



Republic v Multi-Sectoral Committee on Unsafe Structures & 4 others; Alpha Grain Millers Limited (Ex parte Applicant) (Miscellaneous Civil Application 173 of 2018) [2025] KEELC 6140 (KLR) (23 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6140 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION 173 OF 2018
CA OCHIENG, J
SEPTEMBER 23, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**MULTI-SECTORAL COMMITTEE ON UNSAFE STRUCTURES 1ST
RESPONDENT**

NATIONAL LAND COMMISSION 2ND RESPONDENT

MINISTRY OF LANDS & PHYSICAL PLANNING 3RD RESPONDENT

NAIROBI CITY COUNTY 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

AND

ALPHA GRAIN MILLERS LIMITED EX PARTE APPLICANT

JUDGMENT

1. What is before this Court for determination is the Ex parte -Applicant’s Notice of Motion application dated the 22nd October 2018, filed pursuant to leave granted to the Ex parte Applicant to institute judicial review proceedings. The Ex-parte Applicant seeks the following orders;
 - a. That an order of certiorari do issue to bring into this Honourable court for the purpose of being quashed the 1st Respondent’s decision contained in the circular letter dated 25th September 2018 as the Applicant has neither encroached nor constructed any illegal structures on its land.



- b. That an order of prohibition do issue to prohibit the Respondents by themselves, servants, agents, employees or whomsoever from reviewing, revoking, alienating or interfering with the Applicant's ownership and possession of all that parcel of land known as LR No.20750 or having any other dealing whatsoever in relation to all that parcel of land known as LR No.20750 or demolishing the Applicant's development thereon or taking any further illegal action thereon.
 - c. That a declaration be and is hereby issued that the Applicant is the legal and beneficial owner of the premises comprised in title No.LR No.20750.
 - d. That costs of this application be provided for.
2. The application is premised on the statutory statement dated 12th October 2018 and the verifying affidavit sworn on 12th October 2018 by Mohamednur Ibrahim Khalif, the Ex-parte Applicant's Managing Director. It contends that the Ex-Parte Applicant conducted due diligence before purchasing LR No. 20750 from Hagesman Limited. It explains that after confirming that Hagesman Limited was the proprietor of LR No. 20750, it entered into a Sale Agreement with the said company, paid the full purchase price and a Transfer document was executed by the parties. Further, after paying the requisite stamp duty, the Transfer was lodged for registration at the Lands office. Subsequently, the Ex Parte Applicant was issued with title I. R No. 159427 on 1st March 2016. It avers that it then put up a perimeter wall around the suit property upon obtaining consent from the 4th Respondent.
 3. It claims that on 25th September 2018, the Ex -Parte Applicant was issued with a Circular by the 1st Respondent stating that all properties that have encroached on Kenya Airports Authority land at JKIA - LR No. 21919, Wilson Airport land - LR No. 209/13080 and Embakasi Village Airport staff quarters would be demolished or removed from the flight path or encroached land upon expiry of the period stated in the circular. Further, that despite assurances that its parcel of land had not encroached on the aforementioned properties, it was informed on 12th October 2018 that its developments on the suit land were set for demolition on 15th October 2018. He avers that the circular is illegal as there is no Court order revoking the Ex-parte Applicant's title and is in breach of Article 40 of *the Constitution*, which guarantees the right to property. Further, that the Ex parte Applicant is a bona fide purchaser for value as it had no notice of any impropriety in the sale transaction of the suit property.
 4. The application is also premised on grounds that the decision by the 1st Respondent is in breach of the rules of natural justice and the Constitutional right to hearing as the Ex-parte Applicant was not accorded a right to hearing and that it is illegal as it constitutes usurpation of power by the 1st Respondent, in that it is issued under the Physical Planning Act, which has no provision permitting the 1st Respondent to issue such notice.

Responses

5. The application is opposed by the 1st, 3rd and 5th Respondents who filed a replying affidavit sworn by Daniel C. Moss, a Legal Assistant at Kenya Airports Authority. He avers that Grant IR 70118 LR 21919 was registered as I.R 70118/1 on 13th August 1996 for a term of 99 years with effect from 1st August 1996 and vide Legal Notice No.201 made on 7th June 1994, the Minister of State, Office of the President under the Kenya Airports Authority (Vesting Order) 1994 vested it to Kenya Airports Authority. He explains that vide a letter dated 23rd July 1996, the Commissioner of Lands directed issuance of Letters of Allotment to Kenya Airports Authority in respect of Wilson Airport and Jomo Kenyatta International Airport respectively. Further, that vide a letter dated 24th July 1996, a Letter of



