



**Republic v Registrar of Group Representatives; Mayone (Exparte) (Environment and Land
Judicial Review Case 14 of 2017) [2023] KEELC 18579 (KLR) (11 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18579 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 14 OF 2017**

CG MBOGO, J

JULY 11, 2023

BETWEEN

REPUBLIC APPLICANT

AND

THE REGISTRAR OF GROUP REPRESENTATIVES RESPONDENT

AND

DAVID MATUNKE MAYONE EXPARTE

JUDGMENT

1. The application before this court is the Notice of Motion dated 7th December, 2016 expressed to be brought under section 3(1) of the *Judicature Act*, Order 53 Rule 3 of the *Civil Procedure Rules*, Sections 8 (1),(2),(3),(4) and (5) of the *Law Reform Act*, Sections 15 of the *Land (Group Representatives) Act* and Sections 4 (3),(4) Sections 7 (1),(2), 8 and 9 of the *Fair Administrative Action Act* seeking the following orders:-
 - i. That this honourable court be pleased to issue an order of Certiorari to remove to this honourable court for the purposes of being quashed the respondent's letter dated 11th November 2016.
 - ii. That the costs of this motion and the chamber summons filed at the stage of seeking leave to commence this motion be borne by the respondent.
2. The application is supported by the affidavit verifying the facts sworn on 3rd December, 2016 and the statutory statement of facts dated 3rd December, 2016. In these documents, the applicant deposed that he is the chairman of the Board of the Group Representatives of Maji Moto Group Ranch which was registered under Section 7 of the *Land (Group Representatives) Act*. That on 10th November 2016 and during the hearing of the application dated 13th September, 2016, it emerged that the respondent had



- on 2nd June, 2016 issued a letter or a notice purporting to suspend him from the chairmanship of the Group Ranch.
3. He further deposed that he challenged the said letter and the orders were given on 24th November, 2016 to the effect that the implementation and effect of the letter dated 2nd June, was stayed. That thereafter, he came across a letter dated 11th November, 2016 calling for a meeting which meeting stems from the letter dated 2nd June, 2016.
 4. The applicant maintained that the respondent cannot call, convene or purport to hold the meeting scheduled for 13th December, 2016 whose effect and purpose was stayed vide the orders of this court issued on 24th November, 2016. Also, that the respondent has no powers to call for this meeting following the decision of the court to stay the implementation and effect of the letter dated 2nd June, 2016 until the matter is heard inter-partes as it is a violation of the said orders.
 5. The respondent filed a replying affidavit in response to the application which was sworn on 22nd May, 2023 by Stephen G Mayaka-the Registrar of Group Representatives under the Directorate of Land Adjudication and Settlement. The respondent laid out the procedure from the time Maji Moto was declared an Adjudication Section on 24th May, 1977 up until the date he swore this affidavit which he deposed that subdivision has not yet been completed.
 6. The respondent further deposed that the applicant and his team were elected into office on 20th August, 2010 and that the present team led by Mr. Twala Manki were elected into office on 13th December, 2016 at a Special General Meeting held on the same date which the Registrar of Group Representatives presided over the elections. Further, that there is no evidence that the respondent was served with the orders and the letter dated 11th November, 2016 was written before the alleged court orders of 24th November, 2016 were issued.
 7. The respondent deposed that the application has been overtaken by events as the meeting took place and members of the Group Ranch elected officials who are legally in office and which letter dated 11th November, 2016 is legal and within the *Land (Group Representatives) Act*. Further, he deposed that the Registrar may convene a meeting of a Group ranch at any time, that the Registrar is mandated to issue the Group Representatives with a certificate of incorporation after every subsequent election and he can vary the same as he considers appropriate under Section 11 of *Cap 287*. In addition, the Registrar may require to be furnished with information regarding a Group Ranch under Section 23 (2) of *Cap 287*.
 8. In this case, the respondent deposed that the applicant was mentioned adversely in an investigation conducted by the Registrar of Group Representatives and it was recommended that he steps down to seek a fresh mandate from the members through an election. Also, that the applicant together with other former officials were found guilty and ordered to pay a sum of Kshs. 13,014,288/- and surrender illegally allocated plots to the Group Ranch which orders he is yet to comply with.
 9. The respondent deposed that the matters in this application were sufficiently addressed in *Narok ELC Petition 268 of 2017* and that the applicant has not challenged the proceedings of 13th December, 2016 and as such this court should not be invited to determine the legality or otherwise of the meeting and elections that were held on 13th December, 2016.
 10. The applicant filed a supplementary affidavit sworn on 25th May, 2023 in response thereto. The applicant deposed that Maji Moto Group Ranch was dissolved on 1st December, 1995 and the chairman and other officials were directed to remain in office until subdivision and issuance of title



