statute, which imposes duty leaves discretion to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.....”



14. The *Land Control Act* gives discretion to the Board to grant or refuse to grant consent. The Board refused to grant consent as there is a pending case touching on the suit properties. In the circumstances, an order of mandamus cannot issue. I therefore find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondents and Interested Party.

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**HON. E. O. OBAGA**

**JUDGE**

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

In the presence of:

Ms. Momanyi for Ms. Lungu for Respondent and Interested Party.

Mr. Kiluva for Mr. Makundi for Exparte Applicant.

Court assistant – Steve Musyoki