- Allotment in respect of LR No. 21919 for an area 4674.60 Hectares was issued by the Commissioner of Lands in favour of Kenya Airports Authority.
6. He asserts that the Ex Parte Applicant's suit property, I.R 159427 LR 20750 falls within Grant No. 1.R 70118 LR 21919, which is registered in favour of Kenya Airports Authority and pointed out that vide a drawing No. NBI/C/019B, Jomo Kenyatta International Airport's boundary plan layout is depicted and the suit property falls within the said boundary.
 7. Further, that the Ex parte Applicant's purported grant IR 150427 LR 20750 purported to have been registered on 19th December 2014 and transferred to Alpha Grain Millers Limited registered on 1st March 2016 is subject of other Court proceedings with regards to its authenticity and long before the purported registration to the Ex Parte Applicant, Kenya Airports Authority vide a letter dated 10th August 2001 wrote to the Commissioner of Lands warning of the encroachment.
 8. He explains that Kenya Airports Authority reported to the 1st Respondent about encroachments on its land by people who acquired plots irregularly or illegally and requested it to demolish the many structures, which are within and abutting the airport that pose a security threat to aircrafts including other aviation facilities. He claims vide a letter dated 31st October 2018, the Secretary, National Buildings Inspectorate and the Chairman of the 1st Respondent wrote to the 2nd Respondent's Chairperson seeking advice on the status of titles that had encroached and attached a list of the said properties. In response, vide a letter dated 8th February 2019, the 2nd Respondent forwarded a report and recommendations in respect of inquiries or investigations in respect of LR No.21919.
 9. From the said investigations, the suit property forms part of LR 21919 and is within Jomo Kenyatta International Airport's light Industrial zone where no developments are to be undertaken without approval from Kenya Airports Authority for security and safety reasons.
 10. In opposition, the 2nd Respondent filed Grounds of Opposition. It contends that the application is incompetent as it challenges the merits of a decision made and not the process that led to the making of the impugned decision. Further, that while it did not make the impugned decision, public interest necessitates the removal of unlawful and illegal structures on flight paths and flight funnels.
 11. The 2nd Respondent also filed a replying affidavit sworn by Brian Ikol, its acting director of Legal Affairs and Enforcement. He avers that subject to powers conferred to the 2nd Respondent under Section 6 of the *National Land Commission Act*, it conducted investigations relating to seventy (70) parcels of land falling within Jomo Kenyatta International Airport land being LR 21919 of which LR No. 20750 was subject of the scope of investigations. He confirms that the 2nd Respondent then made a report dated 21st January 2019 which he annexed and averred that the suit property falls within Jomo Kenyatta International Airport land, being LR 21919.
 12. On its part, the 4th Respondent filed Grounds of Opposition dated 23rd November 2018. It contends that the Ex parte Applicant was only permitted to repair an existing structure and not to make any alterations or additions to the structure or plans. Further, that the consent to repair existing structures was conditional upon the Ex -parte Applicant receiving consent from its landlord. It pointed out that the Ex -parte Applicant is running a commercial parking space on the suit property without any authority, which action contravenes County Law.
 13. The instant Notice of Motion was canvassed by way of written submissions, which were highlighted by the respective Counsels.



