



**Nyaga & 21 others v Attorney General & another; Nthakanio
(Deceased) & 2 others (Interested Parties) (Environment and Land Case
E014 of 2021) [2025] KEELC 6003 (KLR) (11 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6003 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E014 OF 2021
AK BOR, J
SEPTEMBER 11, 2025**

BETWEEN

CHARLES NJERU NYAGA 1ST APPLICANT

**JOSEPHAT NYAGA MUKEMBO & 20 OTHERS & 20 OTHERS & 20
OTHERS 2ND APPLICANT**

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

MINISTER FOR LANDS 2ND RESPONDENT

AND

FRANCIS NJERU NTHAKANIO (DECEASED) INTERESTED PARTY

RUGANO NTHIGA INTERESTED PARTY

THE LAND REGISTRAR, MBEERE DISTRICT INTERESTED PARTY

JUDGMENT

1. The applicants brought the originating summons dated 16/4/2021 seeking implementation of the orders made in Judicial Review Miscellaneous Civil Application No. 3 of 2014 and Nyeri Court of Appeal Civil Appeal No. 85 of 2016, They sought an order directing the Land Registrar to rectify the register for the parcels of land known as Mbeere/Mbita/2350, 2351, 2352, 2353, 2348, 2347, 2349, 2184, 2385, 2186, 2169, 2188, 2189, 2187, 2176, 2171, 2199, 2197, 2196, 2198, 2202, 2203, 2208, 2193, 2191, 2190, 2194 and 4012 by cancelling the names of the persons currently registered as proprietors. In addition, they seek to have the court order that the production of the title deeds held by the current registered proprietors be dispensed with when registering and issuing title deeds in the names of the new proprietors of those parcels of land.



2. The originating summons was made on the grounds set out on the face of the summons and was supported by the affidavit sworn by Charles Njeru Nyaga on behalf of the 21 applicants, said to be members of the Ikandi Clan. Charles Njeru Nyaga deponed that he was appointed by the Ikandi Clan, which he is a member of, to oversee the redistribution, reparation and registration of the subject parcels of land. He stated that the persons currently registered as proprietors of the subject parcels of land were registered pursuant to the decision of the District Commissioner (DC) in Minister's Appeal Case No. 258 of 2003, and that that decision of the DC was quashed by the court in Embu ELC JR Misc Civil Application No. 3 of 2014 vide the judgment of 9/6/2016.
3. Mr. Nyaga stated that the decision made by this court was upheld by the Court of Appeal in Nyeri Civil Appeal No. 85 of 2016 in its ruling dated 27/7/2017. He averred that by virtue of those decisions, the names of the persons currently registered as proprietors of the subject parcels of land should be cancelled and the names of the persons set out in the schedule be inserted in the registers for the subject parcels of land. He added that the restrictions on the parcels of land should be removed forthwith to facilitate the process for the new proprietors to be issued with new title deeds. Charles Njeru Nyaga attached copies of the official searches for the subject parcels of land together with the decisions from this court and that of the Court of Appeal. He also exhibited a copy of the authority to plead.
4. The 1st Interested Party, Albert Njeru Gachoni representing the late Francis Njeru Nthakanio filed a replying affidavit in response to the originating summons. He deponed that he was withdrawing from representing the late Francis Njeru Nthakanio because he lacked authority in that he did not have a limited grant ad litem to allow him to proceed with the matter. He stated that he was not contesting the orders and prayers sought in the originating summons but requested the court to discharge him from active participation in the suit as he stated he had no interest in the Estate of the late Francis Njeru Nthakanio.
5. Margaret M. Mutai, the Land Registrar, Mbeere District, filed a replying affidavit in response to the suit. She deponed that the subject parcels of land were previously the subject of Embu High Court Judicial Review Application No. 3 of 2014 (formerly Misc. Application No. 14 of 2012), challenging the decision of the Minister of Lands in Appeal Case No. 258 of 2003. That application filed by Joseph Nyaga Mukembo on behalf of 21 others, was against the Attorney General, the Minister for Lands, and the Land Registrar, Mbeere District. By a decree issued on 9/6/2016, Justice B.N. Olao quashed the Minister's decision in Ministers Appeal No. 258 of 2003 dated 27/10/2011 for being irregular and ultra vires, and issued an order prohibiting registration of the affected parcels.
6. She expressed the view that judicial review proceedings are limited to examining the legality of the decision-making process and not the merits of the decision itself and do not permit the court to substitute its own decision for that of the administrator. She contended that the judgment in J.R No. 3 of 2014 did not determine ownership of the suit properties and that it only focused on the process before the Minister in the Ministers Appeal Case No. 258 of 2003. That an appeal against that decision was lodged in the Court of Appeal at Nyeri (Civil Appeal No. 85 of 2016) but was subsequently dismissed on the basis that there had been inordinate and inexcusable delay on the part of the appellant in filing and serving the memorandum and record of appeal, which means that the appeal was never heard on merit.
7. She set out a schedule of the current registered owners of the subject parcels of land and contended that the Originating Summons does not demonstrate sufficient cause or grounds upon which the court can grant the orders sought and should be dismissed. She attached copies of the decisions from the Minister, this court and the Court of Appeal. She also exhibited a copy of the letter from the



