



Omoga & another (Being Representatives of the Estate of Kennedy Blyton Owuor Rabala alias Kenned Blyton Rabala) v Chief Land Registrar & another (Environment and Land Judicial Review Case E013 of 2023) [2024] KEELC 3660 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3660 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E013 OF 2023**

JA MOGENI, J

MAY 7, 2024

BETWEEN

LOICE APIYO OMOGA 1ST APPLICANT

EMMANUEL BLYTON OWUOR 2ND APPLICANT

**BEING REPRESENTATIVES OF THE ESTATE OF KENNEDY BLYTON
OWUOR RABALA ALIAS KENNED BLYTON RABALA**

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. On 19/12/2023 Lady Justice Ann Omollo, considered the Chamber Summons application dated 28/09/2023 by granting the Ex Parte Applicants leave to commence Judicial Review Proceedings in terms of prayers (2) and (3) of the said Chamber Summons application under the provisions of Order 53 of the Civil Procedure Rules, 2010.
2. The leave granted was not to operate as stay and the applicant was directed to file the substantive notice of motion application within 21 days of this order and which they obliged accordingly.
3. Upon obtaining leave to commence judicial review proceedings, the ex parte applicants filed Notice of Motion dated 20/12/2023 in which they seek an order of mandamus against the 1st respondent to compel her to consider the ex parte applicant's application lodged in the Land's Department at Nairobi Registry on 8th September 2020 for Registration of Lease over Title Number Nairobi Block 111/1821 in favour of Loice Apiyo Omoga and Emmanuel Blyton Owuor and within a reasonable time prescribed by Court.



4. The application is supported and based on the Statutory Statement dated 28/09/2023, Verifying Affidavit sworn by Loice Apiyo Omoga 28/09/2023 in support of the Chamber Summons. She deposed that the ex parte applicants are the co-administrators of the Estate of Kennedy Blyton Owuor Rabala having obtained a certificate of confirmation of grant which is annexed to the affidavit as LAO1.
5. That their advocates lodged with the 1st respondent an application for registration of lease in favour of the co-administrators on 8/09/2020 over title number Nairobi Block 111/1821 by way of transmission and were issued with booking number 82/09. That they also paid the duly assessed stamp duty for the said suit property by way of transmission.
6. That from 8/09/2020 to date the 1st respondent has failed, and or refused without giving reason to register the applicants as the proprietors of Title Number Nairobi Block 111/1821 to the applicants in common.
7. At the same time the 1st respondent has refused to respond to the applicant's counsel's letters sent to them dated 19/06/2023 and 14/07/2023. Further the 1st respondent has refused to issue the applicants with a Certificate of Lease over Title Number Nairobi Block 111/1821.
8. The deponents inter alia annexed a copy of the application marked as LAO 2, a copy of the stamp duty assessment slip and payment receipt marked as LAO 3, copies of the two letters marked as LAO 4 and LAO 5. Although served and although a litigation counsel from the Attorney General's chambers attended court on one occasion, the respondent did not file any response to the application nor any written submissions despite directions having been issued on 30/01/2024 on disposal of the application. The ex parte applicants' case is thus unopposed.
9. The ex parte applicants filed their submissions dated 7/03/2024 which I have considered. The counsel has submitted that the Chief Land Registrar is mandated under Section 26 and 30 to issue certificates of lease to applicants and that failure to respond to the inquiries by the ex parte applicants violates section 4 (1), (2) and (3) of the *Fair Administrative Action's* Act which provides:
 1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. Every person has the right to be given written reasons for any administrative action that is taken against him.
 3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
 - a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
10. To buttress this further, Article 47 (1) of the *constitution* provides that:
 1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
11. I have considered the application, the statement of facts, the affidavits filed and the submissions. The ex parte applicants seek the judicial review order of mandamus. The guiding principles in such an



application were restated by the Court of Appeal in *Buffet Park Ltd v Republic & 2 others* [2019] eKLR as follows:

... the principles that guide the High Court in the exercise of judicial review Jurisdiction are as were aptly restated by this Court in *Kingdom Kenya 01 Limited v the District Land Registrar, Narok & Fifteen (15) others* [2018] eKLR as follows: -

“Judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. See the Commissioner of Lands v Hotel Kunste [1997] eKLR. The purpose of JR is to ensure that the individual is given fair treatment by the Authority to which he has been subjected. JR as a remedy is available, in appropriate cases, even where there are alternative legal or equitable remedies. See David Mugo t/a Manyatta Auctioneers v Republic – Civil Appeal No. 265 of 1997 (UR). JR being a discretionary remedy, it demands that whoever seeks to avail itself/himself/herself of this remedy has to act with candour or virtue and temperance. See Zakayo Michubu Kibwange v Lydia Kagina Japheth and 2 others [2014] eKLR. JR as a remedy may also be invoked where the issues in controversy as between the parties are contested. See Zakayo Michubu Kibwange case (*Supra*). The remedy of judicial review is only available where an issue of a public law nature is involved. Further, that a person seeking mandamus must show that he has a legal right to the performance of a legal duty by a party against whom the mandamus order is sought or alternatively, that he has a substantially personal interest and that the duty must not be permissive but imperative and must be of a public nature rather than of a private nature. See Prabhulal Gulabuland Shah v Attorney General & Erastus Gathoni Mlano, Civil Appeal No. 24 of (1985) (UR). Following the promulgation of the Kenya Constitution, 2010, judicial review is available as a relief to a claim of violation of the rights and fundamental freedoms guaranteed in the constitution of Kenya 2010. See Child Welfare Society of Kenya v Republic and 2 others, *Ex parte* Child in Family Forces Kenya [2017] eKLR.”

