



Republic v Commissioner of Lands & Settlement & 3 others; Samuru Gituro Co-op Society Ltd (Ex parte Applicant); Mwaura & 61 others (Interested Parties) (Environment and Land Judicial Review Case 1 of 2022) [2025] KEELC 6280 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6280 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2022

AA OMOLLO, J

SEPTEMBER 18, 2025

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDER OF CERTIORARI, MANDAMUS AND PROHIBITION**

IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 26

AND

ORDER 53 OF THE CIVIL PROCEDURE RULES CAP 21 LAWS OF KENYA

**IN THE MATTER OF THE CO-OPERATIVE SOCIETIES ACT NO. 12 OF 1997
AS AMENDED BY ACT NO.2 OF 2004 AND NOW REVISED AS CAP 490**

IN THE MATTER OF REGISTRATION OF TITLES ACT, CAP 281 LAWS OF KENYA

**IN THE MATTER OF ISSUANCE OF CERTIFIED COPIES OF
DEED PLANS OR NEW CERTIFIED DEED PLANS FOR LR
NO. 10743 SAMURU GITUTO CO-OPERATIVE SOCIETY**

BETWEEN

REPUBLIC APPLICANT

AND

COMMISSIONER OF LANDS & SETTLEMENT 1ST RESPONDENT

DIRECTOR OF SURVEYS 2ND RESPONDENT

CHIEF REGISTRAR OF TITLES 3RD RESPONDENT

COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT AND

MARKETING 4TH RESPONDENT

AND

SAMURU GITURO CO-OP SOCIETY LTD EX PARTE APPLICANT



AND

FRANCIS NDUNGU MWAURA INTERESTED PARTY
PETER NDUATI MBAU INTERESTED PARTY
SIMON NGURE KUNG 'U INTERESTED PARTY
DARODA HOUSE COMPANY LTD INTERESTED PARTY
DANIEL KARURU MWANGI INTERESTED PARTY
BROADWAYS INVESTMENTS LTD INTERESTED PARTY
PATRICK MWAURA NYOIKE INTERESTED PARTY
JOSEPH MWANGI INTERESTED PARTY
KIRANGA PRODUCE LTD INTERESTED PARTY
KIBABU INVESTMENTS LTD INTERESTED PARTY
DAVID NG'ANGA KAMAU INTERESTED PARTY
GATANGA KWAO LIMITED INTERESTED PARTY
JANE M WANJIKU NGACHA INTERESTED PARTY
ELIZABETH W KIMANI INTERESTED PARTY
ZACHARY N MWAURA INTERESTED PARTY
PERRY WANJIKU MWAURA INTERESTED PARTY
RACHEL WANJIRU MACHARIA INTERESTED PARTY
ALEX MUMO MALLA INTERESTED PARTY
IGNATIUS WAMBUGU THIGE INTERESTED PARTY
ALEXANDER K KAGIRI INTERESTED PARTY
CAROLINE GLADWELL W MWAURA INTERESTED PARTY
KENNETH MWAURA NDUNGU INTERESTED PARTY
JOHN MBURU RUHIU INTERESTED PARTY
ANNE MUTHONI MUIRURI INTERESTED PARTY
MARJORY NJERI NJOROGE INTERESTED PARTY
DORCAS WAMBUI KAHUMBURU INTERESTED PARTY
REUBEN MWAURA GICHIA INTERESTED PARTY
ESTHER KAGUTHI INTERESTED PARTY
AUGUSTINE MAMBO KARUGU INTERESTED PARTY
MARIAM NYAMBURA MIRINGU INTERESTED PARTY
HEZRON KAMAU MWANGI INTERESTED PARTY
JANE WANJIRU MWANGI INTERESTED PARTY
MARGARET NJANJA KAMAU INTERESTED PARTY