Department of Land Adjudication and Settlement at Nairobi containing the Duplicate Adjudication Records of the registered land owners of the subject properties.

8. Charles Njeru Nyaga on behalf of the applicants swore a further affidavit in response to the averments made by the 3rd Interested Party. He deponed that the affidavit sworn in opposition to the Originating Summons is based on personal prejudice and interest. He argued that the affidavit is flawed in law and fact, as the 3rd Interested Party seeks to determine the beneficiaries of the suit property, which is not her mandate but that of the applicants. He pointed out what he termed as flaws that were vital to the implementation of the judgment. These are, that in paragraph 5 of the replying affidavit, certain parcels including Mbeere/Mbita/2191, 2195 and 2348 were omitted despite having been part of the judicial process up to the Court of Appeal; and that no records for parcel no. 4012 were attached. He contended that in order to implement the judgment, the Land Registrars' duty is simply to open records for the subject parcels of land as he contended that they existed. Further, he stated that the Land Registrar relied on an incomplete adjudication register and that that omission necessitated the rectification of the schedule to be implemented to include all the relevant parcels as per the applicant's attached schedule.
9. He added that the Land Registrar provided conflicting information, and singled out the registration of Mbeere/Mbita/2169 in the name of Dominic Njue Nyaga, who is unknown to the applicants. The applicant's view is that the 3rd Interested Party is declining to implement or facilitate realization of the fruits of the judgment without any legal basis, and that she should therefore be ordered to implement the judgement.
10. The 2nd Interested Party did not enter an appearance or file a response to the suit.
11. The court directed the parties to file and exchange written submissions, which it has considered. The applicants submitted that the Originating Summons seeks to give effect to the judgment in Embu ELC JR Misc Civil Application No. 3 of 2014, where the decision of the Minister's Appeal was quashed and set aside. That this meant that ownership as determined at the adjudication stage prevailed, and any proprietorship founded on the quashed Minister's decision was null. They submitted that Judicial Review proceedings are sui generis and the court became functus officio upon delivery of its judgment. That the only recourse was appeal, which the Applicants attempted in Nyeri Civil Appeal No. 85 of 2016, and which was disallowed. They stated that this application was filed solely to implement the judgment delivered on 9/6/2016 by Justice Olao in ELC JR Misc Civil Application No. 3 of 2014.
12. They pointed out that the 1st Interested Party was not objecting to the implementation of the judgment. They contended that the Land Registrar's objection is misplaced, because she was a party in these proceedings from the adjudication level all the way to the Court of Appeal and that any issue on non-existent parcels should have been raised then. Further, they submitted that the Land Registrar's argument that judicial review only concerns itself with the process and not merits is misleading because, if the process of making the decision is flawed then its decision cannot have merit. They urged the court to allow the prayers in the Originating Summons and dismiss the 3rd Interested Party's objection as incompetent, without merit and an abuse of process.
13. The respondents and the 3rd Interested Party reiterated that judicial review under Order 53 of the Civil Procedure Rules is concerned with the legality of the decision-making process and not the merits of the decision. They contended that the judgment in Embu ELC JR Misc Civil Application No. 3 of 2014 did not determine proprietary rights but only addressed the process before the Minister of Lands in Appeal No. 258 of 2003. That the applicants therefore could not claim fruits of that judgment since it was limited to reviewing the procedure, not ownership of the suit properties. They submitted that the Originating Summons lacks merit as it improperly focuses on the merits of the decision rather than



