



**Republic v District Land Registrar, Kilifi; Jahindi (Ex parte Applicant) (Environment and Land  
Judicial Review Case E008 of 2024) [2025] KEELC 4450 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4450 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E008 OF 2024  
FM NJOROGE, J  
JUNE 13, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DISTRICT LAND REGISTRAR, KILIFI ..... RESPONDENT**

**AND**

**SANITA JAHINDI ..... EX PARTE APPLICANT**

**JUDGMENT**

1. Pursuant to leave granted by this court on 28/6/2024, the Applicant filed a notice of motion application dated 9/7/2024 seeking the following orders:
  1. This Honourable Court be pleased to grant the Applicant an order of mandamus compelling the Respondent to comply with the National Land Commission determination and gazette notice forwarded vide the Commission’s letter dated 21<sup>st</sup> September 2021 in order to have the ex-parte applicant (now applicant) registered as proprietors of all that land known as LR No. Chembe/Kibabamshe/270 measuring approximately 1.25 Hectares.
  2. The Respondent be condemned to pay costs of this application.
2. The application is anchored upon the grounds set out on its face, the statutory statement and verifying affidavit sworn by the Applicant on 9/7/2024. The Applicant’s case is that she was allocated the parcel of land identified as LR. No. Chembe/Kibabamshe/270 (hereinafter also referred to as “the suit property”) on 21/6/2013 vide an allotment letter; that the National Land Commission endorsed the aforesaid vide gazette notice Vol. CXIX-No. 9707 Number 6866 dated 17/7/2017. Subsequently, the Chief Land Registrar vide a letter dated 21/9/2021, wrote to the Respondent requesting him to



implement the decision by NLC; that despite the above, and the Applicant's various attempts to have the above implemented, the Respondent has failed and or refused to take the necessary action.

3. The application is opposed. The Respondent, through the Office of the Attorney General, filed grounds of opposition, which are undated. The grounds are as follows:
  1. The application is misconceived, as the applicants have failed to establish any evidence of willful or deliberate refusal by the Land Registrar to effectuate the registration of the suit property;
  2. The application lacks merit, as section 14 (c) of the *Land Registration Act* confers upon the Land Registrar the statutory discretion to decline registration where any requisite act or compliance mandated by the Act remains unfulfilled;
  3. The application is premature and unmeritorious, the applicants having failed to exhaust the procedural recourse available for the issuance of a certificate of title as stipulated under Regulation 30 of *Legal Notice No. 278 of 2017*;
4. The Application was canvassed by way of written submissions.

### **Applicant's Submissions**

5. Counsel for the Applicant submitted that Article 40 of *the Constitution* of Kenya gives the right to protection of property and the right to access justice is enshrined under Article 48 thereof; that denying the Applicant these rights would amount to unjust curtailment of her fundamental rights. He asserted that the purpose of an order of mandamus is to compel the performance of a public duty and it lies against a public officer when some specific act or thing, which the law requires to be done, has been omitted; that the conditions are that it must be shown that the public officer has failed to perform its duty; the court will not grant mandamus where there is an alternative remedy available; and that it may be refused if the enforcement of the order will pose implementation challenges that would require the court's supervision. To support these assertions, counsel relied on the case of Republic v The Commissioner of Lands & another ex-parte Kithinji Murugu M'agere, Nbi HC Misc. App. No. 395 of 2012.
6. Counsel added that the order of mandamus in judicial review is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays, and that the test was set out in Republic v principal Secretary, Ministry of Internal Security & Another ex-parte Schen Noorani & another [2018] eKLR.
7. To counsel, the Respondent's refusal to register the Applicant as the proprietor of the suit property is irrational as no reasons have since been given despite the Applicant's numerous trips to the Respondent's office. Counsel relied on the definition of "irrational" elaborated in the case of Pastoral v Kabale District Local Government Council and Others [2008] 2 EA 300.
8. He submitted that while Section 14 (c) of the *Land Registration Act* provides that the Registrar may refuse to proceed with registration under certain circumstances, Section 4 of the Fair Administrative Act provides for the right to fair administrative action, and since the Respondent has not advanced any compelling reasons to refuse to proceed with registration, it is enjoined to act with fairness and rationality.



