



Republic v Multi-Sectoral Committee on Unsafe Structures & 4 others; Blue Silk Holdings Limited (Ex parte Applicant) (Miscellaneous Civil Application 174 of 2018) [2025] KEELC 6138 (KLR) (23 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6138 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION 174 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

BLUE SILK HOLDINGS LIMITED EX PARTE APPLICANT

JUDGMENT

1. What is before this Court for determination is the Ex Parte -Applicant’s Notice of Motion application dated 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. 9093 or having any other dealing whatsoever in relation to all that parcel of land known as LR No. 9093 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.9093.
 - 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 Premji S Gondariya, the Ex -parte Applicant's managing director. He contends that the Ex-Parte Applicant purchased LR No. 9093 from Heartland Holdings Limited after conducting due diligence. He explains that subsequently, it put up Godowns on the suit land, which construction was approved by the 4th Defendant as well as the National Environment Management Authority. Further, that it then leased the go downs to various factories carrying out manufacturing of PVC pipes as well as, furniture and for storage of steel, plywood, tiles and electrical transformers.
 3. It is his contention 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. He claims 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 property 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 and Planning Act, which has no provision permitting the 1st Respondent to issue such notice and is an affront to the Ex parte Applicant's legitimate expectation that, it would enjoy quiet possession of the suit property.

Responses

5. The application is opposed by 1st, 3rd and 5th Respondents who filed a replying affidavit sworn by Daniel C. Moss, a Legal Assistant at Kenya Airports Authority. They aver 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. Subsequently, vide a letter dated 23rd July 1996, the Commissioner of Lands directed issuance of Letters of Allotments to Kenya Airports Authority in respect of Wilson Airport and Jomo Kenyatta International Airport. They contend 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. They assert that the Ex Parte Applicant's suit property, LR No. 9093, 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 long before the purported registration of the suit property to the Ex Parte Applicant, the Kenya Airports Authority vide a letter dated 10th August 2001 wrote to the Commissioner of Lands warning of the encroachment. They explain 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 structures, which are within and abutting the airport that pose a security threat to aircrafts and other aviation facilities.
8. They reiterate that 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. Further, 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.9093.
9. They explain that from the aforementioned 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. The 2nd Respondent filed Grounds of Opposition contending that the instant 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. On its part, the 4th Respondent filed Grounds of Opposition contending that the application does not raise any reasonable cause of action against it, as the Ex Parte Applicant has not faulted it for infringing or violating its rights.
12. The 4th Respondent also filed a replying affidavit sworn by Jasper Ndeke, its director of Planning, Compliance and Enforcement. He avers that the Ex Parte Applicant's building plans registration No. FE339 dated 28th March 2013 and 19th March 2009 were approved with the condition; "subject to the plot not constituting any disputed private or public utility and land allocation" but in violation of the condition, the Ex Parte Applicant carried out development on the suit property in contravention to the approval, as it has encroached on Kenya Airports Authority Land and put up structures that interfere with the flight path.

Submissions

13. The Ex parte Applicant filed written submissions and a reply to the Respondents' submissions. The 2nd Respondent including the 1st, 3rd and 5th Respondents also filed submissions, which the court has duly considered. The same mirror the submissions filed by the respective parties in Nairobi ELC Misc. No. 173 of 2018, which was filed alongside this suit and is a series of two other files being that ELC Nairobi JR 175 of 2018 and JR 176 of 2018, respectively, which have already been determined. During the oral highlighting of submissions, Counsel for the Ex Parte Applicant sought full costs contending that in the two aforementioned matters that have already been determined, the Ex parte Applicant was only awarded half costs.



14. The 4th Respondent's submissions in this suit did not mirror those it filed in Nairobi ELC Misc.NO.173 of 2018. The 4th Respondent submits that the 1st Respondent's mandate has a legal pedigree, as it was established pursuant to the President's Executive order No. 1 of 2008, exercising powers under Article 132 (3) of *the Constitution*. Further, that since the title document exhibited is a Grant, the 2nd Respondent's mandate extends to the suit property and it would be improper for this Court to interfere with the 2nd Respondent's decision unless it is shown that there was a breach of natural justice. It insists that the Ex parte Applicant failed to demonstrate that the 2nd Respondent acted illegally or unprocedurally in the process culminating to the report, which generated the impugned circular. It also urged the Court to be guided that Public interest rights, triumphs the individual rights of a person and that a declaration on ownership of the suit property cannot be made based on affidavit evidence.
15. To buttress its averments, the 4th Respondent relied on the following decisions: Mwangi Stephen Muriithi v National Land Commission & 3 Others [2018] eKLR, Republic v Egerton University Ex-parte Robert Kipkemoi Koskey [206] eKLR, Patrick Thoithi Kanyuira v Kenya Airports Authority [2017] eKLR, Republic v Land Registrar Kilifi & Another ex parte Daniel Ricci [2013] eKLR.

