



**Benson v Kimani t/s GN Kimani & Associates Advocates
(Environmental and Land Originating Summons E005 of 2024)
[2025] KEELC 3590 (KLR) (Environment and Land) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3590 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2024**

MC OUNDO, J

MAY 8, 2025

BETWEEN

MARGARET WANJIRU BENSON APPLICANT

AND

**GEORGE N KIMANI T/S GN KIMANI & ASSOCIATES
ADVOCATES RESPONDENT**

RULING

1. Before me for determination is a Notice of Motion Application dated 31st December 2024 brought under the provisions of section 3A & 3B of the *Civil Procedure Act* 2010 and Order 37 Rule 16 of the Civil Procedure Rules where the Applicant seeks from the District Land Registrar Naivasha, records relating to land parcel No. Naivasha/Maraigushu Block 1/4428 including but not limited to the Green Card, subdivisions and or Mutations if any and warrants of arrest to issue in default.
2. The said Application was supported by the grounds therein as well as the Supporting Affidavit of even date sworn on 16th December, 2024 by Margaret Wanjiku Benson, the Applicant herein who deponed that the present suit was ready for trial hence the need for directions on the hearing as required by Rule 16 of Order 37 of the Civil Procedure Rules. That on various dates, she had applied for a search and Certified Copy of the Green Card in respect of Naivasha/Maraigushu Block 1/4428 (the Estate of her late mother Eunice Wangari Kigwa) from the District Land Registrar Naivasha who had deliberately, arrogantly and rudely refused to supply her with the aforesaid document.
3. That whereas the District Land Registrar as a public officer had a positive duty to provide her with the said documents, the Court too had power to direct the production of the same from the said Registrar.



4. That there was a lingering feeling that the District Land Registrar was acting at the behest of some interested parties against her interest as a beneficiary of the estate. That it was in the very best interest of justice that she was provided with the said search and Green Card which were germane to the present proceedings otherwise she would be prejudiced at the hearing.
5. In response to the Application, vide his Replying Affidavit dated 28th January, 2025 sworn by George N. Kimani Advocate, the Respondent deponed that the Application was mischievous and bad in law hence the same should be dismissed with costs. That further, the Application was inept and seemed to have been made on lack of appreciation of the process governing registration of mutation and issuance of incised/mutated title deed from the mother title deed as in the instant case.
6. That further, the application was un-procedural and an abuse of the court process, the Land Registrar not being a party and further that the prayers that had been sought had bordered on Judicial Review proceedings under principles of mandamus and certiorari where the Applicant sought a public officer to do something and hence it was only prudent that the Applicant ceased mixing up issues and prejudicing him. He also deponed that the cause of action herein should have been lodged in a suitable judicial division for which this court lacked jurisdiction.
7. That the introduction of new parties to the matter herein, particularly public officers who were alleged not to have provided information or documents to the Applicant could be best dealt with after the withdrawal of the instant case against himself as it was embarrassing.
8. That the Applicant's deceased mother and the instructing client had deposited the mother title deed to Naivasha/Maraigushu Block 1/4428 wherein the original Title Deed and original Mutation Form had been lodged at Naivasha Lands Office. That out of the said mother title, various incised parcels of land had been registered to third parties' names hence it was obvious that a search on the mother title deed had required a pre-process for which the Applicant ought to have liaised with the Land Registrar instead of bringing frivolous application which had continued to prejudice and cause him loss and costs. That however, the copies of the mother title deed and the mutation form were available at their office.
9. That further the Applicant ought to institute a Succession Cause so as to deal with the estate of the deceased as required by the law and to enable all interested parties join in the same instead of instituting half-baked claims against innocent parties. He thus sought that the instant Application be dismissed.
10. Vide a Replying Affidavit sworn on the 24th January 2025, the Land Registrar based at the Naivasha Land Registry, opposed the Applicant's Application deponing that an application for the official search documents for title number Naivasha/Maraigushu Block 1/4429 had not been booked in their office them having tried to trace the same in their records to no avail. Secondly, that the letter dated 16th November 2024 had not been received at their offices as the same did not reflect in their office mails. That she had neither refused, failed and or neglected to provide the said official search.
11. In rejoinder, the Applicant, vide a Further Affidavit to the Land Registrar's Replying Affidavit, deponed that the said Land Registrar's quote of a different parcel of land being Naivasha/Maraigushu Block/4429 instead of Naivasha/Maraigushu Block/4428 had been deliberate and aimed to mislead the court.
12. That the search had been booked and the search application form duly stamped by the registry. That one Mr. Moses Nzomo whom she had sent to apply for the search had informed her that one Mr. Ritho, the Registrar had grabbed the original search application form from him and forcefully pushed him out of his office when he had tried to complain about the delay in the search result.



