



Republic v Attorney General & 3 others; Mbaabu & 2 others (Ex parte Applicants) (Environment and Planning Judicial Review E003 of 2024) [2025] KEELC 4816 (KLR) (24 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4816 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND PLANNING JUDICIAL REVIEW E003 OF 2024**

BM EBOSO, J

JUNE 24, 2025

BETWEEN

REPUBLIC APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

CABINET SECRETARY - MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT 2ND RESPONDENT

DISTRICT LAND REGISTRAR, MERU SOUTH 3RD RESPONDENT

DISTRICT SURVEYOR, MERU SOUTH 4TH RESPONDENT

AND

ERICK MWIRIGI MBAABU EX PARTE APPLICANT

RUTH WANJA NYAGAH EX PARTE APPLICANT

LINET KARENDI NYAGAH EX PARTE APPLICANT

JUDGMENT

1. Through a chamber summons dated 30/8/2023 (sic), Erick Mwirigi Mbaabu (the 1st ex parte applicant), on his own behalf and on behalf of Ruth Wanja Nyagah [the 2nd ex-parte applicant] and Linet Karendi Nyaga [the 3rd ex-parte applicant] sought leave to apply for judicial review orders of certiorari, mandamus and prohibition. Vide an order issued on 4/9/2024, this Court [Yano J] granted leave as prayed. Pursuant to the said leave, on 24/9/2024, Erick Mwirigi Mbaabu, again on his



own behalf and on behalf of the 2nd and 3rd ex-parte applicants brought a notice of motion dated 23/9/2023 (sic) seeking the following verbatim judicial review orders:

- a) That an order of mandamus be and is hereby issued directing the Land Registrar to revisit the dispute taking into account and acting in compliance with Section 19 as read together with Section 87 of the [Land Registration Act, No.3 of 2012](#).
- b) An order of mandamus be issued compelling the 3rd & 4th respondents to produce and consider the registered mutation form and registered area thereof unto LR Kalingani/Ndagani/415 in establishing the boundary before interfering with the 3rd exparte applicant's property known as LR Kalingani/Ndagani/1883.
- c) An order of prohibition be issued forthwith prohibiting the 3rd and 4th respondents from illegally allocating land to the interested party herein by adding and/or increasing the area in LR Kalingani/Ndagani/415 beyond the registered area of 0.70 hectares through a boundary resurvey exercise.
- d) An order of prohibition be issued forthwith prohibiting the respondents and interested parties herein, or their servants, agents, assigns or whomsoever acting on their behalf from implementing the 3rd and 4th respondent's report dated 18th July, 2024 or any other consequential reports, orders and/or findings relating to the survey exercise carried out on land parcels LR Kalingani/Ndagani/1883 and 415.
- e) That an order of mandamus be issued forthwith compelling the 2nd Respondent to appoint new staff members in the position of Chuka District Land Surveyor and Chuka District Land Registrar different from the ones who conducted the resurvey exercise in land parcel LR Kalingani/Ndagani/1883 and 415, to investigate the alleged encroachment in LR Kalingani/ Ndagani/415.
- f) Costs of this suit be borne by the respondents and interested party.
- g) Any other prayer that court may deem fit to grant."

2. The above motion/application is the subject of this judgment. Before I analyze and dispose the issues that fall for determination in the judgement, I will briefly outline the parties' respective cases.

Ex-parte Applicants' Case

3. The grounds upon which the ex-parte applicants seek the above judicial review orders are set out in the motion dated 30/9/2023 (sic); in the supporting affidavit of Erick Mwirigi Mbaabu dated 23/9/2024; in the written submissions dated 23/1/2025; and in the supplementary submissions dated 19/3/2025. In summary, the case of the exparte applicants is that, Linet Karendi Nyagah [the 3rd ex-parte applicant] is the registered proprietor of land parcel number Karingani/ Ndagani/1883 [hereinafter referred to as "parcel number 1883"]. Ruth Wanja Nyaga [the 2nd ex-parte applicant] and Erick Mwirigi Mbaabu [the 1st ex-parte applicant] are daughter and son-in-law, respectively, to the 3rd ex-parte applicant [Linet Karendi Nyagah]. Parcel number 1883 borders the interested party's parcel, which the ex-parte applicants have identified interchangeably as "Karingani/Ndagani/415" and "Karingani/Ndagani/ 454".



4. The ex-parte applicants contend that in July 2024, the Land Registrar, Meru South [the 3rd respondent] and the District Surveyor, Meru South [the 4th respondent] visited the two parcels belonging to the 3rd ex-parte applicant and the interested party respectively, to determine and fix the boundaries of the two parcels in accordance with the requirements of the Land Registration Act and the Survey Act. They allege that in undertaking the exercise, the two respondents: (i) failed to hear and take evidence from the ex-parte applicant; (ii) were partial, discriminatory and dishonest; (iii) failed to obtain directions from the Director of Surveys; (iv) failed to consider relevant information such as historical and existing physical boundary feature; (v) failed to take full measurements of parcel number 454 as per the mutation/title to establish whether there was any encroachment; (vi) failed to use the registered Registry Index Map (RIM); (vii) failed to observe the law on limitation of time; and (viii) engaged in gross misconduct, violated the Constitution and breached the ex-parte applicants' fundamental rights and freedoms. They term the whole exercise as extra-legal, illegal, irrational and unconstitutional, adding that it contravened Section 50 of the Surveyors Act. They urge the court to grant the order sought in the notice of motion dated 24/9/2023.