ZACHARIAH KIARIE NJOROGE	INTERESTED PARTY
CATHERINE WAMBUI KARANJA	INTERESTED PARTY
JOHN GATHUMBI NGIGI	INTERESTED PARTY
JULIUS JOE MWANGI NYAMU	INTERESTED PARTY
MARY NJERI GAKUNGA	INTERESTED PARTY
JOAN WANJIKU NDUNGU	INTERESTED PARTY
MARY WANJIRU NDUNGU	INTERESTED PARTY
JANE WANJIRU MWANGI	INTERESTED PARTY
GOLDEN SHOWERS LIMITED	INTERESTED PARTY
LIVINGSTONE W KINYANJUI	INTERESTED PARTY
MARY WAIRIMU KARIUKI	INTERESTED PARTY
DUNCAN KABOCHI MACHARIA	INTERESTED PARTY
JUDITH NJERI NDUNGU	INTERESTED PARTY
DAVID MUCHEMI	INTERESTED PARTY
JENNIFER WANJIRU NDUNGU	INTERESTED PARTY
CATHERINE MURUGI MWAURA	INTERESTED PARTY
FRANCIS NDUNGU KIHU	INTERESTED PARTY
SOPHIE WANGARI MACHARIA	INTERESTED PARTY
ISAAC MUTHURE MACHARIA	INTERESTED PARTY
BEATRICE WANJIKU GACHUGI	INTERESTED PARTY
WAMAITHA MWANGI	INTERESTED PARTY
SHEM MWAURA NJOROGE	INTERESTED PARTY
ESTHER WANGARI MURIU	INTERESTED PARTY
MUCHARA MWANGI	INTERESTED PARTY
NJERI MWANGI	INTERESTED PARTY
MUTHONI MWANGI	INTERESTED PARTY
ANNE WANJIRU IKAHU	INTERESTED PARTY
TIMOTHY MUNGAI MUREGA	INTERESTED PARTY
CATHERINE WAMBUI KARANJA	INTERESTED PARTY

RULING

1. There are several notices of motion applications filed against the ex parte applicant by various Interested parties. What is running through and common to all of them is a prayer seeking joinder of parties and an order to set aside the judgment entered in favour of the Ex parte Applicant on 14th November, 2023.



2. In the application dated 11.10.2024 brought jointly by five (5) Applicants (Daroda House Co Ltd & 4 Others) listed as 4th to 9th Interested Parties. They are seeking orders:
 - a. That, the Honourable Court be pleased to review and/or set aside the proceedings, judgment, and the Decree issued on 14th November 2023.
 - b. That, any step(s) and/or process(es), if any, initiated in compliance with the judgment and decree issued on 14th November 2023, be cancelled by the 1st, 2nd and 3rd Respondents, and the status of all the title documents and registers held by the said Respondents be restored ante the said judgment and decree
 - c. That, the Ex parte Applicant do pay the costs of the application.
3. The second application, dated 23rd October 2024, is brought on behalf of Kiranga Produce and Kibabu Investments Ltd, now listed as the 9th and 10th Interested Parties, and they are seeking orders:
 - i. The honourable court be pleased to review and or set aside the judgment of 14.11.2023.
 - ii. The court be pleased to grant such orders as it deems fit
 - iii. costs
4. Another application dated 17th December 2024, filed on behalf of David Ng'anga Kamau (listed as the 11th interested party), seeks orders to be joined to the proceedings and;
 - a. That, this honourable court be pleased to grant the applicant leave to apply for a stay of execution of the judgment entered on 14th November, 2023 and/or decree arising therefrom, and further setting aside and/or reviewing the ex parte proceedings and judgment entered on 14th November 2023 and/or decree arising therefrom.
 - b. That, upon grant of prayers 2 and 3 herein above. the pleadings be amended to include the interested party in this matter,
 - c. That, the costs of this application in the cause.
5. The fourth application dated 11.02.2025 is brought on behalf of 55 Applicants inter alia Gatanga Kwao Ltd and Anne Wanjiru Ikahu now listed as 12th to 60th Interested Parties. They all seek to be joined to these proceedings and thereafter be granted the following orders:
 - i. That the honourable court be pleased to review and set aside the ex parte proceedings, Judgment entered on 14th November 2023, and/or the decree herein.
 - ii. That the honourable court be pleased to stay and/or reverse any actions already taken by any parties in the execution of the ex parte judgment and decree of 14th November, 2023.
 - iii. That in the alternative, this Honourable Court do grant such other or further orders as it shall deem fit.
 - iv. Costs of this application will be in the cause.
6. The 5th application is dated 11th February 2025 and is brought by Timothy Mungai Murega, now listed as the 61st Interested Party/Applicant. He is seeking orders:
 - a. That this Honourable court be pleased to grant leave to TIMOTHY MUNGAI MUREGA to be enjoined in this matter as the 57th Interested Party in the suit.



