



**Republic v General & another; Moses (Interested Party); Mworia  
(Suing as the Legal Representative of the Estate of Gedion Mugambi  
Mworia – Deceased) (Ex parte Applicant) (Judicial Review Application  
E009 of 2025) [2025] KEELC 6088 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6088 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
JUDICIAL REVIEW APPLICATION E009 OF 2025**

**JO MBOYA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**HONOURABLE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
LAND ADJUDICATION & SETTLEMENT OFFICER RUIRI RWARERA  
ADJUDICATION SECTION ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CELINA NKIROTE MOSES ..... INTERESTED PARTY**

**AND**

**MURIUKI KIJANA MWORIA (SUING AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF GEDION MUGAMBI MWORIA –  
DECEASED) ..... EX PARTE APPLICANT**

**RULING**

1. What is before me is the Ex-parte Chamber Summons application dated 13<sup>th</sup> August 2025; and wherein the Ex-parte applicants have sought various reliefs. The reliefs sought at the foot of the Application are as hereunder;
  - i. That this Application be certified as urgent, service be dispensed with and the same be heard Ex-parte on a priority basis.



- ii. That this Honourable court be pleased to issue and grant Ex-parte Applicant leave to apply for an order of Certiorari to call for and bring into this Honourable court for the purposes of quashing the proceedings and decision made by Land adjudication & settlement officer Ruiru – Rwarera Adjudication Section, the 1<sup>st</sup> respondent herein on 19<sup>th</sup> February 2025 purporting to cancel the ownership of parcel of land No. 2962 Ruiru Rwarera Adjudication Section attached hereto.
  - iii. That this Honourable court be pleased to grant an order that the leave granted herein to institute the judicial review proceedings operate as a stay of the proceedings and execution of the decision and award made by the 1<sup>st</sup> respondent on 19<sup>th</sup> February 2025, purporting to cancel the ownership of parcel of land Number. 2962 Ruiru Rwarera Adjudication Section attached hereto.
  - iv. That this Honourable court be pleased to issue an order of prohibition to prevent the 1<sup>st</sup> respondent from implementing its decision delivered on 19<sup>th</sup> February 2025, purporting to cancel the ownership of parcel of land No. 2962 Ruiru Rwarera Adjudication section.
  - v. That the costs of this Application be borne by the respondents.
2. The instant application is premised on the various grounds which have been highlighted in the body thereof. In addition, the application is said to be anchored on the grounds contained in the body of the statement of facts and the affidavit in verification of the statement of facts.
  3. The respondents filed grounds of opposition dated 19<sup>th</sup> June 2025 and wherein the respondents have contended that the application beforehand was muddled-up; pre-mature and misconceived. In particular, it was contended that leave cannot issue and or be granted in the name of the republic.
  4. The application came up for hearing on 17<sup>th</sup> September, 2025, whereupon the advocate for the parties agreed to canvass same by way of oral submissions. For coherence, the submissions by and on behalf of the advocates are on record.
  5. Briefly, learned counsel for the Ex-parte applicant adopted and reiterated the grounds contained in the body of the application and the averments in the supporting affidavit. Furthermore, learned counsel for the Ex-parte applicant highlighted two[2] key issues for consideration by the court. Firstly, learned counsel submitted that the Ex-parte applicant herein is keen to mount and or file an application for judicial review in the nature of certiorari and mandamus. To this end, it was posited that Leave was required to enable the application for the orders of certiorari to be filed.
  6. Secondly, learned counsel for the Ex-parte Applicant has submitted that the grant of leave is an exercise of judicial discretion and that the court should take into account various factors including the chances of success of the intended application; and whether the application has been made timeously and with due promptitude.
  7. Furthermore, it was submitted that the decision of the 1<sup>st</sup> respondent, which is sought to be challenged, was rendered/handed down on 19<sup>th</sup> February 2025, whereas the subject application was filed on 13<sup>th</sup> August 2025. To this end, it was submitted that the subject application has been filed without unreasonable delay. On the contrary, it was posited that the application was filed timeously.
  8. Finally, learned counsel for the Ex-parte applicant has submitted that the decision by the 1<sup>st</sup> respondent ought to be stayed. In this regard, learned counsel invited the court to decree that the Leave [if any] granted be ordered to operate as stay of the impugned decision.