Respondents' Case

5. The respondents opposed the application through a replying affidavit sworn on 18/11/2024 by S. G. Muthoni and written submissions dated 21/2/2025 filed by E. Kendi, Senior Litigation Counsel. Their case is that the 3rd and 4th respondents carried out the boundary dispute hearing, determined and fixed the boundary within the bounds of the law. They add that the two proprietors of the abutting parcels were granted a fair hearing during the entire exercise. They urge the court to reject the application and condemn the ex-parte applicants to bear costs of the application.

Interested Party's Case

6. The interested party opposed the application through a replying affidavit dated 7/10/2024 and written submissions dated 27/1/2025. The case of the interested party is similar to that of the respondents.

Analysis and Determination

7. The court has considered the application, the response to the application, and the parties' respective submissions. The court has also considered the relevant legal frameworks and the prevailing jurisprudence on the key issues that emerge for determination. The broad question to be answered in this judgment is whether a case has been made for grant of the judicial review orders of mandamus and prohibition set out in the notice of motion dated 23/9/2023.
8. First, the impugned exercise was conducted in July 2024. For reasons that only the ex-parte applicants know, the notice of motion which challenges the exercise predates the impugned exercise; it is dated 24/9/2023. That is, however, not the fatal defect that makes it unnecessary to venture into the merits of the application insofar as it relates to the 3rd ex-parte applicant.
9. The fatal defect in the application relates to the parcels of land in relation to which the judicial review orders of mandamus and prohibition are sought. The reliefs sought in the notice of motion dated 24/9/2023 relate to land parcel numbers Kalingani/Ndagani/1883 and parcel number Kalingani/Ndagani/415. Mis-spelling of "Karingani" (with letter "r") as "Kalingani" (with letter "l") is a minor error that would ordinarily be ignored. However, the identification of parcel numbers 1883 and 415 as the parcels in relation to which the orders of mandamus and prohibition should issue is a fundamental aspect that cannot be casually substituted with some other numbers to be imagined by the court.



10. There is no evidence to suggest that parcel number 415 was the subject matter of the impugned boundary determination dispute. Secondly, there is no evidence indicating that the interested party is the registered proprietor of the said parcel. The court does not know who the registered owner of parcel number 415 is. The owner of parcel number 415 is not a party to the notice of motion dated 24/9/2023 which is the subject of this judgment. Yet in its entirety, the notice of motion dated 23/9/2023 seeks judicial review orders relegating to parcel number 415.
11. This is not the only fatal defect in the notice of motion dated 24/9/2023. The second defect relates to the ex-parte applicant's decision to omit the relief of certiorari. The impugned exercise was a statutory exercise that the 3rd and 4th respondents contend was undertaken as a boundary determination under Sections 18 and 19 of the Land Registration Act. The ex-parte applicants have not sought an order quashing the impugned determination. They want a parallel boundary determination. Were a second boundary determination to be procured without quashing the existing boundary determination, there will be, in existence, two determinations relating to the same boundary. Clearly, the law does not envisage this kind of duplicity that bears the risks of contradictory determinations.
12. If the ex-parte applicants were serious about securing orders of mandamus and prohibition, the first limb of their reliefs should have been a plea for an order of certiorari quashing the subsisting boundary determination. Without that, the order of mandamus would not issue in the circumstances of this dispute.
13. Lastly, what is before this court is a boundary dispute relating to two parcels. One of the parcels is said to belong to Linet Karendi Nyagah. She is an ex-parte applicant in this suit by right. The 1st and 2nd ex-parte applicants do not own either of the two parcels involved in the dispute. Given that Linet Karendi Nyagah is an applicant, clearly, the 1st and 2nd ex-parte applicants who are said to be her son-in-law and daughter, respectively, have no locus standi in this matter. They are unfairly subjecting the respondents and the interested party to a vexatious litigation. Their kinship with the 3rd ex-parte applicant does not vest in them a cause of action against the respondents or against the interested party. For this reason, their respective claims lack merit and stand to be dismissed with costs.
14. For the above reasons, this suit is disposed in the following terms:
 - a. The claim by the 1st and 2nd ex-parte applicants is dismissed for lack of merit on the ground of want of cause of action.
 - b. The claim by the 3rd ex-parte applicant is struck out.
 - c. The three ex-parte applicants shall bear costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24TH DAY OF JUNE, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Mr. Kinyua Advocate for the Applicant

1st, 2nd, 3rd and 4th Respondents – Absent

Ms. Mutege for the Interested Party.

Court Assistant – Mr. Mwangi

