



Mburu v Ruiru Sub-County Land Registrar (Judicial Review Application E014 of 2024) [2025] KEHC 2974 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
JUDICIAL REVIEW APPLICATION E014 OF 2024
FN MUCHEMI, J
MARCH 13, 2025**

BETWEEN

BENSON KINYUA MBURU APPLICANT

AND

RUIRU SUB-COUNTY LAND REGISTRAR RESPONDENT

RULING

1. Coming up for determination is the respondent’s Notice of Preliminary Objection dated 27th September 2024 on the grounds that the matter relates to the transfer of land/property which is a land issue. The respondent argues that being a land matter, the jurisdiction to hear and determine the same is a preserve of the Environment and Land Court (ELC) pursuant to Article 162(2)(b) of *the Constitution* as read together with Section 43(2) and (3) of the *Land Act* (No. 6 of 2012). Thus, by dint of Article 165(5)(b) of *the Constitution* as read with Section 43(2) and (3) of the *Land Act* (No. 6 of 2012) of the Laws of Kenya, this honourable court lacks the requisite jurisdiction to hear and determine the instant application.
2. Parties disposed off the preliminary objection by way of written submissions.

The Respondent’s Submissions

3. The respondent submits that the suit herein relates to a land matter and therefore the ex parte applicant has ignored the doctrine of exhaustion as envisaged under Section 9 of the Fair Administrative Actions Act. The respondent refers to the case of Republic vs Kenya Revenue Authority ex parte Style Industries Limited [2019] eKLR and argues that the judicial review court which is in equal standing with the ELC Court cannot review administrative decisions unless the applicants have exhausted all remedies available under any written law including alternative dispute resolution mechanisms.
4. The respondent submits that the *Environment and Land Court Act* No. 19 of 2011 (ELCA) gives effect to Article 162(2) of *the Constitution* which provides that the court was established to hear and



determine disputes relating to the environment, the use and occupation of, and title to land. Further, Article 165(5) of *the Constitution* of Kenya states that the High Court does not have jurisdiction over matters reserved for the Supreme Court, the Environment and Land court or the Employment and Labour Court. To support its contentions, the respondent relies on the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & 2 Others [2012] eKLR.

5. The respondent refers to Section 43(2) and (3) of the *Land Act* and submits that the instant case lacks merit in a judicial review court as the laid down procedure in the said provisions can only be challenged in the Environment and Land Court.
6. The respondent relies on the case of Municipal Council of Mombasa vs Republic & Umoja Consultants Limited (2002) eKLR and argues that a judicial review court does not concern itself with the merits of a decision but rather focuses on the process through which the decision was made. The respondent further argues that the ex parte applicant is inviting this court to dwell into the merits of registration of a parcel of land which the court has no mandate.

The Ex parte Applicant's Submissions

7. The ex parte applicant submits that he is seeking for orders of mandamus to compel the respondent to issue him with a certificate of official search and certified copy of the green card to land title number Ruiru/Ruiru East Block 2/13483. The application is based on the fact that the respondent without any lawful reason declined to issue the ex parte applicant with a certificate of official search and copy of green card despite his full compliance with all the registrar's requests. Thus the ex parte applicant argues that the respondent acted ultra vires by failing to issue him with a certificate of official search to the subject property in breach of its legal duty as a public officer and in flagrant breach of his constitutional rights to access information and fair administrative action.
8. The ex parte applicant submits that he has demonstrated in his substantive application that he perused all necessary channels for redress including writing to the respondent, the Directorate of Criminal Investigations as directed by the respondent, the Chief Land Registrar but none of the said efforts bore any fruit.
9. The ex parte applicant argues that the matter herein is an administrative issue touching on the actions of the respondent. The ex parte applicant relies on Section 9 of the *Land Act* and the cases of Okonga vs Inyangala & 3 Others [2024] KEHC 5906 (KLR); Republic vs Chief Land Registrar & 2 Others; ex parte Trojan Nomineer Ltd [2020] eKLR and Republic vs Chief Land Registrar & Another Criticos & Another (ex parte applicants) (Judicial Miscellaneous Application E011 of 2023) (2024) KEELC 1705 eKLR and submits that a land registrar is the custodian of government land records and is responsible for ensuring accurate and reliable records of land transactions.
10. The ex parte applicant submits that he seeks for orders of mandamus to compel the respondent to perform the administrative actions that it has failed to take as required by law being that the respondent has not provided any reason for its failure to perform its legal duties to him.
11. The ex parte applicant further submits that he is not inviting this honourable court to make any determination of any dispute relating to the environment, the use of and occupation of, and title to land as alleged by the respondent. On the contrary, the ex parte applicant invites the court to examine the manner in which the decision of the respondent denying to issue a certificate of official search was done.
12. The ex parte applicant relies on the case of Chief Constable of North Water Police vs Evans [1982] 1 WLR 1155 as cited in the case of The Commissioner of Lands vs Kunste Hotel Limited [1997] KECA



335 (KLR) and submits that judicial review is an examination of the manner in which a decision was made or an act done or not done. Thus, the ex parte applicant submits that his application seeks to compel the respondent to execute the duties placed in law.