Submissions

14. The Ex Parte Applicant submits that the 1st Respondent is an amorphous body unknown in law with neither the constitutional nor statutory mandate to determine the illegality of structures or developments, nor issue notices regarding demolition thus its decision contained in the circular letter dated 25th September 2018 is illegal.
15. Further, that despite the impugned circular being issued under the provisions of the Physical Planning Act and the Wayleave Act, there is no provision authorizing the 1st Respondent to do so. It insists that prior to the making of the impugned decision, it was not issued with a notice as required under Section 4 (3) of the *Fair Administrative Action Act* 2015 nor was it heard.
16. It is also submitted that since none of the exceptions under Section 26 (1) of the *Land Registration Act* has been proved by any of the Respondents, this Court should take its Certificate of title as conclusive proof that it is the absolute and indefeasible owner of the suit property and declare it as such. Further, that the 2nd Respondent was not in a position to conclusively find that the suit property was unlawfully acquired thus its report produced herein falls short of the Constitutional threshold for exclusion of the Ex parte Applicant's title from legal protection.
17. At the highlighting of submissions, Counsel for the Ex-parte Applicant reiterated his written submissions as above and so did Counsel for the 1st, 3rd and 5th Respondents. Counsel for the Ex – parte Applicant further pointed out that the Wayleaves Act though cited in the impugned Circular, was repealed in 2012. Further, that pursuant to this Court's orders, no demolition was carried out and the 1st Respondent, which was a creature of 3rd Respondent has since been disbanded. He urged the Court to consider the Constitutional rights under Article 47 (1) and 40 of *the Constitution* and issue a declaration that the Ex parte Applicant is the owner of the suit land as under Article 23 (3) of *the Constitution*, this Court has power to issue a declaration of rights. Further, that Judicial Review Proceedings are Constitutional reliefs. The Court was also urged to consider that ELC Nairobi JR 175 of 2018 and JR 176 OF 2018, which were in a series of this suit have been determined but the issue surrounding Constitutional rights under Article 47 (1) and 40 of *the Constitution* were not addressed.
18. To buttress its averments, the Ex parte Applicant relied on the following decisions: Midland Finance & Securities Globetel Inc v Attorney General & Another [2008] eKLR; Republic v The Cabinet Secretary Hassan Wario Arero & Another Ex parte Kipchoge Keino & 2 Others [2017] eKLR; Republic v Chairman, Uasin Gishu Land Disputes Tribunal & 2 Others, Kaptich Arap Morogo Ex Parte [2014] eKLR; Republic v Firearms Licensing Board & Another Ex parte Boniface Mwaura [2019] eKLR; Kuria Greens Limited v Registrar of Titles & Another [2011] eKLR and Elizabeth Wambui Githinji & 29 Others v Kenya Urban Roads Authority & 4 Others [2019] eKLR.
19. The 1st, 3rd and 5th Respondents in their submissions contend that that the Ex parte Applicant's prayer to be declared owner of the suit land cannot issue in judicial review proceedings as the purpose of judicial review is to check the decision-making process and the legality thereof. They point out that the scope of the orders capable of issuing in judicial review is provided under Section 11 of the *Fair Administrative Action Act* 2015.
20. They contend that the Ex-parte Applicant is merely using the instant proceedings as an escape route to avoid full hearing where evidence to test the legality of its title shall be adduced and that the proprietary right occupies a paramount importance as a fundamental right under *the Constitution* and is therefore tightly secured against arbitrary and illegal interference through conferment of absolute and indefeasible ownership under Section 26 of the *Land Registration Act*.



21. They also submit that the allegation that the decision communicated in the circular letter dated 25th September 2018 is illegal and a usurpation of power is a misrepresentation of facts as it is issued under the Physical Planning Act and signed by the Secretary, National Building Inspectorate, which is the authority vested with power to do so.
22. They contend that a flight path is an overriding interest under section 28 of the [Land Registration Act](#) and that the suit property is subject of Nairobi ELC 546 OF 2018 and ELC 131 of 2015 where it is alleged that the Ex-parte Applicant obtained the suit property through misrepresentation thus it cannot allege to have had legitimate expectation that it would enjoy quiet possession of the suit property having acquired it illegitimately. Further, that the protection accorded to property under Article 40 does not extend to property that is unlawfully acquired.
23. To buttress their averments, the 1st, 3rd and 5th Respondents relied on the following decisions: Republic v Judicial Service Commission ex parte Pareno [2004] 1KLR 203-209; Sanghani Investments Limited v Officer in Charge Nairobi Remand and Allocation Prison [2007]1 EA 354; Republic v Attorney General & 4 others ex parte Diamond Hashim Lalji and Ahmed Hasham Lalji [2014] eKLR; John Orwa v Independent Electoral and Boundaries Commission & another [2017] eKLR; Kenya Power & Lighting Co. Ltd v Kipevu Inland Container EPZ Ltd [2018] eKLR; Republic v Director of Public Prosecutions & 2 others ex parte Edwin Harold Dayn Dande & 3 others [2018] eKLR and Henry Muthee Kathurima v Commissioner of lands & another [2015] eKLR.
24. The 2nd Respondent submits that the circular dated 25th September 2018 does not constitute an administrative action or decision within the meaning assigned under the [Fair Administrative Action Act](#) hence it cannot be subjected to judicial review as it is framed as a public notice meant for the general consumption of the public.
25. It further submits that as per the replying affidavit of David C. Moss, the decision to demolish unlawful structures falling within Jomo Kenyatta International Airport was made by the 1st Respondent following various committee meetings.
26. To buttress its submissions, the 2nd Respondent relied on the following decisions: Peninah Nadako Kilishwa v Independent Electoral Boundaries Commission (IEBC) and 2 others [2015] eKLR; Ugandan High Court Case of Pastoli v Kabali District Local Government Council & others [2008]2EA 300-301; Kenya National Examination Council v Republic Ex-parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR and Republic v Director of Immigration Services & 2 others Ex parte Olamlekan Gabenga Fasuyi & 2 others [2018] eKLR.
27. On its part, the 4th Respondent submits that the Ex-parte Applicant has contravened the special conditions under which, it was granted its title and has been running a commercial parking space without any approval from the 4th Respondent as required. Further, that the said breach warrants an immediate surrender of title at any point. It relied on the case of Njilux Motors Limited v Kenya Power & Lighting Company Limited & another [2000] eKLR, to support its arguments.