- b. That pending the hearing and determination of the application filed herein, the Court be pleased to issue an interim order staying the Judgment delivered on 14th November 2023 and any Decree issued thereto emanating from the judgment of 14th November 2023.
 - c. That the costs of this application be in the cause.
7. The 6th application dated 12th February, 2025 is by Catherine Wambui Karanja, now listed as the 62nd Interested party/applicant. She seeks to be joined to the proceedings and to be granted orders:
- i. That pending the hearing and determination of this application, there be a temporary stay of execution of the judgment and decree of this Honourable court issued on 14th November, 2023.
 - ii. That this Honourable Court be pleased to issue an order directing the ex-party Applicant to serve the Applicant with all the pleadings in the matter.
 - iii. That the judgment and decree of this Honourable Court issued on 14th November, 2023, be set aside and the Applicant be granted leave to file and serve her responses.
 - iv. That the costs of the Application be in the cause
8. All the applications were based on the reasons stated explicitly in them, with the common grounds pleaded across inter alia:
- a. The Interested Parties hold titles to their respective properties, and the effect of the judgment is to cancel their titles without giving them a hearing, as they were not served or joined as parties to these proceedings.
 - b. That they have been in possession of the said properties with the knowledge of the Respondent.
 - c. Unless the order or decree is set aside, they will suffer prejudice, including loss of livelihoods and becoming homeless.
9. The Respondent (ex parte applicant in the original motion) opposed all the applications vide several replying affidavits filed on various dates. Vide a reply dated 6th March 2025 to the motion dated 6th Dec 2024, the Respondent deposed that the court is functus officio. They accuse Gatanga Kwao directors of using their influence and patronising the local administration while ignoring the existence of the criminal cases against the 14th 15th and 16th Respondents, who were sponsoring the whole corrupt, fraudulent and illegal scheme despite having a criminal case in the Thika Chief Magistrate Court Criminal Case No. 849 of 2009.
10. That the print media publicised the criminal cases, and the civil case no 815 of 2009 was equally publicised, and annexed a newspaper cutting to support the averment. THAT there was also a caveat emptor which had been placed in the newspapers by the society against enticing or misleading the public that there was a parcel of land that was available for sale, but the society was cautioning the public that there were always fraudsters and other tricksters who could easily con them
11. That the proposed 6th Interested Party allegedly purchased these parcels of land, which they later on conveyed or transferred to their members and also sold to other members of the public by allegedly paying some large sums of money, but to date, they have not disclosed through which accounts these sums were paid.



12. That of much more interest is the fact that the current Chairman Timothy K Murega cannot escape the blame for these corrupt, fraudulent and other malpractices that were done respecting land parcel 10743 and the sub-divisions in question in particular LR 10743/2, LR 10743/3, LR 10743/6, LR 10743/8, LR 10743/9, LR 10743/10 and LR 10743/11 of which he knew all along.
13. The Respondent stated that the application dated 11.10.2024 is lacking merit both in law and fact and is incompetent. The respondent avers that this court lacks jurisdiction to entertain the application by virtue of section 8(3) and (5) of the *Law Reform Act*.
14. The Respondent proceeded to identify the Applicants, for instance, they state that the 2nd Applicant is an advocate who processed the transfers of the land to their friends and members of Gatanga Kwao. That the 2nd Applicant had a historical background and knowledge of the persons they were dealing with. That David Ng'anga Kamau was also a close associate and confidant of the late Joseph Ndarua Mbugua, who also purchased land from the three fraudsters (Simon Ngure Kungu, Peter Nduati Mbau and Francis Ndungu Mwaura).
15. That the procedure and protocol of the Court of Appeal before the order and taxation is done it set the matter before the presiding Judge for the settlement of terms and in this case the same was placed before Honourable Justice Philip Waki on 18th June 2019. At that particular sitting, the Applicants were represented by M/S Moragwa who was holding brief for Mr. Oyugi for the Applicants. Hence, the argument that these Applicants were aware of the ongoing cases.
16. That it is also foolhardy and an open lie for the Applicants to claim under oath that they legally and lawfully purchased the land parcels under title LR. 10743/1, LR. 10743/2, I-R. 10743/3, LR. 10743/4, Lk. 10743/5, LR. 10743/6, LR. 10743/7, Lk. 10743/8, Lk. 10743/9, LR. 10743/10 and LR. 10743/11, knowing very well that the parcels of land under reference had very serious legal disputes before the Thika Chief Magistrate Court and the Chief Magistrate Criminal Court in CR. 849/2009 — Republic -vs- Francis Ndungu Mwaura & 2 others, and in which case the Applicants have boldly discussed with remarks that the allegations of fraud were dismissed by the document examiner.
17. The Respondent explained that the reason for the delay in execution of the judicial review application was pursuant to a consent order reached in the High Court proceedings to stay it. They also deny that the Court of Appeal directed that the dispute be handled in CMCC case number 792 of 2006. According to them, the dispute in that case was to do with the protagonist group's leadership in the society and not the property.
18. That the Applicants, having been the authors of their own predicaments by virtue of acting arrogantly to the information within their knowledge among them, Caveat Emptor, the communication from the Ministry of Co-operatives, starting with the District Co-Operative Office Thika.