9. Learned counsel for the respondents adopted the Grounds of opposition dated 19<sup>th</sup> August 2025; and thereafter highlighted one singular issue. The issue that was highlighted by learned counsel for the respondent was to the effect that the application for Leave has been made in the name of the Republic; and yet the leave can only issue to and in favour of an applicant, namely, the person affected by the impugned Decision.
10. Furthermore, it was submitted that the name of the Republic has been invoked prematurely and thus the entire application contravenes the peremptory provisions of Order 53 Rule 1 of the Civil Procedure Rules 2010.
11. Based on the foregoing, it has been submitted that the entire application is bad in law and incapable of redemption by way of amendment. To this end, learned counsel for the respondents has invited the court to strike out the application and award costs to the respondents.
12. Having reviewed the Ex-parte Chamber Summons application, the supporting affidavit thereto, the statements of facts, the affidavit in verification of statement of facts and the grounds of opposition by the respondents and upon consideration of the submissions on record, I come to the conclusion that the determination of the subject application turns on two [2] key issues; namely; whether the application is competent or otherwise; and whether the court is seized of the requisite jurisdiction to grant[sic] the order of prohibition at this juncture or otherwise.
13. Regarding the first issue, it is imperative to state and observe that an application for leave to file/take out judicial review proceedings is to be filed/mounted by the subject. For good measure, the subject is the person whose rights are said to have been violated and or infringed upon by the public body or authority. Put differently, the subject is the person affected by the impugned Decision.
14. It is also instructive to highlight that the name of the Republic can only be deployed once Leave has been sought and obtained. It is only then that the Republic becomes the applicant, whereas the subject [in whose favour leave was granted] becomes the Ex-parte applicant.
15. Furthermore, it is worthy to underscore that leave cannot be sought for in the name of the Republic. Notably, leave is sought for by the subject/citizen and once leave is so granted, then the name of the republic [formerly, the Crown] is brought on board and not vice versa.
16. The procedure guiding the request for Leave and the ultimate filing of the substantive application for judicial review was expounded by the Court in the case of Jotham Mulati Welamondi v Chairman, Electoral Commission of Kenya [2002] KEHC 1123 (KLR), where the court [Hon. Justice A. Ringera, Judge [as he then was] stated as hereunder;

As regards the invocation of section 3 A of the *Civil Procedure Act*; order 1 rule 8 of the Civil Procedure rules; and Section 42 (3) and (5), 79 and 80 of *the constitution* of Kenya by the applicant in the motion for Judicial Review by way of Mandamus, the court of Appeal decision in COMMISSIONER OF LANDS V KUNSTE HOTEL LTD (Supra) is the clearest authority that Judicial Review Procedure is a special Procedure.....

Last, but not least, the objection that the application is made in the name of the wrong person is well merited. In FARMERS BUS SERVICE AND OTHERS V THE TRANSPORT LICENSING APPEAL TRIBUNAL (1959) E.A. 779, the East African Court of Appeal held that prerogative orders are issued in the name of the crown and applications for such orders must be correctly intitled. On Kenya's assumption of Republican status on 12<sup>th</sup> December 1964, the place of the crown in all legal proceedings



was taken by the Republic. Accordingly, the orders of Certiorari, Mandamus or Prohibition now issue in the name of the Republic and applications therefor are made in the name of the Republic at the instance of the person affected by the action or omission in issue. In the premises, the proper format of the substantive motion for Mandamus would have been

"REPUBLIC ..... APPLICANT

v

THE ELECTORAL COMMISSION OF KENYA.....RESPONDENT

EX PARTE

JOTHAM MULATI WELAMONDI"

17. From the foregoing, I come to the conclusion that the invocation of the name of the republic has been undertaken prematurely and prior to leave being granted. For coherence, the republic can only come on board after leave has been granted and not otherwise. Moreover, it is also common ground that leave cannot be granted in favour of the republic. On the contrary, leave can only be granted in favour of the subject [citizen] who is the applicant at the first instance.
18. Turning to the second issue, namely; whether the court has the requisite jurisdiction to grant an order of prohibition in the manner sought at the foot of prayer 4 of the application, it is instructive to underscore that the order of prohibition can only issue after leave has been granted. In this regard, it is apparent that the applicant has sought for the substantive order long before leave has been obtained.
19. To my mind, the prayer seeking an order of prohibition is tantamount to placing the cart before the horse. Such a scenario is not fathomable and is thus legally untenable.
20. In a nutshell, I find and hold that the prayer for prohibition is premature and misconceived. In any event, the court is divested of jurisdiction to grant the orders of prohibition at this Juncture. [See Sections 8 & 9 of the *Law Reform Act* Cap 26 as read together with order 53 Rule (1) of the Civil Procedure Rules, which underline the issuance of leave beforehand].

#### **Final Disposition:**

21. Flowing from the analysis contained in the body of the Ruling, it is evident that the application beforehand [brought by the Ex-parte applicant] is premature and misconceived. In this regard, the entire application is irredeemably bad and incapable of amendment.
22. Consequently, and in the premises, the final orders of the court are as hereunder;
  - i. The Application dated 13<sup>th</sup> August 2025 be and is hereby struck out.
  - ii. Costs of the Application be and are hereby awarded to the respondents.
23. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].**

**JUDGE**

In the presence of:

C/A: Hussein

Kerubo holding brief for Kiautha Arithi for the Ex-parte Applicant



Miss Miranda [Senior Litigation Counsel] for the Respondents

No appearance for the Interested Party.

