



**Republic v Land Registrar, Ukwala & another; Otayi (Interested Party); Yamo (Exparte Applicant)
(Judicial Review E004 of 2022) [2023] KEELC 20402 (KLR) (5 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20402 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
JUDICIAL REVIEW E004 OF 2022
AY KOROSS, J
OCTOBER 5, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

THE LAND REGISTRAR, UKWALA 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

JOYCE ADHIAMBO OTAYI INTERESTED PARTY

AND

WYCLIFF YAMO YAMO EXPARTE APPLICANT

JUDGMENT

1. Pursuant to leave granted by this court on November 13, 2022, the *ex parte* applicant filed a notice of motion dated March 16, 2023. The motion was moved pursuant to the provisions of Articles 27, 40, 43 and 47 of *the Constitution*, Sections 14, 24(a), 25 (1), 26 (1) and 79 of the *Land Registration Act*, Section 3A of the *Civil Procedure Act* and Order 53 Rule 1 of the *Civil Procedure Rules* in which he sought the following judicial review orders and other orders: -
 - a. That the court do grant the *ex parte* applicant an order of certiorari to remove into this court and quash the decision of the respondent cancelling/revoking the title deeds for land parcel nos. Uholo/Rambula/512 and 513 issued to the *ex parte* applicant.
 - b. That the court be pleased to grant the *ex parte* applicant an order of mandamus compelling the respondent to cancel the new title nos. Uholo/Rambula/913,915,916 and 917 and restore land parcel nos. Uholo/Rambula/512 and 513.



- c. That costs be provided for.
2. The motion was supported by the verifying affidavit of the ex parte applicant Wycliff Yamo Yamo sworn on March 16, 2023, statutory statement and several annexures.
3. The motion was founded on the following grounds: -
 - a. The cancellation of the *ex parte* applicant's title nos. Uholo/Rambula/512 and 513 was illegal and ultra vires *the constitution* and statutes since the respondent did not have powers to cancel title documents without a court order.
 - b. The cancellation of Uholo/Rambula/512 and 513 was conducted without notice, a hearing and contravened the rules of natural justice.
 - c. The cancellation of title documents of Uholo/Rambula/512 and 513 was actuated by malice and bad faith.
4. In brief, it was the *ex parte* applicant's case he was the original registered proprietor of land parcels nos. Uholo/Rambula/512 and 513 (suit properties) having acquired them in 1997 from James Omoro Yamo (James) who himself acquired them from Dominicus Amuok Odembo (Dominicus). They were a subdivision of land parcel no. Uholo/Rambula/3 (original parcel). Dominicus who is since deceased owned the original parcel. The original parcel's subdivision created the suit properties together with land parcel nos. Uholo/Rambula/514 and 515 (cumulatively they shall be referred to as the 'whole parcels').
5. In 2022, the owners of land parcel no. Uholo/Rambula 514 began to lay claim over the whole parcels. Upon the *ex parte* applicant investigating their claim, he established the respondent had cancelled the title nos. of the suit properties and reverted them to the original parcel. The cancellation had been backdated to 1994 and James's name did not appear in the re-enacted register as it originally had in the previous register of the original parcel.
6. The new register of the original parcel indicated the interested party had conducted probate proceedings and acquired the original parcel. The original suit property was then subdivided into Uholo/Rambula/913, 915, 916 and 917 and ostensibly registered the ex parte applicant as the owner of 915; a land parcel measuring 0.88 Ha and not the initial 1.50 Ha that he held under the suit properties.
7. It was the ex parte applicant's contention the cancellation of the whole parcels was illegal since the respondent did not have powers to cancel titles; it was the preserve of courts. The cancellation was also carried out without issuing him with notice and he was not afforded an opportunity to defend his interests over the suit properties.
8. Further, there was no evidence the interested party had carried out probate proceedings. It was the ex parte applicant's position the cancellation was malicious and done in bad faith without bona fide court orders.
9. The Office of the Attorney General ('AG') entered appearance for the respondent but did not file any documents in opposition to the motion. The interested party did not file any response to the motion.
10. Mr Opondo, counsel representing the ex parte applicant, filed written submissions dated 5/12/2022. Counsel submitted judicial review proceedings were anchored in Article 47 of *the Constitution* and Section 4 (1), (2) and (3) of the *Fair Administrative Action Act*.



11. Counsel submitted these statutory underpinnings were well enunciated in the case of *Geothermal Development Company Limited vs. Attorney General & 3 others* [2013] eKLR where the court stated: -

“Article 47 enshrines the right of every person to fair administrative action. Article 232 enunciates various values and principles of public service including “(c) responsive, prompt, effective, impartial and equitable provision of services” and “(f) transparency and provision to the public of timely, accurate information.”