the procedural aspects that are the proper subject of judicial review. They urged that the Originating Summons be dismissed.

14. The issue for determination is whether this court should issue the orders sought by the applicants, by directing the Land Registrar, Mbeere District, to rectify the registers for the subject parcels of land by cancelling the names of the current proprietors and substitute them with the applicants, on the basis of the judgment delivered in ELC JR Misc Civil Application No. 3 of 2014.
15. This court notes that parcel numbers 2191, 2195 and 2348 which the applicants claim were omitted from the schedule provided by the Registrar did not form part of the Judicial Review Application No. 3 of 2014. Parcel no. 4012 is registered in the name of the person listed in the schedule for substitution.
16. In Embu ELC JR Misc Civil Application No. 3 of 2014, Justice B.N Olao quashed the decision of the Minister in Appeal No. 258 of 2003. In the decision. The court stated as follows:

“Having considered all the materials herein, it is clear to me that the decision of the Minister (the 2nd respondent) issued on 27th October 2011 in Appeal Case No. 258 of 2003 was irregular in that it purported to cancel a title already issued which was the preserve of the High Court then, and now this Court, by virtue of Section 80 of the *Land Registration Act*. That decision is therefore amenable to being quashed.”
17. That decision was not overturned on appeal as the appeal in Nyeri Civil Appeal (Application) No. 85 of 2016 was dismissed because it had been filed out of time without leave of the court. Judicial review proceedings, by their very nature, are concerned with the legality of the decision-making process as opposed to the merits of the decision itself. This court agrees with the Land Registrar on the point that the judgment from the judicial review matter did not confer or determine proprietary rights over the subject land.
18. Once the Minister’s decision was quashed, the effect in law was that it ceased to have any legal validity, which means that any land registration founded on the Minister’s decision was therefore invalid and of no legal effect. The applicants’ contention is therefore not without merit.
19. The Applicants averred that the persons currently registered as proprietors of the subject parcels of land were registered pursuant to the decision in Minister’s Appeal Case No. 258 of 2003. From 2003 or thereabouts when that decision was made until now in 2025, a lot must have happened on the subject parcels of land in terms of transactions conferring rights over land since there is no indication that there were orders in force restraining dealings with the subject parcels of land.
20. Granting the orders sought by the Applicants without evidence of the status of each parcel of land comprising the subject matter of this suit would not be prudent for such a decision may adversely affect parties who have acquired rights over the land without knowledge of the Applicants’ claim over the same land.
21. The court is not persuaded that the implementation of the judgment in the judicial review proceedings entails returning the proprietorship and registration of the subject properties to the status they were in prior to the decision of the Minister.
22. The court declines to grant the orders sought in the Originating Summons dated 16/4/2021. Each party will bear its costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF SEPTEMBER 2025.

K. BOR



JUDGE

In the presence of: -

Mr. Justin Kiongo for the Respondents and 3rd Interested Party

No appearance for the other parties