- deeds was completed. That he challenged his suspension from office and obtained a court order which was issued on 6th December, 2016 and served upon the respondent on 8th December, 2016.
11. That in total defiance of the court order, he was forced to move to this court and the court allowed his notice of motion by an order of 29th December, 2016 suspending the election of the team on 13th December, 2016 and Certificate No. 0264 dated 14th December, 2016. Further, that summons were issued to the respondent to personally attend court.
 12. The applicant further deposed that the respondent appeared before court and confirmed that he would comply with the court orders and that the suspension of certificate no. 0264 was effectively suspended restoring him and his team as bonafide officials of Maji Moto Group Ranch. Further, that the said orders have not been reviewed, varied, appealed against or discharged. That on the other hand, Mr. Twala Manki and his team are masquerading in office on the strength of the suspended certificate no 0264.
 13. In conclusion, the applicant deposed that the mention of this matter in [*ELC petition no 268 of 2017*](#) was per incuriam as it was not an issue for determination in the petition.
 14. The application was canvassed by way of written submissions. The applicant filed written submissions dated 13th April, 2023 and raised one issue for determination which is whether the respondent has powers to call for an annual general meeting of a group ranch under section 4(2) of the now repealed [*Land \(Group Representatives\) Act*](#).
 15. On this issue, the applicant submitted that the duties and powers of the Registrar of the Group Representatives are only supervisory under Section 4 (2) and in his view, the respondent has no jurisdiction to call, convene and hold an Annual General Meeting for the Group Ranch and in doing so, the respondent acted in excess of his jurisdiction. Reliance was placed in the case of *Anisminic Limited v Foreign Compensation Commission* [1967]2 A.C 147.
 16. The respondent filed written submissions dated 23rd May, 2023. The respondent submitted that by the time the orders were issued staying the letter dated 2nd June, 2016, the letter dated 11th November, 2016 had already been served upon the members of the Group Ranch. Further, that a reading of the judgment in [*ELC Petition No. 268 of 2017*](#) in paragraph 174 shows that JR No. 35 of 2016 had been dismissed. The respondent submitted that the instant application has been overtaken by events as there are new officials and this court cannot therefore quash the letter dated 11th November, 2016.
 17. The respondent further submitted that the [*Land \(Group Representatives\) Act*](#) now repealed allows the Registrar to convene a meeting of a Group Ranch as was provided under Section 15 (1) of the [*Act*](#). Further, that pursuant to the provisions of Section 6 (1) of the repealed [*Act*](#), the applicant and the team could not continue to serve as officials of the Group Ranch hence the suspension and subsequent election of new officials.
 18. On whether the respondent has jurisdiction to convene a meeting, reliance was placed in the case of [*Risie Ole Masarie & 4 Others v Director of Land Adjudication & Settlement & 2 Others*](#) [2008] eKLR.
 19. I have carefully analysed and considered the application, the replies thereof and the written submissions filed by both parties and the issue for determination is whether the ex-parte applicant is entitled to the orders of certiorari.
 20. The ex-parte applicant learnt of his suspension as the chairman of the Group Ranch together with his team on 10th November, 2016. The orders suspending/staying implementation of the letter dated 2nd June, 2016 were issued on 24th November, 2016. Thereafter, he came across a letter dated 11th



November, 2016 calling for a meeting on 13th December, 2016. I have perused the documents attached to the application and I do note that indeed there was a letter dated 2nd June, 2016 addressed to the applicant and others.