## Respondent's Submissions

9. Ms. Lutta, Principal State Counsel, submitted that there are two issues for determination namely whether the applicant exhausted all the statutorily laid out mechanisms before moving the court and whether the application is merited.
10. Counsel submitted that it is trite that where there is a clear procedure for redress of any particular grievance, prescribed by *the Constitution* or statute, that procedure should be strictly followed. This, she stated, was asserted in the case of William Odhiambo Ramogi & 3 Other v AG & 4 Others; Muslims for Human Rights & 2 Others (Interested Parties) [2020] eKLR; Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR; Reuben Mwangela M'Itelekwa (suing as the legal representative of the estate of M'itelekwa M'mucheke Naituri aliaa M'Itelekwa Mucheke) v Paul Kigea Nabea & 2 Others [2019] eKLR, and Speaker of National Assembly v Karume [1992] KLR 425. She added that Section 30 of the *Legal Notice No. 278 of 2017* provides that a person who has interest in land for which a certificate of lease or a certificate of title is to be issued may apply to the Registrar for the certificate in Form LRA 19 set out in the sixth schedule.
11. Counsel submitted that since the ownership is not in dispute, it was upon the Applicant to move the Respondent under Section 30 above to actualize the registration in her favour. To her, the Applicant had not done so thus not yet exhausted the statutory procedure for the redress of the act complained of.
12. On whether the application is merited, Ms. Lutta submitted that the same is misconceived for failure to establish any evidence or willful or deliberate refusal by the Respondent to effectuate registration of the suit property, as stipulated under Section 107 (1) of the *Evidence Act* and in the case of Salim N. Yamani t/a Mbaao & Allied Enterprises Limited v Jubilee Insurance Company of Kenya Ltd (Civil Appeal E830 of 2022) [2024] KEHC 8871 (KLR). She argued that the recommendation by the NLC did not waive the laid down procedure for the Applicant to have the suit property registered.
13. Citing the cases of Republic v The County Education Board & another ex-parte Bridge International Academis Ltd [2017] KEHC 7278 (KLR); Municipal Council of Mombasa & Umoja Consultants Limited, Nairobi Civil Appeal No. 185 of 2001 [2002] eKLR; Suchan Investment Limited v Ministry of National Heritage & Culture & 3 Others [2016] KLR; and Pastoli v Kabale District Local Government Council & Otehrs [2008] EA 300, counsel discussed the parameters of judicial review and the conditions to be demonstrated in order to succeed in an application for judicial review; that an applicant has to demonstrate that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.
14. Counsel argued that the Applicant has not proven that the Respondent committed an error of law, acted ultra vires or contrary to the law, or acted on procedural impropriety, by virtue of Section 30 of the *Legal Notice No. 278 of 2017* and Section 14 of the *Land Registration Act*.
15. Counsel added that the application is sub-judice ELC Petition No. E018 of 2024 Sanita Kahindi Mangi v Mayungu Real Estates Limited, Registrar of Titles Kilifi & AG filed on 7/12/2024, where the issue in dispute is in relation to ownership of the suit property. To counsel, the present application was therefore an abuse of the court process and urged the court to dismiss it. She relied on Section 6 of the *Civil Procedure Act* and the case of Catherine Nyakobo Nyang'au v Evangeline Njoka & 3 Others [2021] eKLR.



## Analysis and Determination

16. Having considered the application, the grounds of opposition and the rival submissions, the following issues fall for determination;
- i. Whether the Applicant has made out a case for the grant of an order of mandamus.
  - ii. Who shall bear the costs of the application?
17. The duty of a Court in Judicial Review proceedings is not to act as an appellate forum in respect of the impugned decision of the respondent. Rather, the Court is concerned with the decision-making process itself. Not the merits of the decision. In the case of *Republic -v- Attorney General & another; Mwololo & another (Interested Parties); Kamula & 2 others (Ex parte Applicants) (Environment and Land Judicial Review Case E005 of 2023) [2024] KEELC 4317 (KLR)* the Court discussed the parameters of an order of mandamus as follows:
- “ 18. Mandamus is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether the remedy is the most efficacious in the circumstances obtaining.
19. In the case of *R vs Kenya National Examination Council ex parte Gathengi & 8 Others (1997) eKLR* the Court of Appeal stated as follows:-
- “The order of mandamus is of a most extensive remedial nature and is, in form a command issuing from the High Court of justice directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual”.
20. The test for granting mandamus was eloquently set out in *Apotex Inc. vs. Canada (Attorney General)*. The position was reiterated in *Dragan vs. Canada (Minister of Citizenship and Immigration) (2003) FCA 139* which listed eight factors that must be present for the writ to issue are: -
- i. There must be a public legal duty to act;
  - ii. The duty must be owed to the Applicants;
  - iii. There must be a clear right to the performance of that duty, meaning that:
    - a. The Applicants have satisfied all conditions precedent; and
    - b. There must have been:



- i. A prior demand for performance;
- ii. A reasonable time to comply with the demand, unless there was outright refusal; and
- iii. An express refusal, or an implied refusal through unreasonable delay;
- (iv) No other adequate remedy is available to the Applicants;
- (v) The Order sought must be of some practical value or effect;
- (vi) There is no equitable bar to the relief sought;
- (vii) On a balance of convenience, mandamus should lie.”

18. Firstly, the Applicant must demonstrate that there exists a public legal duty to act. The basis of the Applicant’s claim is already stated and the Respondent does not deny that it has a duty to register the Applicant as the owner of the suit property. The Respondent’s sole contention is that the Applicant failed to move the Respondent by the required procedure under Regulation 30 of the [Legal Notice No. 278 of 2017](#). Section 30 of the [Legal Notice No. 278 of 2017](#), known as the Land Registration (General) Regulations, 2017, pertains to the procedure for application for a certificate; it reads: -

“ 30.

- (1) A person who has an interest in land for which a certificate of lease or a certificate of title is to be issued may apply to the Registrar for the certificate in Form LRA 19 set out in the Sixth Schedule.
- (2) An applicant under paragraph (1) shall pay the prescribed fees.
- (3) The application under paragraph (1) shall be accompanied by-
  - (a) all instruments evidencing ownership in respect of the land or interest in land which are in possession of the proprietor except any document which is already in possession of the registry pursuant to an ongoing transaction;
  - and
  - (b) an official search in respect of the land or interest in land issued within the preceding thirty days.
- (4) Upon Compliance with paragraphs (1), (2) and (3), the Registrar shall issue a certificate of lease or a certificate of title, whichever is applicable.”

19. The Applicant has not demonstrated that it satisfied all conditions precedent or that there was prior demand to the Respondent for performance. In the given circumstances, I decline to grant the reliefs sought.



20. The outcome is that the Notice of Motion dated 9/7/2024 is unmerited, it is hereby dismissed. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 13<sup>TH</sup> DAY OF JUNE 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

