



**Republic v Land Registrar, Machakos County; Mutua (Exparte Applicant)
 (Environment and Land Judicial Review Miscellaneous Application
 E002 of 2024) [2025] KEELC 4733 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4733 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
 ENVIRONMENT AND LAND JUDICIAL REVIEW
 MISCELLANEOUS APPLICATION E002 OF 2024**

NA MATHEKA, J

JUNE 25, 2025

IN THE MATTER OF ENVIRONMENT AND LAND COURT ACT NO. 19 OF 2011

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012

**AND IN THE MATTER OF A JUDICIAL REVIEW APPLICATION FOR AN ORDER OF
 MANDAMUS UDDER SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CHAPTER
 26 LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

BETWEEN

REPUBLIC APPLICANT

AND

THE LAND REGISTRAR, MACHAKOS COUNTY RESPONDENT

AND

ROSEMARY M. MUTUA EXPARTE APPLICANT

JUDGMENT

1. The application is dated 9th October 2024 and is brought pursuant to leave granted on 3rd October, 2024, Section 19 of the [Land Registration Act](#), Section 8 of the [Law Reform Act](#) Chapter 26 Laws of Kenya and Order 53 of the Civil Procedure Rules, 2010 seeking the following orders;



1. That the Honourable Court be pleased to issue an order of mandamus, to compel the 1st and 2nd Respondents to ascertain and fix boundaries for parcel No. Donyo Sabuk/Komarock Block 1/20712, 20713, 20714, 20715 and 20716.
 2. That the costs of this Application be provided for by the Respondents jointly and severally.
 3. Such further and other reliefs as this Honourable Court may deem just and expedient to grant.
2. It is based on grounds as set out in the Statements of Facts dated 26th August, 2024 and Verifying Affidavit sworn by Rosemary M. Mutua on 26th August, 2024 and all filed with Application for leave. This was granted by the court on the 3rd October 2024 and a substantive motion was filed thereafter.
 3. This court has considered the application and the submissions therein. The Respondents were served but failed to file any response. The purpose of judicial review was enunciated in the case of *Municipal Council of Mombasa vs Republic Umoja Consultants Ltd*, Nairobi Civil Appeal No.185 of 2007(2002) eKLR, where the Court of Appeal held that;

The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who make the decision have the power i.e. the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.

4. It is trite law that a court exercising judicial review jurisdiction is only concerned with the procedural propriety of a decision and not the merits. The court cannot be invited in a judicial review proceeding to act as an appellate court to reverse the decision of the 1st Respondent.
5. This position was adopted by the court in *Associated Provincial Picture Houses, Ltd. vs Wednesbury Corporation* (1947) 2 All E.R 680. As a result, it is only in exceptional circumstances that the court can consider merits of a decision. These exceptional circumstances were enumerated by the learned Mumbi Ngugi J in *Republic vs Public Procurement Administrative Review Board & 2 others Ex Parte - Sanitam Services (E.A) Limited* (2013) eKLR, while citing the *Associated Provincial Picture Houses Ltd. vs Wednesbury Corporation* (supra) namely:

where the administrative body has acted outside its jurisdiction, has taken into account matters it ought not to have taken into account, or failed to take into account matters it ought to have taken into account; or that it has made a decision that is ‘so unreasonable that no reasonable authority could ever come to it.’”

6. The remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision- making process as was held by Mumbi Ngugi J in the case of *Republic vs Public Procurement Administrative Review Board & 2 others Ex Parte - Sanitam Services (E.A) Limited* (supra);

That the purpose of the remedies availed to a party under the judicial review regime is to ensure that the individual is given fair treatment by the authority to which he has been subjected. The purpose is not to substitute the opinion of the court for that of



the administrative body in which is vested statutory authority to determine the matter in question.”

7. It was incumbent upon the Applicant to demonstrate that the decision-making organ, in this case, the 1st Respondent acted ultra vires in making the impugned decision. In the case of *Seventh Day Adventist Church (East Africa) Limited vs Permanent Secretary, Ministry of Nairobi Metropolitan Development & another* (2014) eKLR, the court held that;

Where an applicant brings judicial review proceedings with a view to determining contested matters of facts with an intention of securing a determination on the merits of the dispute the Court would not have jurisdiction in a judicial review proceeding to determine such a dispute and would leave the parties to ventilate the merits of the dispute in the ordinary civil suits.”