Submissions:

19. The respective Applicants filed written submissions in support of their applications. In their submissions dated 25th April, 2025, the 6th to 55th proposed interested parties argued on the reasons why they should be added as interested parties.
20. Regarding the merit of their application, they contend that the judicial review proceeding leading to the cancellation of the deed plan from which titles have been issued to the applicants required a determination of merits or validity of titles outside the scope of judicial review. They reiterate that the applicants purchased individual plots over time from a party who had valid titles at the time and no registered caution or restriction. The ex parte applicant has essentially called upon this Honourable



Court sitting on judicial review to assess the evidence of at least 55 interested parties and how they acquired their individual titles, and whether they were truly innocent purchasers without notice.

21. In support of the above argument, these applicants cited the Court of Appeal in *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd.* (Civil Appeal 185 of 2001) [2002] KECA 8 (KLR) stated as follows:

Concerning judicial review: “We agree with Mr. Mburu that by and large an order of prohibition would normally issue to stop or pre-empt a contemplated action where such contemplated action is either outside the jurisdiction of the decision-maker, or where the decision-maker has evinced an intention to act contrary to law. That is the effect of this Court’s decision in the KENYA NATIONAL EXAMINATION COUNCIL case, and as the Court has repeatedly said, judicial review is concerned with the decision-making process, not with the merits of the decision itself. Mr. Justice Waki clearly recognised this and stated so; so that in this matter, for example, the court would not be concerned with the issue of whether the increases in the charges were or were not justified. 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 made the decision have the power, i.e. 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 he 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 a 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 there was or there was not sufficient evidence to support the decision and that, as we have said, is not the province of judicial review”.

22. The Applicants submitted that the judgment herein can be set aside and made comments on the provisions of section 8(3) and (5) of the [Law Reform Act](#) in stating that the option of appeal is not available to them since they were not party to the earlier proceedings leading to the judgment. They argue that the discretion of this court under section 3A is not limited, and Order 45 of the [Civil Procedure Act](#), which allows review.

23. They also relied on the decision of the Court of Appeal in *Richard Ncharpi Leiyagu v Independent Electoral Boundaries Commission & 2 others* [2013] KECA 282 (KLR) held:

“[18]. We agree with those noble principles which go further to establish that the court’s discretion to set aside an ex parte judgment or order for that matter, is intended to avoid injustice or hardship resulting from an accident, inadvertence or inexcusable mistake or error, but not to assist a person who deliberately seeks to obstruct or delay the course of justice.

[24] In our own appreciation of this appeal, the Judge held that the court had no jurisdiction and in the same breath, accepted and rightly so, that the inherent jurisdiction vested in the court was meant to ensure the ends of justice are achieved. Circumstances vary, and although the courts are governed by statutory underpinnings, statutes cannot cover every conceivable situation and make provisions for every possible outcome. That is what is described in the Taylor case as implied jurisdiction.”



