



Republic v County Government of Kiambu; Kenya Rural Roads Authority & 3 others (Interested Parties); National Land Commission (Exparte) (Judicial Review E003 of 2025) [2025] KEELC 4896 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4896 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW E003 OF 2025**

JA MOGENI, J

JUNE 26, 2025

**IN THE MATTER OF AN APPLICATION BY THE NATIONAL
LAND COMMISSION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW AND AN ORDER FOR MANDAMUS**

AND

**IN THE MATTER OF ARTICLE 67 OF THE CONSTITUTION OF
KENYA 2010**

AND

**IN THE MATTER OF SECTION 78 OF THE LAND LAW
AMENDMENT ACT, 2016**

AND

**IN THE MATTER OF SECTIONS 107 & 111 1(A) OF THE LAND
ACT NO. 6 OF 2012**

AND

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES, 2010**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF KIAMBU RESPONDENT

AND



KENYA RURAL ROADS AUTHORITY INTERESTED PARTY
DOMINIC MBUGUA WAINAINA INTERESTED PARTY
JULIUS KIIRU MWAURA INTERESTED PARTY
VERONICA MBUTU NJUNGE INTERESTED PARTY

AND

NATIONAL LAND COMMISSION EXPARTE

RULING

1. Before this Court is a Chamber Summons Application dated 12/03/2025. The Application is brought under Article 67 of the Constitution of Kenya, 2010, Sections 8 & 9 of the Law Reform Act, Cap 26, Order 53 Rule 1 and 2 of the Civil Procedure Rules, 2010, Section 78 of the Land Laws Amendment Act, 2016, Section 107 and 111 1(A) of the Land Act, 2012, Section 13 of the Environment and Land Court Act.
2. The Ex Parte Applicant seeks for orders:
 1. Spent
 2. Leave be granted to the ex parte Applicant to apply for the Judicial Review order of mandamus directing and compelling the Respondent to forthwith furnish the Commission with the money required to pay the 2nd -4th Interested Parties compensation for the compulsory acquisition of their land
 3. In the alternative, an order of mandamus be issued directing and compelling the Respondent to directly pay the 2nd and 4th Interested Parties compensation as ordered by Justices Gacheru and Kemei for the compulsory acquisition of their land.
 4. Costs of the Application in favour of the ex parte Applicant.
3. The Application is supported by the grounds on the face of it, and on the grounds in the accompanying Statutory Statement, and in Verifying Affidavit deponed by Brian Ikol, ex parte Applicant's Director Legal Affairs – both similarly dated as the Application.
4. It is the ex parte Applicant's case that the Commission conducted Review of Grants and Disposition proceedings related to the 2nd - 4th Interested Parties' land in 2017 leading to a determination which stated that they had encroached on the road reserve meant for the construction of link road E1507. They were requested to remove the development that had been made on the land.
5. That the 2nd – 4th Interested Parties filed Judicial Review No. 4 of 2017 challenging the Commission's determination and it culminated with the quashing of the Commission's decision by the Court and the issuance of status quo orders.
6. By way of plaint dated 21st March 2018 the 2nd - 4th Interested Parties filed a suit against the ex parte Applicant and the 1st interest parties seeking among other orders that a declaration that they are entitled to fair compensation the compulsory acquisition of their land for the construction of link road E1507 and interest at Court rates from the date of the filing of the suit until payment in full.



