



REPUBLIC OF KENYA



Nyakio Holdings Company Ltd v National Land Commission & another (Judicial Review Application E007 of 2025) [2025] KEELC 6311 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6311 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW APPLICATION E007 OF 2025
JO MBOYA, J
SEPTEMBER 25, 2025**

BETWEEN

NYAKIO HOLDINGS COMPANY LTD APPLICANT

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

MERU COUNTY GOVERNMENT 2ND RESPONDENT

JUDGMENT

1. Before me is the Originating Summons [OS] dated 25th June 2025; brought pursuant to the provisions of Article 47 of *the Constitution* 2010; sections 4, 6, 7 & 8 of the Fair Administrative Actions Act (2015) and wherein the Applicant seeks following reliefs:
 - i. That a declaration do issue that approximately 50 acres forming part of L.R No. 2890 and adjoining L.R No. 7452 Timau Township Buuri Sub-County Meru belongs to Nyakio Holdings Company Ltd.
 - ii. That CEC in charge of lands Meru County is hereby compelled to submit a request to the national land commission for allocation of approximately 50 acres forming part of L.R No. 2890 and adjoining L.R No. 7452 failure to do so within 30 days of being served with the court order, the national land commissioner will be at liberty to cause the necessary action to have the land registered in the name of Nyakio Holdings Limited.
 - iii. That the C.E.C in charge of Meru County is hereby prohibited from interfering with the quiet possession of Nyakio Holdings Company Limited or in any other was interfering with the approximately 50 acres forming part of L.R No. 2890 and adjoining L.R No. 7452 Timau Township Buuri Sub-County Meru, contrary to the best interests of the applicant.



- iv. That the chairperson of the National Land Commission be and is hereby compelled to take the necessary action to have the land measuring approximately 50 acres forming part of L.R No. 2890 and adjoining L.R No. 7452 Timau Township Buuri sub county Meru registered within 60 days of being served with this order failure to which any registered surveyor will survey, develop the necessary map and have the land registered and the land registrar where this land is domiciled shall register the land in favour of the applicant.
 - v. That in the interim and pending the hearing and determination of this matter, an injunction do and hereby issue against Meru county from interfering with the quiet possession of Nyakio Holdings limited in the 50 acres of land forming part of L.R No. 2890 and adjoining L.R No. 7452 Timau Township Buuri Subcounty Meru.
 - vi. That any other appropriate orders do issue.
2. The Originating Summons is premised on various grounds which have been highlighted in the body thereof. Furthermore, the summons herein is supported by the affidavit of Wachira Wambugu Gitumbi [the deponent] sworn on 25th June 2025. In addition, the deponent has annexed diverse documents including a copy of the application for allotment of the suit property; copy of the letter by the National Land Commission dated 11th February 2025; and copy of the decision of the County Government of Meru vide letter dated 10th March 2025, respectively.
 3. The 1st Respondent, namely; National Land Commission filed a replying affidavit sworn on the 16th September 2025; and wherein the deponent, [Brian A. Ikol] has averred that the orders sought vide the subject application are not available. Furthermore, it has been contended that the applicant herein is seeking to use the court to acquire ownership of the suit property. In addition, it has also been contended that the grant of the orders sought are likely to constitute usurpation of the powers of the commission.
 4. The subject matter came up for directions on the 16th of September 2025; whereupon learned counsel for the applicant pointed out that the application is premised on the provisions of section 8 of the Fair Administrative Actions Act (2015); and thus same ought to be heard and disposed off within 90 days from the date of filing. Further and in addition, it was pointed out that the application was filed on 25th June 2025 and hence same ought to be determined on or before 25th September 2025.
 5. Premised on the foregoing, the parties agreed to canvass and dispose of the application by way of written submissions. In this regard, and taking into account the relevant law, the court proceeded to and issued directions. In particular, the court circumscribed the timelines for the filing and exchange of written submissions.
 6. Learned counsel for the applicant filed written submissions dated 18th September 2025; and wherein same has highlighted five [5] issues, namely; the effects of the Judgment in petition E010 of 2020 as consolidated with petition No. 1 of 2022; implementation of the Judgment in ELC Petition E010 of 2020; the legal implication[s] of the actions of the 2nd respondent as pertains to the implementation of the Judgment in ELC petition E010 of 2020; the justification for the filing of the judicial review application; and whether there exists any conflict between the current application and the Judgment/ proceedings in ELC Petition E010 of 2020.
 7. Regarding the first issue, learned counsel for the applicant has submitted that the applicant herein had filed a previous suit, namely; Meru ELC Petition E010 of 2020; and which petition was consolidated with Petition No. 1 of 2022 and same was thereafter heard and disposed of vide judgment rendered by this court [differently constituted]. In addition, it has been submitted that arising from the decision in