13. That the conduct of the land Registrar Naivasha had been dilatory and a mischievous attempt to deflect the attention and focus of the court since all that the registrar had been required to do, as a public officer, was simply to produce the records to the court.
14. The Application was disposed of by way of written submissions, wherein the Applicant vide her submissions dated 21st February, 2025 in support of her Notice of Motion summarized the factual background of the matter as well as the proceedings herein and submitted that the Respondent had formed unholy alliance with the Land Registrar so that neither she nor her advocate could even secure a land search at the Lands Office-Naivasha. That it had been out of such frustration that she had filed the instant application wherein she had sought warrants of arrest against the Registrar if he refused to co-operate.
15. That indeed, on 7th January, 2025 the Court had directed that the Land Registrar files an affidavit on an update on the subject issue. She reiterated that whereas the parcel for which information was sought had clearly been described in the body of the Application and in the court's order dated 7th January 2025 as Naivasha/Maraigushu Block 1/4428, the Land Registrar had chosen to update the court on a different property namely Naivasha/Maraigushu Block 1/4429.
16. That the Land Registrar was a public officer and under duty to act bona fide and in the best interest of the public for which her conduct amounted to contempt and must be punished. That despite having been informed that she had provided the wrong details, to date the Land Registrar had maintained her obstinate attitude. That since the court had a duty to protect the rights of the Applicant from deliberate violations by the Respondent and the Land Registrar, the instant Application should be allowed as prayed.
17. In response and in opposition to the Applicant's Application, the Respondent vide his submissions dated 25th February, 2024 submitted that the prayers sought by the Applicant were misplaced as far as the provisions of law were concerned because they had fallen under matters on Judicial Review the District Land Registrar Naivasha having refused to do something, to wit, availing land records on the suit parcel. That the Land Registrar could only be summoned by parties as witness and therefore the Court lacked jurisdiction to do what it was being asked to do. Reliance was placed on the decided case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited [2012] eKLR to submit that the mandate of the court flowed from the Constitution or specific law.
18. That there had been no evidence depicting that the Applicant had either booked the respective file for search or paid the requisite fees wherein she was denied access to the file. That the Land Registrar was the custodian of the legal conveyance documents, in the instant suit, she had deponed that the Applicant had not sought for or filled the form for search. He thus urged the court to order the Applicant to duly approach the lands office and comply with land search requirements.
19. That his office had provided the Applicant with the copies of the land conveyance documents and useful information as had been instructed by his deceased client wherein the Applicant chose to liaise casually with the lands office and had now shifted blame from the Respondent to the Land Registrar by alleging refusal to access the documents.
20. That the instant Application ought to be dismissed with costs and the Applicant be ordered to approach court against the Land Registrar if at all under the correct provision of the law.
21. He also sought for the dismissal of the main suit herein since it was now clear that the Applicant's was not the Respondent.



22. In rejoinder to the Respondent's submissions, the Applicant vide her Supplementary Written Submissions dated 3rd March, 2025 submitted that the Respondent had usurped the role of the Land Registrar and submitted to matters that he could not ordinarily know being whether or not a booking for a search had been submitted to the Land Registrar. That on the contrary, she had annexed evidence to that effect in her affidavit.
23. That pursuant to the provisions of Section 3 and 69 of the *Evidence Act*, public officers including the Land Registrar could be summoned to produce public records as was held in the decided case of R v S Land Registrar Kajiado; Ex parte Joyce Wanjiru Kaguona [2019] eKLR that a registrar could be compelled to produce land documents even if they were not a party to the suit. Further reliance was placed on the provisions of section 69 of the *Land Registration Act* as well as the decisions in the cases of Republic v Chief Land Registrar Thika & Another; Ex Parte Peter Kimani Gichuru [2018] eKLR and Republic v Chief Land Registrar & Another; Ex Parte James Muigai Thuo [2017] eKLR to submit that the Land Registrar could be summoned to give evidence or produce documents.
24. That whereas the court had on 7th January 2025 directed the Land Registrar Naivasha to file an Affidavit and produce the records, the registrar had complied but filed the wrong parcel of land. That subsequently, the Respondent could not try to contradict the court's well considered directions by trying to suggest that the Applicant ought to have filed a Judicial Review Application.

Determination.

25. I have considered the application dated 31st December 2024, the opposition thereto the submissions and authorities therein as well as the law. The gist of the Applicant's application is that she seeks from the District Land Registrar Naivasha, records relating to land parcel No. Naivasha/Maraigushu Block 1/4428 including but not limited to the Green Card, subdivisions and or Mutations if any for reason that despite submitting a search application form which was duly stamped by the registry, the Land Registrar had failed or neglected to supply them.
26. The application was opposed by the Respondent on the ground that it was inept and lacked of appreciation of the process governing registration of mutation and issuance of incised/mutated title deed from the mother title deed as in the instant case. That further, the application was un-procedural and an abuse of the court process, first because the Land Registrar was not a party and secondly the prayers sought bordered on Judicial Review proceedings under principles of mandamus and certiorari where the Applicant sought from a public officer to do something and therefore the Application ought to have been filed in the High Court in a suitable judicial division. That the Applicant should withdraw the suit against him with costs so that she could liaise with the land registry where all the documents for land parcel No. Naivasha/Maraigushu Block 1/4428 were domiciled.
27. I find the question for determination as being whether or not the Applicant should be granted the orders sought.
28. It must be pointed out that this Application was filed by a layperson under the wrong provisions of the law to wit Order 37 rule 16 of the Civil Procedure Rules which stipulates the procedure to be taken by the Registrar of the Court upon the filing of Originating Summons. However, it is my humble opinion that the same is not fatal and is curable pursuant to the Provisions of Article 159 (2) (d) of *the Constitution*.
29. Indeed, from the Applicant's application she only required the above captioned documents for preparation of her suit. The court is satisfied that the Applicant is entitled to said documents not



only under the provisions of the Civil law but also pursuant to the provisions of Article 35 (1) of *the Constitution* of Kenya and Section 4(1) of the *Access to Information Act*.

30. To this effect, and since there is no case before me save for the Application, the court directs the land Registrar Naivasha to furnish the Applicant with a copy of the search, a copy of the Green card and Mutation form, if any, to land parcel No. Naivasha/Maraigushu Block 1/4428 within 14 days upon the delivery of this ruling.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 8TH DAY OF MAY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