8. Similarly, in the case of *Commissioner of Lands vs Kunste Hotel Limited* (1997) eKLR (E & L) 1 at page 249, the Court of Appeal stated that;

But it must be remembered that Judicial Review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected”.

9. In *Halsbury’s Laws of England 4th Edition Volume 2 Page 508* where it is stated that;

Certiorari is a discretionary remedy which the Court may refuse to grant even when the requisite grounds for its grant exist. The Court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The judicial discretion of the Court being a judicial one, must be exercised on the basis of evidence and sound legal principles”.

10. This Court will therefore be guided by the above principles and other binding precedents and the relevant laws in determining the matter at hand. The Judicial Review process is concerned with the decision making process and not with the merits of the decision itself. Further, that a Court hearing an application for Judicial Review should not sit as an appellate Court and such orders will not be granted as a matter of course but are a discretion of the Court which must consider if such orders are most efficacious in the circumstances of each case.

11. In the case of *Republic vs Inland Revenue Commissioner Ex Parte Opman International* 1986 1ALL E.R 328, the Court held that the fact that there is an alternative procedure available to address a particular grievance does not mean one cannot apply for the remedy of Judicial Review. The Court stated that;

Judicial Review is however the procedure of last resort and is a residual procedure which is available in those cases where the alternative procedure does not satisfactorily achieve a just resolution of the applicant’s claim”

12. In the case of *Speaker of National Assembly vs Karume* C.A Civil Application No. 92 of 1992 (2008 1 K.L.R 426), the Court of Appeal stated that where there is a clear procedure to address a particular grievance, it should be followed. Looking at the circumstances of this case, the Applicant submits that she is the legal owner of the properties known as Title Number Donyo Sabuk/Komarock Block 1/20713, 20714 and 20715. That she bought the properties from Mwokoke United. That the Applicant was shown the boundaries and beacons for his properties. That in 2017 the Applicant



noticed that other third parties were putting developments on the area where her properties beacons were. That the Applicant approached the said third parties who informed her that they were doing construction on their properties as is their right. That the Applicant visited the area chief with the dispute who referred the Applicant to the Respondents for purposes of ascertainment and fixing of the boundaries. That the Applicant complied with all the requirements including the payment of the requisite fees so as the Respondents could carry their statutory duty of ascertaining and fixing of the boundaries to enable the Applicant to know with certainty her properties and boundaries. That to date the Respondents have not carried out the exercise to the prejudice and detriment of the Applicant. The Respondents has infringed the legal rights of the Applicant as no other office can carry out the particular exercise that duty is only bestowed upon the Respondents. The continued refusal by the Respondents to carry out the exercise of ascertaining and fixing the boundaries is not only illegal and irrational but plainly unreasonable. The application was not opposed.

13. Be that as it may, Judicial Review orders are granted at the discretion of the Court. Courts therefore have the discretion to refuse to grant such orders even where a foundation has been laid for the same although such discretion must be used sparingly. In the case of *Blueseas Shopping Mall Limited vs City Council of Nairobi & Others* C.A Civil Appeal No. 129 of 2013 (Nairobi), the Court of Appeal said the following on the issue of discretion in Judicial Review applications:

In administrative law matters, Courts have discretion to withhold a remedy of Judicial Review even where a substantive foundation has been laid because administrative law remedies are inherently discretionary. But Courts are slow to deny the remedy. The discretion to refuse to grant Judicial Review orders where they are merited must be very sparingly exercised”.

14. As discussed above, the Judicial Review process is concerned with the decision making process and not with the merits of the decision itself. In the circumstances of this case, the decision was not made, taking into account the fact that the meeting at the site was cancelled and no decision on fixing the boundaries has taken place the Applicants’ judicial review before this court premature and lacks merit and is dismissed. No orders as to costs as the same was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF JUNE 2025.

N.A. MATHEKA

JUDGE

