



**Republic v Attorney General & 4 others; Mbogho & 63 others (Exparte Applicants)
 (Environment and Land Judicial Review Miscellaneous Application E001 of 2025)
 [2025] KEELC 3819 (KLR) (Environment and Land) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3819 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT VOI
 ENVIRONMENT AND LAND
 ENVIRONMENT AND LAND JUDICIAL REVIEW
 MISCELLANEOUS APPLICATION E001 OF 2025**

EK WABWOTO, J

MAY 15, 2025

**IN THE MATTER OF ARTICLES 163(4)(A), 165(2)(B), 22, 23,
 27, 48, 50, 70 OF THE CONSTITUTION OF KENYA 2010**

IN THE MATTER OF ORDERS 53 RULES 1, 2 AND 3 OF THE CIVIL PROCEDURE RULES

**IN THE MATTER OF SECTION 4 AND 13(1) OF
 ENVIRONMENT AND LAND COURT ACT AND**

**IN THE MATTER OF SECTION 9 OF THE FAIR
 ADMINISTRATION ACTION ACT NO. 4 OF 2015**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW FOR
 ORDERS OF MANDAMUS CERTIORARI AND PROHIBITION**

**IN THE MATTER OF PETITION FORMERLY NO. 38
 OF 2021 MOMBASA AND NOW NO. E012 OF 2024 VOI**

IN THE MATTER OF VOI MUNICIPAL BLOCK 3 SUBDIVIDED TO 135 PLOTS

IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR LANDS ADJUDICATION AND SETTLEMENT 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT



CHIEF LAND REGISTRAR 4TH RESPONDENT

LAND REGISTRAR TAITA TAVETA 5TH RESPONDENT

AND

HERMAN MWAKITAU MBOGHO EXPARTE APPLICANT

ASHA MWAKE NDOLONGA EXPARTE APPLICANT

ANTHONY MAJIMBO BOMBO EXPARTE APPLICANT

NEWTON CHUMA MWAKIO & 60 OTHERS & 60 OTHERS & 60

OTHERS EXPARTE APPLICANT

JUDGMENT

1. By a Chamber summons dated 8th February 2025, the Applicant sought leave to apply for the Judicial Review Order of Mandamus against the Respondents.
2. Upon leave being granted, the Applicant filed this substantive motion dated 29th March 2025 seeking the following orders:-
 - i. That an order of Mandamus do and hereby issue directed to the Respondents compelling them jointly and severally to provide and release to the Applicants herein the list of the persons who were allocated plots created from the sub-division of the parcel of land known as Voi Municipality Block/3 situated just after crossing the old railway line and extending down the right side of the road to the Voi River when facing Mombasa side.
 - ii. That an order of Certiorari do and hereby issue for squashing of the illegal allocations made to the underserving and/or strangers who owned no land but were illegally allocated plot(s).
 - iii. That an order do and hereby issue to the Respondents jointly and severally to show cause against detention in civil jail for non compliance with the court orders herein.
 - iv. That the honourable court be pleased such or further orders it deems fit to grant in the interests of justice.
 - v. That costs of this application be provided for.
3. The application was canvassed by way of written submissions. No response nor submissions were filed by any of the Respondents herein. The Applicant filed written submissions dated 7th April 2025 which were also highlighted on the 6th May 2025.
4. It was the Applicant's case that the Applicants herein seeks from this court orders of Mandamus to issue compelling the Respondents herein jointly and severally to provide and release to the Applicants, the list of the persons who were allocated plots created from the sub-division of the parcel of land known as Voi Municipal/block 3 situated just after crossing over the old railway line and extending down the right side of the road to the Voi River when facing Mombasa side.
5. That the order is specifically sought for enforcing obedience and compliance of the judgment and decree of the court in formerly Mombasa ELC Petition No. 38 of 2021 now Voi E012 of 2024 delivered on the 15th May 2023 and decree issues thereafter on the 1st July 2024.



6. That not only that the Respondents herein were represented in the said petition by the office of the Attorney General to the end of the petition but also after the judgment, the Respondents were again served with a letter by the Applicants demanding compliance of the said decree.
7. That to date there has been no compliance from the Respondents, clearly demonstrating deliberate refusal and disrespect of the court's decree and/or orders.
8. That the said judgment and the decree of the court has not been stayed varied and/or vacated at all as at the filing hereof, hence the judgment and the decree of the court in formerly Mombasa ELC Petition No. 38 of 2021 now Voi E012 of 2024 still subsists and remains in force todate.
9. It is on the basis of the foregoing that the Applicants have been left with no other legal recourse for enforcement of the decree of the court other than approaching this honourable court as they have done.
10. It was contended that the Applicants claim their land Voi Municipal/Block 3 which they have for decades been in their possession, occupation, use and cultivation. It was also contended that the Applicants were made to believe that the subdivision was to make them legal owners by being issued with title deeds for the plots created from the subdivision. However after the subdivision was completed, the Respondents herein secretly went on dishing out the plots to other parties and themselves. The Applicants came to know of the illegality after the title deeds had been issued and processed.
11. Relying on the cases of Republic =Versus= Director Kenya School of Law (2024) eKLR and Teachers Service Commission =Versus= Kenya Union of Teachers & 2 Others (2013) eKLR it was submitted that this court has jurisdiction to grant the relief sought by virtue of Article 23(3)(e) of *the Constitution*.
12. The court was urged to grant the reliefs sought together with the costs of the application.
13. The court has considered the application dated 29th March 2025 and notes that the said application has introduced new and additional reliefs which were not in the application for leave dated 8th February 2025 that had been granted by the court. The new and additional reliefs include the following:-
 - i. That an order of Certiorari do and hereby issue for squashing of the illegal allocations made to the underserving and/or strangers who owned no land but were illegally allocated plot(s).
 - ii. That an order do and hereby issue to the Respondents jointly and severally to show cause against detention in civil jail for non compliance with the court orders herein.
14. In judicial review proceedings a substantive motion cannot introduce new reliefs that were not specifically sought in the application for leave. The application for leave is a crucial step and the reliefs sought therein should align with those pursued in the substantive motion. A party is not allowed to introduce new and additional reliefs without obtaining leave. In considering the issue, this court is guided by the case of R(on the application of Hilingdon LBC) =Versus= Secretary of State for Transport (2010) EWHK 626 (Admn) where the court emphasized that judicial review is not an open ended process where applicants can raise new grounds and or reliefs after the leave application has been granted. See also the case of Republic =Versus= Were & 2 Others; Makhame & 8 Others (exparte) Judicial Review E001 of 2024 where the court equally addressed itself on the issue of introducing new reliefs not sought during the leave stages.
15. In view of the foregoing, it is the finding of this court that the application dated 29th March 2025 is unmerited and the same is dismissed. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 15TH DAY OF MAY 2025.

E. K. WABWOTO



JUDGE

In the presence of:-

Mr. Mwinzi for the Applicants.

N/A for Respondents.

Court Assistants: Mary Ngoira and Norah Chao.