Analysis and Determination

28. Upon consideration of the instant Notice of Motion application including the Statutory Statement, respective affidavits, Grounds of Opposition and rivaling submissions, the issue for determination is whether the Ex Parte Applicant is entitled to the Orders as sought in the instant application.
29. The Ex Parte Applicant has sought for an order of Certiorari to quash the decision of the 1st Respondent contained in the Circular dated the 25th September, 2018. It has also sought for an order of prohibition to prohibit the Respondents or their agents, from reviewing, revoking, alienating or



interfering with its ownership and possession of all that parcel of land known as LR No.20750 or having any other dealing whatsoever in relation to all that parcel of land known as LR No.20750 or demolishing its development. It also sought for the Court to make a declaration that it is the owner of the suit property.

30. The Ex parte Applicant's complaint stems from a circular dated 25th September 2018 allegedly issued by the 1st Respondent to notify the public about an imminent demolition of properties that had encroached on Kenya Airports Authority land at JKIA - LR No.21919, Wilson Airport Land- LR No.209/13080 and Embakasi Village Airport staff quarters.
31. The Ex Parte Applicant averred that it is the proprietor of LR No. 20750 (suit property) and has a title to that effect. It contends that it purchased the said suit land from Hasegeman Limited, after conducting due diligence, thus its title is indefeasible, unless exceptions under Section 26(1) of the *Land Registration Act* are proven. In that regard, it argued that its Constitutional rights under Article 40 and Article 47(1) of *the Constitution* were violated in that the 1st Respondent by issuing the impugned Circular with no legal authority, interfered with its right to property as it was not given a hearing before the said circular was issued.
32. On the other hand, the Respondents main contention is that the suit property falls within LR No. 21919, which is land vested in Kenya Airports Authority.
33. On administrative action, Section 7 of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to— (a) a court in accordance with section 8; or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.
34. While Article 47 of *the Constitution* stipulates inter alia:
 - “(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.”
35. In the case of *Peninah Nadako Kilishwa v Independent Electoral Boundaries Commission (IEBC) & 2 others (2015) eKLR*, the Supreme Court of Kenya while dealing with judicial review held as follows:

“The well-recognized principle in such cases, is that the court's target in judicial review is always no more than the process which conveyed the ultimate decisions arrived at. It is not the merits of the decision, but the compliance of the decision making process with certain established criteria of fairness. Hence an Applicant making a case for judicial Review has to show that the decision in question was illegal, irrational or procedurally defective.”



36. Justice George Odunga (as he then was) in the case of Republic v Chesang (Ms) Resident Magistrate & 2 others ex parte Paul Karanja Kamunge t/a Davisco Agencies & 2 others [2017] eKLR, held as follows:

“25. However, it is important to remember that Judicial Review is a special supervisory jurisdiction which is different from both (1) ordinary (adversarial) litigation between private parties and (2) an appeal (rehearing) on the merits. The question is not whether the Judge disagrees with what the public body has done, but whether there is some recognisable public law wrong that has been committed. Whereas private law proceedings involve the claimant asserting rights, judicial review represents the claimant invoking supervisory jurisdiction of the court through proceedings brought nominally by the Republic. See R v Traffic Commissioner for North Western Traffic Area ex parte Brake [1996] COD 248.”

37. I wish to reproduce an excerpt from the impugned Circular which forms the fulcrum of the dispute herein:

“Removal of Illegal Structures

Further to the various notices, Notice is hereby given to the owner(s) developer(s) of the illegal development buildings/structures and go downs which have encroached to Kenya Airports Authority land at JKIA on LR No. 21919, Wilson Airport land LR No. 209/13080 and Embakasi Village Airport Staff Quarters.Notice is hereby issued in interest of safeguarding aviation Safety, Security and Human life, that any person(s) who has/have:.....illegally entered, occupied, developed, undertaken any development or continuous to stay within the title of KAA staff houses of the area known as Embakasi staff quarters..... should take notice therefore: that all such persons are hereby required to remove the illegal structures to vacate all the encroached areas within fourteen (14) days, as part of their own safety, the Occupants/Tenants in such areas are asked to immediately vacate the buildings prior to the expiry of the notice. Upon the expiry of this notice, the illegal developed buildings, installations, or erections will be demolished or removed from the flight path/encroached land without further references to them at their owner(s) developer(s) cost and risk as to any loss or damage incurred.”