- the previous proceedings, the applicant proceeded to and lodged an application for allocation of the suit property in accordance with the provisions of section 12 of the *Land Act*, 2012 [2016].
8. Additionally, it was submitted that pursuant to the application for allocation of land, it was incumbent upon the 1st respondent to comply with the law and to consider the application. To this end, learned counsel for the applicant has submitted that the application by the applicant ought to have been duly considered.
 9. Regarding the second issue, learned counsel for the applicant has submitted that despite the orders that were made vide ELC Petition E010 of 2020, the 2nd respondent failed to act in good faith and to consider the application by the applicant. Moreover, it has been submitted that the conduct of the 2nd respondent was/is tainted with mala-fides. Further and in addition, it was submitted that the conduct of the 2nd respondent constitutes a breach of the applicants' legitimate expectations.
 10. Turning to the justification for the filing of the instant proceedings, learned counsel for the applicant has submitted that the instant application has been provoked and precipitated by the irregular and illegal manner in which the 2nd respondent handled the application for allotment of the suit property. In particular, it has been submitted that the decision of the 2nd respondent conveyed vide letter dated 10th March 2025, constitutes breach and violation of the applicants' rights in terms of Article 47 of *the Constitution* 2010.
 11. Next is the issue as to whether there exists any conflict between the current application and the pending applications filed by the applicant in ELC Petition E010 of 2020. To this end, learned counsel for the applicant has submitted that the subject application arises out of a hitch in effecting the judgment of the petition. Furthermore, it has been submitted that the hitch in the reference is an issue that falls within the province of Fair Administrative Actions Act; and hence the subject Application is well-grounded in the Law.
 12. Flowing from the foregoing, learned counsel for the applicant has contended that the applicant has demonstrated and established a basis to warrant the issuance of the various reliefs sought. In particular, the applicant has posited that the suit property belongs to same and hence the court ought to grant the declaration of ownership.
 13. Learned counsel for the 1st respondent filed written submissions dated 17th September 2025; and wherein same has highlighted four [4] key issues. The issues highlighted by the 1st respondent are, namely; whether the prayers sought fall within the purview of judicial review remedies; whether the court can compel allocation and registration of public land to a private entity through judicial review; whether the applicant has established a violation of article 47 of *the constitution* to warrant the intervention of the court; and whether the application is premature and bad in law.
 14. Regarding the first issue, learned counsel for the 1st respondent has submitted that the applicant herein has filed the judicial review proceedings in an endeavor to use the court to order and or direct that same is the owner of the suit property. Moreover, counsel has submitted that what the applicant is seeking is to have the court substitute its decision and or order in place of the decision of the duly established statutory body. To this end, it has been submitted that the court is divested of the jurisdiction to usurp the powers of the commission.
 15. Additionally, it has been contended that judicial review proceedings are restricted to the process and not the merits of the decision.
 16. Turning to the second issue, learned counsel for the 1st respondent has submitted that allocation of public land is a guided and structured process. In particular, learned counsel has submitted that



an applicant seeking to be allocated public land is enjoined to make the requisite application to the National Land Commission [NLC] in terms of the provisions of sections 12 to 14 of the *Land Act*; and thereafter, the commission shall commence the process of allocation. Nevertheless, it has been submitted that the commission is guided by the provisions of Article 67 (2) of *the Constitution* while discharging its mandate.