7. It is the ex parte Applicant's averment that the suit was contested by the 1st Interested Party (KeRRA hereinafter) but the Commission was unable to participate in the case and did not therefore enter appearance or file a statement of defence opposing the allegations.
8. That KeRRA testified through its witness that the road was transferred to the County Government of Kiambu and all documents related to it had been given the County Government. At the conclusion of the case a Judgment was issued by Justice Gacheru on 25/10/2019 in which orders for payment of compensation, interest at Court rates and costs were entered in favour of the 2nd - 4th Interested Parties.
9. Thus, the amounts owed to the 2nd - 4th Interested Parties were calculated as follows:
 - a. The 2nd Interested Party be paid the sum of Kesh 8,181,525
 - b. The 3rd Interested Party be paid the sum of Kesh 9,688,750
 - c. The 4th Interested Party be paid the sum of Kesh 8,178,250
 - d. Interest on all the above at 12% from 23rd March 2018 until 22nd March 2022 for a total of Ksh 12,503,292/-
10. The 2nd - 4th Interested Party were also awarded costs of the suit which were taxed at Kesh 362,483.80/-. The figures all add up to a total of Kesh 38,914,300.80/-.
11. At the same time the 2nd-4th Interested Parties filed a Miscellaneous E050 OF 2022 before Thika Environment and Land Court seeking an order of Mandamus to compel the Commission's Secretary/ Chief Accounting Officer to pay the above sums. Vide a Ruling delivered on 27/09/2023 by Justice Kemei they were granted the order of Mandamus. Further the ex parte Applicant prayed for and was granted a 30 (thirty) day stay of execution which has since lapsed.
12. That despite the Commission's effort to liaise with the Respondent to comply with both Justices Gacheru's and Kemei's orders to facilitate payment, but it has been unsuccessful since the Respondent has not been receptive to its requests.
13. It is the Ex parte Applicant's averment that they it was not involved in the compulsory acquisition of the 2nd - 4th Interested Parties' land and that the said compulsory acquisition was not done in accordance with the provisions of Part VIII of the Land Act, 2012.
14. That during the hearing of Thika ELC Case No. 94 of 2018 KeRRA adduced evidence that control over the construction of the link road E1507 was ceded to the County Government of Kiambu. That this fact was acknowledged in Justice Gacheru's Judgment and is not disputed by the 2nd - 4th Interested Parties.
15. That since it is the Commission clothed with the mandate to pay compensation following the compulsory acquisition of land, the Commission per Justice Gacheru's Judgment and Justice Kemei's Ruling is now required to pay the 2nd - 4th Interested Parties for the acquisition of their land. That however, Section 111 1(A) of the Land Act 2012 (amended by Section 78 of the Land Laws Amendment Act, 2016) provides that for the Commission to make these payments, it has to be furnished with funds by the acquiring body.
16. The Ex parte Applicant contends that it has been proven that the entity that acquired the land and constructed the road thereon without the involvement of the Commission is the County Government of Kiambu. Therefore, though an order of Mandamus has been issued by law, compliance can only happen when the County Government of Kiambu forwards the money needed to the Commission. With the money the Commission will be unable to pay despite the mandamus order.



17. That an order directing the Respondent to pay them the money directly will also suffice to resolve the issue. That it is just and fair that the orders sought are granted to ensure that the 2nd - 4th Interested Parties are paid the compensation owed so as to ensure that adverse orders are not unfairly issued and enforced against the Commission and its CEO/Secretary.
18. The application is opposed vide a Replying Affidavit filed by the 2nd Interested Party with the authority of the 3rd and 4th Interested Parties dated 24/04/2025.
19. It is the contention of the 2nd - 4th Interested Parties that the ex parte Applicant has a legal and constitutional duty to ensure that it received money to compensate the 2nd, 3rd and 4th Interested Parties before gazetting their land as public land. The act of gazettelement enabled the 1st Interested Party and/or Respondent to enter the suit property and develop public roads thereupon.
20. Thus the Ex parte Applicant failed in its legal constitutional duty and should ensure the 2nd - 4th Interested Parties are compensated. Further that the Judgment giving rise to this application was made on 15/06/2020 and it has taken the Ex parte Applicant almost five (5) years to make attempts to comply with the Judgment and this is an inordinate delay which is not excusable.
21. The 2nd - 4th Interested Parties aver that all they need is to be compensated through the Ex parte Applicant since the bodies who acquired their land and the ones charged with the role of compensation are all government bodies. To which the 2nd - 4th Interested Parties have no control over and therefore the 2nd - 4th Interested Parties should not be enjoined in this suit.
22. They contend that if the Ex parte Applicant had been vigilant, it would have made the Respondent the 3rd Interested Party in the initial suit wherein the issue of who between the 1st Interested Party and the Respondent was responsible to compensate for the parcels of land was canvassed.
23. On its part, the 1st Respondent in response filed a Replying Affidavit sworn by Josphat Mugucia Njuguna on 2/04/2025 a surveyor in the employment of Kenya Rural Roads Authority (KeRRA - the Interested Party herein) as the Acting Deputy Director for Survey Department and hence authorized to swear the Replying Affidavit.
24. It was his averment that as per paragraph 14 of the Chamber Summons dated 12th February 2025 by the Ex Parte Applicant, the 1st Interested Party demonstrated in ELC Case No. 94 of 2018 that link road E 1507 is not under the mandate of the 1st Interested Party. Further that according to him as per the Judgment dated 15th June 2020 of Thika ELC Case No. 94 of 2018 it was held that the link road is not under the mandate of the 1st Interested Party and a copy of the Judgment was annexed and marked J.M.N 1.
25. It was his case that following that findings of the Judgment therefore the 1st Interested Party is not responsible for payment of compensation for compulsory acquisition to the 2nd, 3rd and 4th Interested Parties.
26. Further based on that same Judgment the 1st Interested Party contests that it is not responsible for furnishing the Ex Parte Applicant with money to facilitate compensation for compulsory acquisition of the suit properties. That infact based on the averments of paragraphs 4 to 7 of the Replying Affidavit filed by the 1st Interested Party, the 1st Interested Party ought to be struck out as a party to this suit.
27. The application was canvassed by way of written submissions. At the time of writing this Ruling only the Ex Parte Applicant had filed their submissions dated 23/05/2025 which I have considered in writing this Ruling.