Analysis and Determination

16. Having considered the instant Notice of Motion application including the Statement of Facts, respective affidavits and submissions, the issue for determination is whether the Ex Parte Applicant has made a case for grant of the judicial review orders sought.
17. 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.9093 or having any other dealing whatsoever in relation to all that parcel of land known as LR No.9093 or demolishing the Applicant's development. It also sought for the Court to make a declaration that it is the owner of LR No. 9093.
18. The Ex parte Applicant's claim emanates 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. The Ex Parte Applicant averred that it is the proprietor of LR No. 9093 (suit property) and has a title to that effect
19. The Ex Parte Applicant averred that it was issued with a title to LR No. 9093 which it purchased after conducting due diligence, thus its title is indefeasible, unless exceptions under Section 26 (1) of *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 and that it was not given a hearing before the circular was issued.
20. The Respondents main contention is that the suit property falls within LR No. 21919, which is land vested in Kenya Airports Authority. They assert that the Ex Parte Applicant's suit property, LR No. 9093, 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.



21. As relates to judicial review, the Supreme Court in *Peninah Nadako Kilishwa v Independent Electoral Boundaries Commission (IEBC) & 2 Others* (2015) eKLR, stated that:

“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.”

22. While the High Court (Justice G. 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 that:

“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.”

23. The Ex Parte Applicant has 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 since Judicial Review Proceedings are constitutional reliefs and this court has power to make a declaration under Article 23 (3) of *the Constitution*.

24. In the case of *John Florence Maritime Services Limited & Another v Cabinet Secretary Transport & Infrastructure & 3 Others* [2021] KESC 39 (KLR), the Supreme Court stated that:

“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.”

25. 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



26. In Misc. Civil Application No. 176 of 2018, which is one of the series of files that the Ex parte Applicant referred to, Justice S. Okong’o while granting an Order of Certiorari to quash the decision contained in the impugned circular of September, 2018, held that:

“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.....”

27. He further stated that:

“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.”

28. On administrative action, Section 7 of the Fair Administrative Actions Act provides remedy for any person aggrieved by an administrative action or decision. While Article 47 of the Constitution stipulates thus:

- “(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.”

29. On the issue of the impugned Circular, I wish to reproduce an excerpt therefrom:

“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.”

30. The Ex parte Applicant’s main argument is that it was not involved in the decision culminating in the impugned Circular. It argues that the 1st Respondent is an illegal body but I opine that the legality of the 1st Respondent cannot be subject of a judicial review proceedings but can be dealt with in a substantive suit.
31. 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. From the averments by the Ex parte Applicant, which were not denied by the Respondents, it is not clear at what point the Ex parte Applicant was issued with the impugned Circular. It is trite that for a party in occupation of the land to be evicted therefrom, a proper notice has to be issued. In the current scenario, I find that the Ex parte Applicant was not properly involved in the proceedings culminating in the impugned Circular nor properly served, in accordance with the provisions of section 152 (c) and (e) of the Land Act.
32. In the circumstance, I find that the impugned Circular of 25th September, 2018 in respect to eviction of the Ex parte Applicant from the suit property should hence be quashed as relates to the suit property only. I further find that the said Circular or notice contravenes the provisions of section 152 (C) and (E) of the Land Act, which stipulates that notices for eviction should be issued three (3) months in advance. Further, I note the Circular was also issued under the Wayleaves Act, which is a repealed law and this indeed makes the said notice null and void. I opine that the mode in which the Ex parte Applicant was informed of the eviction offended the rules of natural justice and was unreasonable.
33. In the foregoing, I will proceed to issue an Order of Certiorari to quash the 1st Respondent’s circular of 25th September, 2018 as it relates to LR No. 9093 only.
34. Except for the 1st Respondent’s Circular of 25th September, 2018, I opine that the rest of the issues being raised by the Ex parte Applicant and shrouded in this Judicial Review proceedings, are actually about validation of its title, which does not fall within the ambit of Judicial Review. It is my considered view that the Ex parte Applicant should have actually filed a civil suit to deal with issues of validity of its title. I am hence unable to address the other Constitutional rights being sought under Article 47 (1) and 40 in this forum and advise the Ex parte Applicant to file a substantive suit if need me.
35. Based on the facts before me while associating myself with the decisions quoted, I find that the order of prohibition and declaration of ownership of the suit land sought cannot issue at this juncture as they are framed in very wide terms.
36. In the foregoing, I find the instant Notice of Motion application only partially successful as relates to prayer (a) seeking an Order of Certiorari, but not to the Others prayers (b) and (c) for prohibition and declaration, which prayers I will proceed to dismiss.
37. I award the Ex parte Applicant half of the costs of this 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