17. Furthermore, it has been submitted that the commission is an independent commission and thus same is not amenable to the directions of any person or body.
18. However, in this case, it has been submitted that the applicant is seeking to use the court to compel the commission to allocate same the suit property. In any event, it has been posited that the commission does not allocate land on its own motion.
19. Next is whether the applicant has demonstrated a violation of his rights to fair administrative action in terms of Article 47 of *the Constitution*. To this end, learned counsel for the 1st respondent has submitted that the applicant duly made an application to be allocated the suit land. Furthermore, it has been submitted that the application by the applicant was thereafter transmitted to the 2nd respondent [the county government of Meru] for consideration.
20. In addition, it has been posited that the application was duly considered and thereafter responded to vide a letter dated 10th March 2023. In this regard, learned counsel for the 1st respondent has submitted that the applicant herein was fairly treated. In any event, it has been submitted that the applicant has not demonstrated any breach and or infringement of its rights in terms of Article 47 of *the Constitution*.
21. Finally, learned counsel for the 1st respondent has submitted that the application by the applicant is not only premature but bad in law in so far as the applicant is seeking to defeat and or circumvent the principle of finality in litigation. Furthermore, it has been submitted that the application is also bad in law in so far as the applicant is attempting to enforce property rights through a process not designed for such reliefs.
22. Flowing from the foregoing, learned counsel for the 1st respondent has invited the court to find and hold that the entire application is not only premature and misconceived; but same constitutes misuse of the court process in an endeavor to defeat established statutory mechanisms for allotment of public land. Simply put, the court has been implored to dismiss the application.
23. The 2nd respondent neither entered an appearance nor filed any response. In addition, the 2nd respondent did not participate in the proceedings. In this regard, the court has not had the benefit of submissions from the 2nd respondents.
24. Having reviewed the Originating Summons; the supporting affidavit; the response by the 1st respondent; and the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the subject application turns on three [3] key issues, namely; whether the applicant herein has acquired legal or equitable rights to the suit property to warrant declaration of ownership or otherwise; whether the court is seized of the requisite jurisdiction to compel the respondents and in particular, the 1st respondent to allocate the suit property to the applicant; and whether the applicant's rights of legitimate expectation was violated/breached or otherwise.
25. Regarding the first issue, namely; whether the applicant herein has acquired legal or equitable rights over the suit property to warrant a declaration of ownership, it is imperative to recall and reiterate that the applicant herein mounted an application to be allocated the suit property. The application under reference was mounted vide letter dated 18th October 2022. Furthermore, the application for



allotment of the suit property followed a decision by this court [differently constituted] delivered vide ELC Petition No. E010 of 2020, as consolidated with petition No. 1 of 2022. Suffice it to state that the decision in the said proceedings directed the 1st respondent to entertain the applicant's request for regularization of use; and occupation of the suit property.

26. Arising from the decision of the court [details in terms of the preceding paragraph], the 1st respondent received the application/request from the applicant and thereafter transmitted same to the 2nd respondent [county government of Meru] for consideration. Moreover, there is no gainsaying that the county government of Meru considered the application under reference and thereafter relayed its decision to the applicant and the commission vide letter dated 10th March 2025.
27. Pertinently, the County Government of Meru communicated the position that the suit property which the applicant had sought to be allocated was not available for allocation.
28. For coherence, the letter dated 10th March 2025, states as hereunder;

..... with regard to your request for allocation/regularization of the T.O.L adjoining L.R No. 7452 the county government of Meru wishes to inform you that the land under reference has already been planned for public purpose/utilities and therefore not available for allocation.

The County Government of Meru has already allocated resources for developing the land for the benefit of the public.

Signed

CECM – Lands Physical Planning Urban Development and Public Works.

29. My understanding is to the effect that the applicants request for allocation of the suit property [which is admittedly public land] was declined. On the contrary, the county government indicated that the land in question was not available in so far as same has since been committed for public use. Further and in addition, the county posited that public funds have already been set aside to facilitate the development of public utilities on the suit property.
30. From the foregoing, there is no gainsaying that the applicant's application was declined. In this regard, it is apparent that the applicant did not accrue any ownership rights to and in respect of the suit property. For good measure, one can only acquire and or accrue rights to immovable property in the manner prescribed under the law.
31. Section 7 of the [Land Act](#), 2012 [2016] stipulates the various modes for acquiring of land rights.
32. The said section stipulates as hereunder;

Methods of acquisition of title to land

Title to land may be acquired through—

- (a) allocation;
- (b) land adjudication process;
- (c) compulsory acquisition;
- (d) prescription;
- (e) settlement programs;
- (f) transmissions;



- (g) transfers;
- (h) long term leases exceeding twenty-one years created out of private land; or
- (i) any other manner prescribed in an Act of Parliament.

33. It was incumbent upon the applicant to demonstrate that same has acquired rights to and in respect of the suit property. It is the acquisition of rights over the suit property that would anchor the applicant's prayer for declaration that the suit property lawfully belongs to the applicant. Absent legal rights, the applicant's prayer that same be declared to be the owner of the suit property are made in vacuum.
34. Additionally, it is not lost on me that courts of law, this court not excepted, exist to declare and protect rights and fundamental freedoms that have been acquired one way or the other. On the contrary, the court does not exist to give rights to the parties. In this case, this court cannot [sic] give ownership rights to the applicant over and in respect of the suit property.
35. The provisions of Article 20 (3) (a) of *the Constitution*, 2010; are apt and succinct.
36. The said provision state thus;