28. The gist of the Ex Parte Applicant's submissions are that the law under Section 111 1(A) clearly lays out where the funds needed for payment of fees related to compulsory acquisition of land including compensation should emanate from. Thus, the Ex Parte Applicant submits that having been identified as the acquiring body and the entity in charge of the road the was constructed on the suit property, then the Respondent which is the county government bears the responsibility of ensuring that the compensation owed is paid. That the 2nd to 4th Interested Parties who are owed are paid by the Respondent who needs to either forward the money to the NLC for onward transmission or pay it off directly.
29. That infact it is important that the Respondent forwards the money as soon as possible so that the NLC is able to purge its CEO/Secretary's contempt. The Applicant thus submits that it is entitled to orders sought being an order of mandamus compelling the County to either furnish it with the PAP's compensation money or make the payment directly itself. The ex-parte Applicant therefore prays that its application be allowed with costs.
30. The Ex parte Applicant relied on the cases of Patrick Musimba vs. The National Land Commission & 4 Others [2016] eKLR and ELC Reference 1 of 2018; National Land Commission And Afrison Import Export Limited & Others [2019] eKLR; to support its position.

Analysis and Determination

31. The first issue for the Court's determination is whether the Ex parte Applicant is entitled to Judicial Review orders sought.
32. The nature of Judicial Review orders was aptly discussed in the case of Republic vs. Director of Immigration Services & 2 Others Exparte Olamilekan Gbenga Fasuyi & 2 Others (2018) eKLR as follows:-

“... It is common ground that the prayers sought are Judicial Review remedies and the rules governing grant of Judicial Review orders do apply. Judicial Review is about the decision-making process, not the decision itself. The role of the Court in Judicial Review is supervisory. It is not an appeal and the Court should not attempt to adopt the forbidden appellate approach. Judicial Review is the review by a Judge of the High Court of a decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction- reflecting the role of the Courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised. Judicial Review is a means to hold those who exercise public power accountable for the manner of its exercise. The primary role of the Courts is to uphold the fundamental and enduring values that constitute the rule of Law. Judicial Review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. As long as the process followed by the decision-maker are proper, and the decision is within the confines of the Law, a Court will not interfere.”

33. According to Halsbury Law of England 4th EDN. Vol. 1 (1) para 12 page 270:

“The remedies of quashing orders (formerly known as orders of Certiorari) prohibiting orders formerly known as orders of prohibition (mandatory orders formerly known as orders of mandamus) ... are all discretionary. The Court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the Court will take into account the conduct of the party applying and consider whether it



has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the Court declining to grant relief.”