As a component of due process, it is important that a party has reasonable opportunity to know the basis of allegations against it. Elementary justice and the law demands that a person be given full information on the case against him and given reasonable opportunity to present a response.”
12. Counsel submitted the 1st respondent did not inform the ex parte applicant or take steps to hear representations from him before cancelling the suit properties’ title documents. This ran afoul with Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act*. The cancellation was thus liable to be quashed by the honourable court.
13. According to counsel, Section 79 of the *Land Registration Act* outlined circumstances under which a land registrar could rectify a land register. However, from this provision of law, cancellation of titles was not one of the mandates donated to the land register. In that regard, counsel cited the case of *Republic vs. Chief Land Registrar & another ex parte Yosabia Kerubo Manyura* [2018] eKLR which held thus: -

“It is evident from the provisions of Section 79 (above) that the Land Registrar’s powers of rectification are limited to rectifying errors, mistakes or omissions that do not materially affect the interests of any proprietor...In my view, it is only the court that under Section 80(1) of the *Land Registration Act*, 2012 that has the power to direct the cancellation of a registration.”
14. In light of the above, counsel urged the court to deem the land registrar’s actions ultra vires, issue the orders sought and to revert the status quo ante. The AG and interested party did not file any submissions.
15. I have considered the ex parte applicant’s pleadings and submissions including the well cited provisions of law and authorities and I concur with them. I find the following 4 issues fall for determination: -
 - a. Whether the judicial review proceedings were statutory barred.
 - b. If the answer to (a) is in the negative, whether the 1st respondent acted ultra vires powers donated to it by Section 79 of the Land Registration Act.
 - c. If the answer to (a) is in the negative, whether the 1st respondent’s proceedings were conducted with procedural impropriety.
 - d. What orders should this court issue.

Whether the judicial review proceedings were statutory barred.

16. Section 9(2) and (3) of the *Law Reform Act* stipulates thus: -
 - (2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such



shorter period as may be prescribed, after the act or omission to which the application for leave relates.

- (3) In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

17. These provisions of law are replicated within the provisions of Order 53 Rule (2) of the [Civil Procedure Rules](#) which provides as follows: -

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

18. In the Court of Appeal decision of [Republic v Kenya National Highways Authority & 2 others ex-parte Amica Business Solutions Limited](#) [2016] eKLR, the court stated: -

“We are persuaded in this respect by the High Court decision in The Goldenberg Affair Ex-parte Hon. Mwalulu and Others, HCMA No. 1279 of 2004 [2004] eKLR, and Republic vs The Commissioner of Lands Ex-parte Lake Flowers Limited Nairobi, H.C. Misc. Application No. 1235 of 1998 where the courts held that the six (6) months limitation period set out in order 53 Rules 2 and 7 only applied to specific formal orders mentioned in Order 53 Rules 2 and 7 and to nothing else, certainly not to contents of one private letter in response to another.”

19. In another decision of the Court of Appeal of [Wilson Osolo v John Ojiambo Ochola & Another](#) 1995 eKLR, the court held thus;

“It can readily be seen that Order 53 Rule 2 (as it then stood) is derived verbatim from section 9(3) of the [Law Reform Act](#). Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil Procedure Rules that procedure cannot be availed of for extension of time limited by statute, in this case, the [Law Reform Act](#). There is no provision for extension of time to apply for such leave in the [Limitation of Actions Act](#) Cap 22 of the Laws of Kenya which gives some limited right for extension of time to the suits after expiry of a limitation period. But this Act also has no relevance here.”

20. A similar position was taken in [Republic vs. Director of Land Adjudication and Settlement & 2 Others](#) [2017] eKLR which stated: -

Section 9 of the [Law Reform Act](#), Cap 26 is very explicit in the time frame within which an order for certiorari may be applied and has similar provisions as the Civil Procedure Rules



aforestated. Section 9(3) of the Law Reform Act read together with Order 53 Rule 2 are couched in mandatory terms; Leave shall not be granted unless an application for leave is made not later than 6 months after the date of the decision.”

21. The provisions of Section 9 (2) and (3) of the Law Reform Act and Order 53 Rule (2) of the Civil Procedure Rules have been interpreted by the courts. It is quite clear upon the lapse of 6 months from the date of delivery of a judgment, order, decree, conviction or other proceeding, the court is constrained from granting leave to apply for an order of certiorari or entertain judicial review proceedings over the said judgment, order, decree, conviction or other proceeding.
22. In our case herein, the decision was rendered by the respondent on October 12, 2015. The application for leave was filed on November 23, 2022 which was visibly outside the statutory timelines. It appears the ex parte applicant was not privy of the decision until 9/11/2022. I sympathize with the ex parte applicant but my hands are tied.
23. Although it is the responsibility of the court to ensure executive action is properly exercised, this court is constrained. However, it appears the ex parte applicant has a good case and he is at liberty to pursue other legal avenues to approach this court and ventilate his case.
24. In view of the foregoing, it is my finding the motion dated November 13, 2022 is not competent and I hereby strike it out with no orders as to costs.
25. It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 5TH DAY OF OCTOBER 2023.

HON. A. Y. KOROSS

JUDGE

05/10/2023

Judgment delivered virtually through Microsoft Teams Video

Conferencing Platform in the Presence of:

Mr. Ooro F. h/b for Mr. Opondo for the ex parte applicant

N/A for the respondent

N/A for the interested party

Court assistant: Mr. Ishmael Orwa.