Application of Bill of Rights

- (1) The Bill of Rights applies to all law and binds all State organs and all persons.
 - (2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
 - (3) In applying a provision of the Bill of Rights, a court shall—
 - (a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and
 - (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.
37. Before concluding on this issue, it is also instructive to reference the dictum of the Court of Appeal in the case of *Nelson Kazungu Chai & 9 others v Pwani University College* [2017] KECA 135 (KLR), where the court stated as hereunder;

“22 A right can only be protected when it exists in reality and not where it remains an illusion or a mere expectation. Right to property is not one of those rights that inhere to every human being upon birth. They are acquired in different ways after one comes into this world. One cannot acquire property rights over another's property other than in a manner prescribed in law. In this case the appellants' claim to the suit property was in our view merely aspirational or rhetorical. This is so both under our very progressive Constitution and also under International Law. Indeed, other than call in aid International Law, learned counsel Dr. Khaminwa did not cite any specific instrument that the appellants can leverage on to elevate the appellant's right to practice and enjoy their culture on the respondent's property over the respondent's rights under Article 40 of *the Constitution*. In the absence of any right under the doctrine of legitimate expectation and of any other valid colour of right, the trial court could not have arrived at any other finding. Our



conclusion is that the learned Judge arrived at the right decision based on the evidence placed before him, and he cannot be faulted.”

38. It was incumbent upon the applicant to acquire and accrue rights to the suit land before approaching the court. However, having not acquired any rights to and in respect of the suit property, the applicant herein cannot be heard to seek a declaration that same lawfully owns the suit property. Furthermore, it is not lost on me that the temporary occupation license [TOL]; which the applicant hitherto held did not confer any property rights to the applicant. [See *Faraj Maharua v JB Martin Glass Industries & 3 others* [2005] KECA 107 (KLR)].
39. Turning to the second issue, namely; whether the court is seized of jurisdiction to grant the reliefs sought. To start with, it is common ground that the suit property is public land falling within the purview of the County Government of Meru. [See the Provisions of Article 62 (1) & (2) of *the Constitution* 2010.
40. In so far as the suit property is public land, the process for allocation and or alienation is well prescribed under the law. Firstly, any applicant [the applicant herein not excepted] who is desirous to be allocated public land is enjoined to make the requisite application to the national land commission. [See the provisions of sections 12, 13 & 14 of the *Land Act*].
41. Upon receipt of the application for allocation of public land, the commission [NLC] is enjoined to transmit same to either the national government or the county government [depending on the public land under reference]. In respect of the instant matter, the public land in question falls under the purview of the County Government of Meru; and hence it behooved the commission to remit the application for allotment to the county government of meru for consideration. For good measure, there is no gainsaying that the application for allotment was indeed remitted to the County Government of Meru. In addition, it suffices to highlight that the County Government of Meru considered the application and reacted to vide the letter dated 10th March 2025.
42. It is instructive to observe that the jurisdiction and mandate to allocate public land inheres in the national land commission. [see Article 67 (2) of *the Constitution*; See also section 5 of the *National Land Commission Act* 2012]. Consequently, and in this regard, the only body that is tasked and chargeable with the allocation of public land is the commission.
43. On the contrary, this court is not vested with any such mandate. Furthermore, it is not lost on me that the commission is an independent constitution commission and thus same is not subject to the direction of any person or body in the manner in which it exercises its functions. Simply put, this court cannot be used to direct and or compel the commission to allocate the land in question to the applicant. [See Article 249 (2) of *the Constitution* 2010].
44. The Supreme Court of Kenya has had occasion to speak to the process attendant to allocation of public land. In particular, the Supreme Court expounded on the mandate of the National Land Commission, especially as concerns the power to administer and manage public land on behalf of the national government and the county government.
45. In the case of *National Land Commission v Attorney-General & 5 others; Kituo Cha Sheria & another (Amicus Curiae)* (Advisory Opinion Reference 2 of 2014) [2015] KESC 3 (KLR) (2 December 2015) (Advisory Opinion) the Apex court stated thus; [paragraphs 222 – 224]

The *Land Act* defines “alienation” as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or



County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal.

223. It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC's function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration. Section 5(2)(e) of the NLC Act-versus-*the Constitution*'s terms

224. Section 5(2)(e) of the NLC Act mandates the Commission to manage and administer all unregistered trust land and unregistered community land on behalf of County Government. Counsel for the Commission for the Implementation of *the Constitution* submitted that this provision was contrary to the terms of *the Constitution*. In the case, *In Re IIEC*, this Court had held that while exercising its Advisory Opinion jurisdiction, it may undertake the interpretation of *the Constitution*.