21. The applicant was granted leave to commence Judicial Review proceedings against the respondent and the said leave also operated as a stay of implementation and effect of the letter dated 2nd June, 2016 which culminated to the letter dated 11th November, 2016 informing members of the Special General Meeting to be held on 13th December, 2016. The respondent in his reply, maintained that he proceeded with the election of officials as they were not served with any orders of stay. The applicant on the other hand contended that the respondent was served with the said orders in good time i. e. on 8th December, 2016 but defied the same.
22. The question then is, was the respondent served with the orders of the court dated 24th November, 2016? In his supplementary affidavit, the applicant produced evidence that the orders were served upon the respondent. A look at a copy of the court order annexed to the applicant's supplementary affidavit shows a stamp of the Department of Land Adjudication and Settlement main registry dated 8th December, 2016. However, it cannot be discerned whether the officer responsible in this case, the Registrar, was actually served or was aware of the same. For this court to be convinced that indeed service was effected, there is need for an affidavit of service to prove service, if any. Upon perusal of the court file, there is no affidavit of evidence on record to show exactly who was served.
23. The respondent filed a notice of appointment dated 23rd February, 2017 on 3rd April 2017. In the absence of an affidavit of service, this court is unable to tell exactly whether the Registrar was served despite the stamp from the department of Land Adjudication and Settlement.
24. Most notably, I do note that Kullow J on 22nd October, 2020 stayed the proceedings to await the outcome in [ELC Petition No. 268 of 2017](#) and JR No. 11 of 2017. It is, therefore, not accurate for the respondent to state that this matter was dismissed.
25. Having said the above and in view of the averment that the application has been overtaken by events, this court, in the absence of an affidavit of service as proof of service upon the relevant officer in this case, reluctantly agrees that the respondent innocently went ahead with the election of the officials of the Group Ranch in its Special General Meeting that was held on 13th December, 2016.
26. The applicant also raised one issue for determination and which he submitted that the Registrar has no powers to call for an Annual General Meeting.
27. It should be noted that the instant application was premised pursuant to the provisions of the [Land \(Group Representatives\) Act](#) now repealed. Section 15 (1) of the [repealed Act](#) provided that "The registrar may convene a meeting of a group at any time."
28. In arriving at my determination, I have regard to the nature and scope of judicial review as was addressed in [Municipal Council of Mombasa v Republic & Umoja Consultants Ltd](#), Civil Appeal No. 185 of 2001 as follows:

"Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters... The court should not act as a Court



of Appeal over the decider which would involve going into the merits of the decision itself- such as whether there was or there was not sufficient evidence to support the decision.”

29. Also, in *Republic v Kenya Revenue Authority Ex parte Yaya Towers Limited*, [2008] eKLR, it was held that “the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself.”
30. The purpose of the remedy of judicial review is, therefore, to ensure that the individual in this case, the applicant, is given fair treatment by the authority to which he has been subjected, but not to substitute the opinion of this court that is seized with judicial review proceedings for that of the authority constituted by law to decide the matter in question. The proper avenue for such a result is the appellate process and not judicial review proceedings.
31. In addition, the nature of judicial review remedies of certiorari, mandamus and prohibition that can be issued by a Court were explained by the Court of Appeal in *Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & 9 Others* [1997] eKLR *inter alia* as follows:
- “Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings....Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of certiorari and that is all the court wants to say on that aspect of the matter.”
32. In the present application, the letter dated 11th November, 2016 calling for the Special General Meeting that was held on 13th December, 2016 was within the confines of Section 15 (1) the *Land (Group Representatives) Act* (repealed) as the respondent had powers to do so. On this, I agree with the respondent.
33. Arising from the above, I find that the applicant is not entitled to the orders of Certiorari and the Notice of Motion dated 7th December, 2016 therefore fails. Each party to bear its own costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ON THIS 11TH DAY OF JULY, 2023

HON. MBOGO C.G

JUDGE

11/7/2023

In the presence of: -