13. The ex parte applicant relies on Article 165(3) of *the Constitution* of Kenya, Section 7 of the *Fair Administrative action Act* and the case of Republic vs Public Procurement Administrative Review Board, Kenya Civil Aviation Authority & Thales Air Systems ex parte Selex Sistemi Integrati [2008] KEHC 138 (KLR) and submits that the instant court has jurisdiction to hear the matter as it is an administrative law matter touching on the administrative conduct of the respondent as a public officer .

The Law

Whether the preliminary objection is sustainable.

14. The case of Mukisa Biscuits Manufacturing Ltd vs West End Distributors (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection. The court observed thus:-

.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

15. Sir Charles Newbold P. stated: -

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.

16. Similarly the Supreme Court in the case of Hassan Ali Joho & Another vs Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR held that:-

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

17. Further in the case of Hassan Nyanje Charo vs Khatib Mwashetani & 3 Others, [2014] eKLR the court held that:-

Thus a preliminary objection may only be raised on a 'pure question of law.' To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.

18. Evidently, a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.

19. The respondent argues that the instant suit is a land matter and therefore the instant court does not have jurisdiction and the matter ought to be heard by the Environment and Land Court.



20. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

21. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR that:-

A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

22. The jurisdiction of the High Court is provided for in Article 165 (3) of *the Constitution* as follows:-

3. Subject to clause (5), the High Court shall have: -

- a. Unlimited original jurisdiction in criminal and civil matters.
- b. Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- c. Jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- d. Jurisdiction to hear any question respecting the interpretation of this Constitution.....

5. the High Court shall not have jurisdiction in respect of matters: -

- a. Reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
- b. Falling within the jurisdiction of the courts contemplated in Article 162(2).

23. The applicant in the instant suit seeks for orders of mandamus to compel the respondent to issue him with a certificate of official search and certified copy of the green card to land title number Ruiru/ ruiru East Block 2/13483. The applicant states that he entered into a sale agreement with one Justus Muindi Mue dated 28th July 2015 but he was unable to complete the transfer of the property from the vendor to himself due to the frustrations at the Ruiru Land Registry. The applicant further states that his advocates held a meeting with the Lands Registrar on 15th March 2024 and the Land Registrar notified them of alleged suspicions against the registered proprietor for being involved in fraudulent dealings in land and directed him to inquire from the Directorate of Criminal Investigations Office at Juja Police Station on the status of the parcel of land and ascertain whether any complaint had been filed in relation to the subject land.

24. The respondent on the other hand argues that the matter involves transfer of land and therefore the same cannot be determined in judicial review proceedings but the Environment and Land Court.



25. It is trite that judicial review is concerned with the decision making process and not with the merits of the decision itself. In the case of *Municipal Council of Mombasa vs Republic & Another* [2002] eKLR, the Court of Appeal held as follows:-

Judicial review is only 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.

26. Similarly in *Zachariah Wagunza & Another vs Office of the Registrar, Academic Kenyatta University & 2 Others* [2013] eKLR where the court held:-

In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of law or its principles are instances of illegality...

27. It is clear therefore that the purpose of judicial review is to check public bodies or persons holding public authority and exercising their function do not exceed their jurisdiction and carry out their duties within the limit defined by the law. In the instant application, the court will have to look into the merits of the case in the event that it proceeds to hear the applicant. This is because the applicant alleges that he purchased the land from one Justus Muindi and these allegations require proof through evidence. The allegations of misconduct or failure to act by the Lands Registrar in his official capacity as well as allegations of fraud on the part of the registered proprietor have to be interrogated through evidence too. These are matters that clearly fall within the Environment and Land Court which has exclusive jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to land. The said court is equipped with the necessary jurisdiction to hear both sides and make a logical conclusion.

28. In that regard, this court lacks jurisdiction to hear and determine these proceedings which have been baptized as judicial review. Accordingly, the respondent's notice of preliminary objection dated 27th September 2024 has merit and is hereby upheld.

29. These proceedings are hereby struck out for lack of jurisdiction with costs to the respondent.

30. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE

