



Mwanza (Suing as the administrator and legal representative of John Mulu Mwadundu) v Director of Land Adjudication and Settlement, Kilifi & another; Mwadundu & 2 others (Interested Parties) (Environment and Land Judicial Review Case E005 of 2024) [2025] KEELC 252 (KLR) (31 January 2025) (Judgment)

Neutral citation: [2025] KEELC 252 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2024**

FM NJOROGE, J

JANUARY 31, 2025

BETWEEN

ANDREW MWANZA (SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF JOHN MULU MWADUNDU) APPLICANT

AND

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT,
KILIFI 1ST RESPONDENT**

COUNTY SURVEYOR, KILIFI 2ND RESPONDENT

AND

KALIYE KIMWELI MWADUNDU INTERESTED PARTY

CHARLES KIMWELI MWADUNDU INTERESTED PARTY

JOHN MAKAU KIMWELI INTERESTED PARTY

JUDGMENT

1. Upon leave being granted on 5/3/2024, the Applicant filed the substantive Judicial Review notice of motion on 22/3/2024 seeking an order of mandamus to compel the 1st and 2nd Respondents to immediately comply and implement the decision in Kilifi Minister’s Land Appeal No. 70 of 2016 Kaliye Kimweli Mwadundu v Andrew Mwanzia Mulu and for costs of the application. The grounds under which the Applicant seeks relief are contained in his Statutory Statement and the verifying Affidavit both dated 28/2/2024.
2. It is the applicant’s case that on 12/9/2017, judgment was delivered in Minister’s Land Appeal No. 70 of 2016 Kaliye Kimweli Mwadundu v Andrew Mwanzia Mulu (herein after “the judgment”), which



- required the 1st and 2nd Respondent consolidate Land Parcel Nos. 970, 971, 972 and 976 – Kawala B Adjudication Section and thereafter subdivide the consolidated parcels into two equal shares between the family of Kimweli Mwadundu Mkwata (deceased) and Mulu Mwadundu (deceased); that despite being served with the said judgment, and several demand letters, the 1st and 2nd Respondents have failed and or completely refused to implement the said decision. There is no order staying execution of the judgment.
3. The Attorney General filed a replying Affidavit sworn on 11/6/2023 by John Karanja said to be a Land Adjudication and Settlement Officer, Kilifi on behalf of the Respondent. He deposed that demarcation of the disputed section was done and parcel 970 surveyed to Karis A. Nyanje Ziro, Andrew Mwanzia Mulu, Chari Rani and Peter Nyambu Mkalla; parcel 971 was surveyed to Karisa Nyanje Ziro and Andrew M. Mulu; parcel 972 to Andrew M. Mulu, Kalie Kimweli and John Makau Kimweli; and parcel 976 surveyed to Julius M. Mulu, Charles Kimweli and John Makau Kimweli.
 4. Thereafter, disputes were presented before the Land Committee regarding the said parcels as follows: -
 - a. Cases No. 116, 132, 134 and 141 filed by Charo Rani, Andrew M Mulu, Karisa N. Ziro and Peter P.N Mkalla respectively, regarding parcel no. 970 which were all heard and allowed.
 - b. Cases No. 133 and 135 filed by Karisa N. Ziro and Karisa Nyanje Ziro respectively, regarding parcel no. 971 which the former was allowed and the latter dismissed.
 - c. Case No. 112 filed by Gideon Charo regarding parcel no. 972 which was dismissed.
 - d. Case No. 139 filed by Shilingi Kiti regarding parcel 976 which was dismissed.
 5. Resultantly, the following appeals were filed to the Arbitration Board: -
 - a. Case No. 40, 41 and 44 filed by Karisa Nyanje Ziro, Charo Rani Matho and Peter P. N. Mkala respectively, regarding parcel no. 970 which were all dismissed.
 - b. Case No. 43 filed by Gideon Charo regarding parcel no. 972 which was also dismissed.
 6. Thereafter, the section was published as complete on 13/2/2012 for public inspection and filing of any objection. Several objections were thus filed and determined. Upon such determinations, further appeals were filed to the Minister for Lands as is required by statute. The appeal related to the present suit was Appeal No. 70 of 2016 between Kaliye Kimweli Mwadundu (appellant) and Andrew Mwanzia Mulu (respondent). That appeal was heard and determined on 12/9/2017. The surveyor was directed to consolidate parcel nos. 970, 971, 972 and 976 into a single parcel which he was to sub-divide equally between the families of Kimweli Mwadundu and Mulu Mwadundu.
 7. That the County Surveyor was thus directed by the Director of Land Adjudication to implement the said decision but he has since been unable to do so on the ground, owing to the different interpretations held by the two families; the family of Mulu Mwadundu holds that upon consolidation of the four parcels, the block be subdivided into equal portions to all the family members of both Kimweli Mwadundu and Mulu Mwadundu; while the family of Kimweli holds that upon consolidation, the block be subdivided into two equal portions first for the two families, then each family to share its portion into equal shares to their respective children.
 8. The Applicant filed a further affidavit which he swore on 4/7/2024 stating that the judgment is clear and that there is no difficulty in interpreting the same as alleged by the state.



SUBMISSIONS

Applicant's Submissions dated 5/7/2024

9. Counsel submitted that the test for granting an order of mandamus was discussed in *Republic v PS, Ministry of Internal Security & another Ex-parte Schon Noorani & another* [2018] eKLR and that the applicant has fully satisfied the test by demonstrating that the judgment has not been reviewed, appealed or set aside and was issued in favour of the Applicant; that despite being served with the said judgment, the 1st and 2nd Respondents have deliberately failed to comply with it. Therefore, the Respondents being state officers, there is urgent need for the court to intervene.

Respondents' Submissions dated 30/10/2024.

10. Mr. Munga, State Counsel, relied on the definition of an order of mandamus stated in the case of *Kenya National Examination Council v Republic, Ex-parte Geoffrey Gathenji Njoroge & 9 others Civil Appeal No. 266 of 1996* eKLR. Counsel rehashed the contents of the replying affidavit, specifically the reason as to why the judgment is yet to be implemented. He submitted that owing to the dispute between the two families, implementation of the judgment and the public duty of the Respondents will only crystallize upon this court making the correct interpretation of the judgment.
11. Counsel argued that until the court makes such an interpretation, the order of mandamus cannot issue. To support this argument, he relied on the case of *Republic v JKUAT, Ex-parte Elijah Kamau Mwangi* [2021] eKLR.

Determination

12. The main issue for determination is whether the Applicant has made out a case for the grant of the order he seeks. The grant of an order of mandamus is discretionary. The principles that guide the Court when dealing with an application for judicial review remedy of mandamus was stated in the Court of Appeal case of *Commission on Administrative Justice vs Kenya Vision 2030 Delivery Board & 2 others* [2019] eKLR wherein the court stated as follows:

"As observed by the Judge and correctly so in our view, the principle that guides the High Court when dealing with the scope and efficacy of an order of mandamus was crystalized by the Court in *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* (supra) namely:

"The order of mandamus is of most extensive remedial nature and is in the form of 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 of 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 it may issue in cases where although there is an alternative remedy, yet the mode of redress is not convenient, beneficial and effectual."

13. Similarly, in the English case of *R -v- Dudsheath, ex parte, Meredith* [1950] 2 ALL E.R. 741 it was stated as follows:

"It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects



the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it."

14. It is not in dispute that there exists a judgment issued by the Minister of Lands regarding certain objections that were filed in relation to the aforementioned parcel nos. 970, 971, 972 and 976. The Respondents do not deny that they were served with the said judgment and mandated to implement the same. Their only contention and reason for failure to actualize the same is that the two families do not agree on the interpretation of the said judgment. I have keenly perused the judgment subject of this suit, the order granted was framed as follows: -

"Order

The surveyor is hereby directed to join parcel nos. 970, 971, 972 and 976 and subdivide it among the family members of the late Kimweli Mwadundu and Mulu Mwadundu whereby collectively the two families of Mwadundu Mkwata (deceased) get equal shares."

15. The above disposition is clear to me that upon consolidation of the four plots, the same are first to be subdivided into two portions, one for each of the two families of the late Kimweli Mwadundu and Mulu Mwadundu who, as I have gathered, were sons of the late Mwadundu Mkwata, the patriarch and original owner of the land.
16. Having said so, I hereby grant the following orders: -
- a. An order of mandamus is hereby issued compelling the 1st and 2nd Respondents to forthwith comply with and implement the decision in Kilifi Minister's Land Appeal No. 70 of 2016 Kaliye Kimweli Mwadundu v Andrew Mwanzia Mulu;
 - b. Each party shall bear its own costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 31ST DAY OF JANUARY, 2025.

MWANGI NJOROGE

JUDGE, ELC MALINDI