24. Mr David Ng'anga Kamau's submissions dated 2nd May 2025, presented arguments qualifying a party to be joined as an interested party. He also submitted grounds to be fulfilled to obtain a stay, inter alia, urgency, no delay, non-disclosure, and duty of candour.
25. The Ex parte applicant, now Respondent, in its submissions placed reliance on the provisions of section 8(3) of the *Law Reform Act* to state that this court lacks jurisdiction to entertain the present applications. It also cited inter alia the case of Charles Mwangi Gitundu versus Charles Wanjohi Wathuku for the proposition that this court cannot sit on appeal of its own ruling.
26. It also submits that the Applicants have miscontextualised the application of section 80 of the *Civil Procedure Act* and Order 45 of the Rules. That the facts and circumstances of their application are outside the scope and tangent of what is anticipated by the provisions of the law. The Respondent reiterates that the court is functus officio, having rendered a judgment on the matter on the merits. That it is an insult to their intelligence for the Applicants to refer to the said judgment as ex parte.
27. In answering the Applicants' contention that they were not heard, the Respondent submits that the cause of action culminating in the judgment existed way before the fraudulent dealings in the subject land reference 10743. Hence, the Applicants could not be served in respect to their cause of action, which did not exist when the matter was filed. That, had they (Applicants) done due diligence as purchasers, they would have found out about the pending cases. The Respondent contends, therefore, that the Applicants cannot plead the doctrine of innocent purchaser for valuer.
28. The Respondent further avers that the Applicants have recourse against the persons who sold them the land, and not the picture of hopelessness they are painting to this court. That endless litigation would prejudice the Respondent if this matter were to be reopened. In addition, the Respondent accuses some of the Applicants of non-disclosure in terms of who sold them the land and where the money was paid. Thus, they should not be granted the relief of review and or setting aside. To support this argument, it cites the case of Mohamed Shally Sese versus Fulson Co. Ltd & Another (2006) eKLR, where the Court of Appeal held that:

“It is apparent that the applicant has not been candid with this court. The orders the applicant seeks are discretionary in nature and equitable. Equity calls to those seeking its aid to come before it with clean hands and also do equity.”

Analysis and Determination:

29. The applications under consideration are brought under various provisions of the law cited, such as articles 10 and 159 of *the Constitution*, the overriding sections of the *Civil Procedure Act*, sections 18 and 19 of the *Environment and Land Court Act* and Orders 10, 45, 50, 51 and 53 of the Civil Procedure Rules. I have considered the grounds offered in support and against the applications and the submissions rendered. The question arising for this court's determination are:
 - i. Whether this court has jurisdiction to consider the applications filed post-judgment.
 - ii. Whether the Applicants should be joined to the case as interested parties
 - iii. Whether the judgment of this court entered on 14th November 2023 should be set aside.



Whether the court has jurisdiction to entertain the claim:

30. The Respondent has pleaded and argued that this court lacks jurisdiction to entertain an application seeking to set aside and or review a judgment because doing so is tantamount to sitting on its own appeal. It relied on the provisions of section 8(3) and (5) of the Law Reform Act, which states thus:

- “3. No return shall be made to any such order and no pleadings in prohibition shall be allowed, but the order shall be final subject to the Right of Appeal therefrom conferred by subsection (5) of this section.
5. Any person aggrieved by an order made in exercise of the Civil Jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal.”

31. The Applicants in the motion dated 23rd October, 2024, were clear on the orders they are seeking which are to set aside the judgment under the provisions of sections 1A, 1B and 3A of the Civil Procedure Act and Order 10 of the Civil Procedure Rules. They also prayed that if the judgment is set aside, an order does issue reversing any actions taken in execution of the impugned judgment. Similarly, the Applicant in the motion dated 11th October 2024, seeks to have the impugned judgment set aside and reviewed. The application of 17th December, 2024, is also asking for a stay and setting aside of the impugned judgment.

32. Hence the question, can a regular judgment as in this case, be set aside or is doing so amount to the court sitting on appeal on its own judgment? My answer is no, and the law backs the answer. Under the principles of natural justice, the law puts a duty on courts not to condemn a party unheard, except that the party requesting to be heard must convince the court. Thus, a court exercising its/discretion to set aside a regular judgment does not result in the court sitting on appeal over its order/decre.

33. The Civil Procedure Rules make provisions for setting aside interlocutory judgments as well as regular judgments. Order 10(10) and (11) states as follows:

- “10. The provisions of rules 4 to 9 inclusive shall apply with any necessary modification where any defendant has failed to file a defence.
11. Where judgment has been entered under this Order the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just.”

34. In the renowned case of Shah versus Mbogo, the Court of Appeal established the principles that must be satisfied before a judgment can be set aside. They held thus:

- “The discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist the person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”

Whether the interested parties can be joined in this case:

35. All the applicants have detailed their interests in land number 10743, the subject of the judicial review proceedings. They have attached copies of the title deeds issued to them. Most of them have stated that they are in physical possession of the portions of the land in question and have developed those areas.