38. The Ex parte Applicant’s main argument is that it was not involved in the decision culminating in the impugned notice. It has heavily urged the Court to make a finding that its rights under Article 40 and 47 (1) of *the Constitution* were violated, and make a declaration that it is the legal owner of the suit property as Judicial Review Proceedings are constitutional reliefs and this court has power to make a declaration under Article 23 (3) of *the Constitution*. It insists that the 1st Respondent is an illegal body and hence could not issue the impugned notice, where it even relied on the Wayleaves Act, which was repealed.

39. In John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR), the Supreme Court stated thus:

“102. Despite the shift from common law to codification in *the Constitution* and the *Fair Administrative Action Act*, the purpose of the remedy of judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself. This finding is further reinforced by the fact that though the court in



determining a judicial review application may look at certain aspects of merit and even set aside a decision, it may not substitute its own decision on merit but must remit the same to the body or office with the power to make that decision.”

40. The Court further stated that:

“109. The court in hearing a constitutional petition may very well arrive at the same conclusion as the court hearing a judicial review application. However, the considerations right from the outset are different, the procedures are different, the reliefs that the court may grant are different, the court will be playing fairly different roles.” Emphasis Mine

41. The Ex parte Applicant has also relied heavily in Nairobi Misc. Civil Application No.176 of 2018 which is one of the files in a series alongside this suit, where Justice Okongo while granting an Order of Certiorari quashing the impugned Circular of 25th September, 2018 observed as follows:

“The Notice that was served by the 1st Respondent fell short of the form of Notice that is provided for in Section 152C and 152E of the *Land Act*, 2012.....as concerns the order of prohibition, and the declaration sought, I am not satisfied that a case has been made for granting the said orders as prayed.... the prohibitory order sought by the Applicant is framed in very wide terms. The Court can only grant an order on the said terms where a determination has been made that the Applicant is the lawful owner of the suit property....secondly, a dispute over ownership of land cannot be determined in a judicial review application through affidavit evidence.”

42. From a perusal of the pleadings including documents presented by the Ex parte Applicant, I note the Kenya Airports Authority is not a party to this suit, yet the impugned Circular was issued in its favour. I however find that since there is no demonstration that the Ex parte Applicant participated in any proceedings culminating in the issuance of said Circular, which sought to evict it, from the suit property, yet it was already in possession thereon and conducting business, I opine that this offended the rules of natural justice and was unreasonable.

43. Further, I note section 152 (C) and (E) of the *Land Act*, stipulates that an eviction notice should be issued three (3) months prior to eviction and properly served on the affected parties occupying the land, which was not the case herein. It has also emerged that the said Circular was served under the Wayleaves Act, which is a repealed law and this indeed makes it null and void. In the foregoing, I find that an Order of Certiorari would indeed suffice to quash the Circular of 25th September, 2018 as regards LR No. 20750 only. I however find that this is not the right forum to grant the rest of the Orders on validation of title, which the Ex parte Applicant seeks.

44. This Court further takes judicial notice of the fact that there is already a pending suit whose fulcrum revolves around ownership of LR No. 20750 being ELC No. 131 of 2015. I opine that the rest of the issues being raised by the Ex parte Applicant and shrouded in this Judicial Review touching on the validity of the title are best dealt with in the aforementioned Civil Suit and not herein.

45. I further note that the ex parte Applicant has admitted that it has not constructed on the suit property except for a perimeter wall and only runs a commercial parking therein. Further, it has admitted that the Respondents have not interfered with the suit property from the date of issuance of the Circular. I am hence unable to address the Constitutional rights being sought under Article 47 (1) and 40 in this forum.



46. Based on the facts before me while associating myself with the decisions quoted, I find that the order of prohibition and declaration sought cannot issue at this juncture as they are framed in very wide terms.
47. In the foregoing, I find the prayers of Prohibition and Declaration sought in the instant Notice of Motion application unmerited and will disallow them. I will only allow the prayer for Certiorari as regards the quashing of the Circular of 25th September, 2018 in relation to LR No. 20750 only.
48. On the issue of costs, I note the majority of prayers have been disallowed and will award the Ex parte Applicant only half of the costs of the suit.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ngatia SC for Ex Parte Applicant

Allan Kamau for 1st, 3rd and 5th Respondents

Court Assistant: Joan