12. The scope and efficacy of an order of mandamus were discussed by the Court of Appeal in *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR as follows:

“The 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 him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. ...

The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as 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.”

13. The 1st respondent in the instant matter is the Chief Land Registrar, a public office created under Sections 12 and 13 of the *Land Registration Act* and given the responsibility of discharging functions under the said statute. His duties as specified under section 14 (2) (b) and (c) of the Act include setting



standards for the land registries and generally supervising the registries. He is required under section 7 of the Act to keep in the registries a land register, parcel files containing the instruments and documents that support subsisting entries in the land register. He is further required under section S 9 (1) of the Act to maintain the register and any document required to be kept under the Act in a secure, accessible and reliable format and to make the information in the register accessible to the public in terms of section 10 of the Act.

14. Section 46 of [Land Registration Act](#) requires that before any document required for registration is registered, it must be stamped in accordance with the [Stamp Duty Act](#). While the ex parte applicants have adduced evidence of payment of Stamp Duty, the 1st and 2nd respondents have not presented any evidence to challenge these transmission documents. The Transfer documents by the ex parte applicants indicate that Stamp Duty was assessed at Kshs.280/= . There is no way transfer could happen without payment of stamp duty. Therefore, there is an impression that the Counsel for the vendors made payment. There was no evidence that the ex parte applicants did not pay stamp duty. (See Embu ELC No. 327 of 2015 [Elias Njue Ireri v Kubu Benson Nderi & 3 others](#) [2019] eKLR) To this end, the Court finds that both transactions were within the legal parameters.
15. The Chief Land Registrar therefore at the minimum had a duty to communicate their decisions to the ex parte applicants to either reject or accept the registration and transfer by transmission of the suit property to the applicants. The registrar has a duty to inform and guide applicants who approach the office on the processes of registration of certificates of leases as and when they have lodged their documents. The same applies to the documents that he received from the ex parte applicants. He is further bound by the national values and principles of governance under article 10 of the [constitution](#) which include good governance, integrity, transparency and accountability. The respondent's actions or failures to act are thus amenable to judicial review.
16. From the material placed on record, I note that the ex parte applicants have written to the Chief Land Registrar and transmitted what they believe are adequate documents that would enable the office of the Registrar to have them registered as proprietors of the suit property as per the confirmation of grant. The Registrar has maintained a studious silence yet there is evidence presented that his office has received the letters sent to his office.
17. Whereas this Court cannot hold that the ex parte applicants must be given the certificate of lease without paying attention to the processes that must be adhered to before the same is issued, the 1st respondent was expected to notify the ex parte applicants of any discovery of new information that they needed to pay attention to in order to enable their application to be processed.
18. By not according the ex parte applicants the opportunity to be explained to why their certificate of lease cannot be processed, it is my view and I so find that the 1st respondent was guilty of abuse of power. The ex parte applicants have however sought for orders of mandamus. In [Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge](#) Civil Appeal No. 266 of 1996 it was held *inter alia* as follows:

“...The 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 him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than



the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as 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... These principles mean that an order of mandamus compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”

19. The 1st respondent has not given an explanation for the delay in issuance of the certificate of lease, nor the reason pertaining to why they have not responded to the ex parte applicant’s letters inquiring why the registration has not been done. There is no explanation that has been offered for the delay or failure to respond to the inquiries made in respect of the suit property.
20. In view of the foregoing, I am persuaded that the ex parte applicants have made a case for granting the orders of mandamus. Which unfortunately will mean that the court has to compel a public officer to undertake the duties he is paid for through taxes paid by Kenyans including the ex parte applicants. I will at the same time direct that the costs of this application be paid for by the Chief Land Registrar in his personal capacity if within 30 days of issuance of this orders, his office continues to willfully neglect the performance of the tasks of the office he holds in relation to this application. I therefore enter judgment in favour of the ex parte applicants and make the following orders:
 - a. An order of mandamus is hereby issued against the Chief Land Registrar compelling them to consider and give directions on the Application Booking Number 82/09 lodged in Lands Department at Nairobi Registry on 8th September 2020 for Registration of Lease over Title Number Nairobi Block 111/1821 in favour of Loice Apiyo Omoga and Emmanuel Blyton Owuor, and, within 30 days from the date hereof inform Loice Apiyo Omoga and Emmanuel Blyton Owuor both orally and in writing the reason(s) for their refusal to issue them with Certificate of Lease over Title Number Nairobi Block 111/1821.
 - b. The orders issued herein shall in no way be interpreted as determining the ownership of Nairobi Block 111/1821 or the validity of the documents presented to the Chief Land Registrar by the Ex-parte applicants. These are issues that can only be determined in a civil suit filed for that purpose in which the parties shall have an opportunity to adduce oral evidence.
21. If within 30 days of this ruling the Chief Land Registrar does not implement the order issued here, they will be condemned to pay the cost of this application. Order must be served upon the Chief Land Registrar within 7 days of its issuance.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7TH DAY OF MAY 2024.

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**MOGENI J
JUDGE**

In the Virtual presence of:-



Mr. Okoth for the Ex Parte Applicant

No appearance for Respondent

Ms. Caroline Sagina: Court Assistant

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MOGENI J

JUDGE

