



Republic v Land Control Board Hamisi (Tiriki West Board); Ratori (Exparte Applicant) (Environment and Land Case Judicial Review Application E001 of 2023) [2024] KEHC 45 (KLR) (15 January 2024) (Ruling)

Neutral citation: [2024] KEHC 45 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E001 OF 2023
RE ABURILI, J
JANUARY 15, 2024
IN THE MATTER OF AN APPLICATION FOR LEAVE
FOR THE JUDICIAL REVIEW ORDER FOR MANDAMUS
AND
IN THE MATTER OF ENFORCEMENT OF COURT
ORDERS AND DECREE AGAINST THE GOVERNMENT
AND
IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT
AND
IN THE MATTER OF THE COUNTY GOVERNMENT ACT**

BETWEEN

REPUBLIC APPLICANT

AND

LAND CONTROL BOARD HAMISI (TIRIKI WEST BOARD) RESPONDENT

AND

ERICK ENOCK RATORI EXPARTE APPLICANT

RULING

1. This matter came up for directions under certificate of urgency on 22nd December 2023 before J. Kamau Judge of Vihiga, being the Recess Duty Judge. The learned Judge gave directions which were served on the applicant’s counsel on 5th January 2024 at 4.07pm.



2. The application as filed and dated 20th December 2023 was to be served and heard today interpartes. It is now 10.05am. The court started session at 9.00am and called out this matter but there is no appearance by any of the parties.
3. I would have dismissed the application dated 20th December 2023 for non-attendance to prosecute. However, the application has caught my attention on the issue of jurisdiction.
4. It is now settled law that jurisdiction is everything without which a court of law acts in vain.
5. The application for leave to apply for Judicial Review orders of Mandamus against the Tiriki West Land Control Board is in respect of Land Parcel No Nyangori/Gamalenga/666 to enable the said title to be transferred to the *Ex parte* Applicant as the bonafide purchaser thereof.
6. In the grounds and supporting affidavit, the *Ex parte* Applicant claims that there is a judgment in ELC Cause No E153 of 2022 delivered on 12th September 2023 and that todate, there has been no transfer of the said title of land to the *Ex parte* Applicant herein hence this application.
7. It is alleged that the Respondent has refused to sign documents to facilitate the transfer of the subject parcel of land to the *Ex parte* Applicant. The ELC matter is before Kisumu Chief Magistrate's Court and copy of decree in that case has been annexed to the sworn affidavit.
8. Having considered all the averments and depositions in the application, the question is whether this court has jurisdiction to hear and determine the application which is a purely land matter and more so, enforcement process of a decree issued by the Chief Magistrate's court exercising jurisdiction as an Environment and Land Court.
9. Article 162(2) (b) of the Constitution establishes the Environment and Land Court with jurisdiction conferred on the court under the Constitution and the Environment and Land Court Act and other Land Acts, to hear and determine disputes relating to the environment and the use and occupation of, and, title to land.
10. In addition, Section 13 of the Environment and Land Court gives jurisdiction to the Court and among the orders that the ELC is to make are Judicial Review or prerogative orders.
11. What is before me is a Judicial Review application. It is a continuation process of the enforcement of a decree of an ELC Chief Magistrate's Court.
12. Article 165(5) (b) of the Constitution expressly bars this court from hearing and determining disputes which are within the exclusive jurisdiction of the superior courts established under Article 162 (2) of the Constitution and the Supreme Court.
13. That being the case, I find and hold that this Court is devoid of any jurisdiction to hear and determine the application herein.
14. The application dated 20th December 2023 be and is hereby struck out for want of jurisdiction.
15. The applicant's counsel to be notified via email.
16. This Ruling to be typed forthwith.
17. File is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 15TH DAY OF JANUARY, 2024

R. E. ABURILI



JUDGE