34. Further, in *Chief Constable of the North Wales Police VS Evans* (1982)1 WLR 1155 e Lord Brightman noted:

“Judicial Review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the Court is observed, the Court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power ... Judicial Review, as words imply, is not an appeal from a decision but a review of the manner in which the decision was made.”

35. Order 53 Rule 1 of the Civil Procedure Rules provides that no application for Judicial Review orders should be made unless leave of the Court has been sought and granted. It states inter alia, as follows-

- “(1) No application for an order of Mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rules
- (2) An application for such leave as aforesaid shall be made ex-parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the Applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.
- (3) The Judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.”

36. The reason for the leave was explained by Waki J (as he then was) in *Republic V County council of Kwale & Another Ex-parte Kondo & 57 Others*, Mombasa HCMCA No 384 of 1996 as follows-;

“The purpose of application for leave to apply for Judicial Review is firstly to eliminate at an early stage any applications for Judicial Review which are either frivolous, vexatious or hopeless and secondly to ensure that the Applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for Judicial Review is designed to prevent the time of the Court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for Judicial Review of it were actually pending even though misconceived... leave may only be granted therefore if on the material available the Court is of the view, without going into the matter in dept that there is an arguable case for granting the relief claimed by the Applicant the test being whether there is a case fit for further investigations at a full inter partes hearing of the substantive application for Judicial Review. It is an exercise of the Court’s discretion but as always it has to be exercised judicially.”

37. Granting of leave to file for Judicial Review is an exercise of the Court’s discretion, but as always it has to be exercised judiciously.



38. From the foregoing, in an Application for leave, such as the instant one, this Court ought not to delve deeply into the arguments of the parties; but should make cursory perusal of the evidence before it [Court] and make the decision as to whether an Applicant's case is sufficiently meritorious to justify leave.
39. The Court also in the case of Republic v National Transport & Safety Authority & 10 Others [2014] eKLR, held that in Judicial Review, the threshold for obtaining leave to commence is low and obtaining leave is not in itself evidence of a strong case. In order to obtain leave to commence Judicial Review proceedings, an Applicant only needs to show that he has an arguable case.
40. Like in the instant matter, the gist of the Application before this Court is that the Applicant is seeking for leave to commence Judicial Review proceedings for orders of Mandamus. It is not contested that the Court awarded compensation to the 2nd -4th Interested Parties who obtained mandamus orders against the Ex Parte Applicant herein to pay up the decreed sum to the 2nd to 4th Interested Parties in Thika ELC 94 OF 2018.
41. Having invoked the Judicial Review jurisdiction of this Court, it was upon the Applicant to demonstrate an arguable case that requires ventilation at a substantive hearing. I have carefully perused through the record and submissions. A prima facie case is established to warrant the grant of the leave sought.
42. In the end, I find that the Application dated 12/03/2025 for leave has merit.
43. I proceed and grant the following orders:-
- i. Leave to file Judicial Review order of mandamus directing and compelling the Respondent to forthwith furnish the Commission with the money required to pay the 2nd - 4th Interested Parties compensation for the compulsory acquisition of their land is granted.
 - ii. The Applicant shall file and serve the substantive Motion within 14 days of today's date.
 - iii. The Respondent shall file and serve its responses to the application within 14 days of service.
 - iv. The Applicant shall thereafter file and serve its submissions within 10 days.
 - v. The Respondent shall file and serve their submissions within 10 days of service.
 - vi. The matter will be mentioned on 15/10/2025 to report compliance.
 - vii. Cost shall be in the cause.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 26TH DAY OF JUNE 2025
VIA MICROSOFT TEAMS.**

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MOGENI J

JUDGE

In the presence of:

Applicant – Absent

Respondent – Absent



Ms. Bosire for the 1st Interested Party

Mr. Njuguna holding brief for Mr. Kimathi for the 2nd, 3rd and 4th Interested Parties

Mr. Koceyo Titus for the Ex parte Applicant

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