46. I beg to state that the mandate to allocate public land exclusively belongs to National Land Commission. This court is not vested with such jurisdiction. To this end, the court cannot provide succor/refuge to the applicant herein as pertains to the suit property.

47. It suffices to underscore that a court of law can only exercise jurisdiction which is granted/donated by *the constitution* or statute. Absent jurisdiction, a court of law must down its tools.

48. In the case of *Samuel K. Macharia vs Kenya Commercial Bank Ltd (2012) eKLR*, the Supreme Court observed as hereunder;

A court jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively in. *In the Matter of the Interim Independent Electoral Commission (applicant), Constitutional Application Number 2 of 2011*. Where *the Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.” (emphasis supplied).

49. Next is the question whether the applicant's legitimate expectation was breached and or infringed upon. The applicant herein has contended that the 2nd respondent's decision dated 10th March 2025, was wrought with malice, bad faith and ulterior motives. Furthermore, it has been contended that the decision under reference was not rational and that the 2nd respondent violated the applicant's right of legitimate expectation.

50. Despite the contention by the applicant, it is common ground that the 2nd respondent duly received the application for allotment of the suit property and thereafter considered same. Moreover, it is worthy



recalling that the 2nd respondent proceeded to and communicated its decision declining to allocate the suit property. Furthermore, the reasons underpinning the decision were also communicated/disseminated.

51. On the face of the decision, what becomes apparent is that the 2nd respondent exercised its discretion and thereafter made the decision. Suffice it to posit that the decision is informed by reasons, whose details are highlighted in the body of the letter. In addition, it is not lost on me that the applicant's plea for allocation was considered.
52. To my mind, the applicant's legitimate expectation to be considered for allocation of the suit property was attended to by the designated statutory bodies. The decision may not be favourable to the applicant, but that does not mean that the applicant's legitimate expectation was infringed. In any event, there is no evidence that the respondents had [sic] made a representation and or promise to allocate the suit property to the applicant.
53. It suffices to state that where an applicant, [the current applicant not excepted] seeks to propagate a claim for breach of legitimate expectation, such an applicant must satisfy certain parameters. The parameters to be met and or satisfied in an endeavor to prove a claim for breach of legitimate expectation were highlighted by the Supreme Court of Kenya in the case of Kenya Revenue Authority v Export Trading Company Limited (Petition 20 of 2020) [2022] KESC 31 (KLR) (17 June 2022) (Judgment).
54. For coherence, the court stated as hereunder;

As can be discerned from these two definitions, legitimate expectation may take many forms. It may take the form of an expectation to succeed in a request placed before the decision maker or it may take the objective form that a party may legitimately expect that, before a decision that may be prejudicial is taken, one shall be afforded a hearing.

53. Respectfully, we take the view that the question of whether a legitimate expectation arose is more than a factual question. It is not merely confined to whether an expectation exists in the mind of an aggrieved party, but whether viewed objectively, such expectation is in a legal sense, legitimate.
54. This is the position taken by this court in the CCK Case where it was held that legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfill. For an expectation to be legitimate therefore, it must be founded upon a promise or practice by a public authority that is expected to fulfill the expectation. We then went on to find the emerging principles on legitimate expectation to be that;
 - a. there must be an express, clear and unambiguous promise given by a public authority;
 - b. the expectation itself must be reasonable;
 - c. the representation must be one which it was competent and lawful for the decision-maker to make; and
 - (d) There cannot be a legitimate expectation against clear provisions of the law or *the Constitution*.”



55. Guided by the principles enunciated in the decision [supra], I come to the conclusion that the applicant's plea that its legitimate expectation was breached is not only premature; but legally untenable. Clearly, the applicant herein could not expect to be accorded preferential treatment in the allocation or alienation of the suit property. [See Article 27 (1) & (2) of *the Constitution*. Like every other Applicant, the Applicant was and is subject to the provisions of the Laws.

Final Disposition._

56. Flowing from the analysis contained in the body of the Judgment, it must have become evident that the originating summons beforehand was premature; misconceived and thus legally untenable. Furthermore, there is no gainsaying that the applicants claim to ownership of the suit property were made in vacuum.

57. In the upshot, the final orders that commend themselves to the court are as hereunder;

- i. The Originating Summons dated 25th June 2025 be and is hereby dismissed.
- ii. Costs of the proceedings be and are hereby awarded to the 1st Respondent only.
- iii. The costs in terms of clause (ii) shall be agreed upon and in default be taxed in the conventional manner.

58. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF SEPTEMBER 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein – Court Assistant

Nguring'a for the Applicant

Ms. Mwanyika for the 1st Respondent

No appearance for the 2nd Respondent