36. The Respondent has not denied the occupation by the Applicants or that they hold titles as exhibited but asserts that their ownership and possession were irregularly and fraudulently acquired. In fact, the Respondent chides them, stating that they are the architects of their own misfortune, as they did not conduct proper due diligence before purchasing. It further states that these parties did not even provide evidence of the payment of the purchase price or disclose which accounts the monies were paid into.

37. The applicants have extensively cited case law supporting their joinder to these proceedings. For example, the decision of the Supreme Court in *Trusted Society of Human Rights Alliance v. Mumo Matemo & 5 Others*, Sup. Ct. Pet. No. 12 of 2013 - at paragraphs 17 and 18,

“Consequently, an interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he or she appears in the proceedings and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well-informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his or her cause is to ensure that a legal and legitimate decision is achieved.”

38. The principles were also affirmed in the case of *Francis Kariuki Muruatetu & another v Republic & 5 others*, Supreme Court Petition No 15 of 2015, where the court stated at paragraph 37:

“The following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the court by way of a formal application. Enjoinment is not as of right, but at the discretion of the court; hence, sufficient grounds must be laid before the court, based on the following elements:

- a. The personal interest or stake that the party has in the matter must be set out in the application.
- b. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
- c. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the court.
- d. It must also be clearly outlined, and not something remote.
- e. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions.
- f. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.

39. The grounds presented by the applicants, expressing their interests, meet the principles outlined above, as the Respondents listed in the original application would not raise their claims. The only difference in this case is that the matter has already been decided. However, having shown that they have significant stakes in the matter and were not part of the proceedings from the outset, it is essential they be joined to be given the opportunity to present their case. Only after they are joined can the Ex parte Applicant blame them for not exercising due diligence before acquiring the titles.



Whether the impugned judgment can be set aside:

40. The main ground why the Applicants want the impugned judgment of the 14th November, 2023 set aside is to allow them the opportunity to present their case. That the orders granted impact them by virtue that, in execution of the decree, their titles will be cancelled without being afforded a right of hearing.
41. It is trite law that judicial review proceedings fall under a special category of proceedings because they question the process of decision-making, not the merit of the decision. To consider whether there is merit in the applications before me, I hereby reproduce the orders sought in the application that resulted in the impugned judgment:
- (a) An order of certiorari to bring to court for quashing:
 - i. The decision/directive of the 1st Respondent contained in a letter dated 13th November 2008 by Land Officer a Mr. R.O. Olundo to issue.
 - ii. The decision/directive of the Director of survey contained in a letter dated 19th November and posted on 27th November 2008 by a Mr. B.N. Owino to issue.
 - iii. The certified copies of the deed plans issued on 25th November 2008 by the Director of Survey to issue.
 - (b) An order of mandamus directed to the:
 - i. 1st Respondent to issue a duplicate title for LR.10743
 - ii. 2nd Respondent to cancel the certified copies of the deed plans issued on 25th November 2008.
 - iii. 3rd Respondent to produce before court the certified copies of the deed plans issued by him/them on 25th November 2008.
 - (c) An order of prohibition directed to the 1st, 2nd, 3rd and 4th Respondents from effecting and/or registering any documents, transferring, alienating, disposing or in any manner whatsoever dealing with the land parcel number LR 10743 belonging to the Applicant Society by the Interested Parties.
2. That this Honourable Court do make such other or further orders as it may deem fit.
3. That the Respondents, in any event, provide for the costs of this application.
40. The prosecution of the original application was stayed pending the determination of Constitutional Petition no 30 of 2009. After the petition was decided, its judgment was challenged before the Court of Appeal. The Court of Appeal rendered its decision on 22nd March 2022. The applicants in the motion dated 23rd October 2024 argue that the Court of Appeal only quashed the orders made on 20th and 29th August 2008 in Thika CMCC 792/2006, while directing that the suit proceed to hearing and determination in accordance with the law.
41. One of the reasons put forward by the Respondent why they did not join these Applicants to their proceedings is that there was no cause of action against them. There is some truth in this assertion since nearly all the Applicants' titles were issued after the original motion was filed, save for the titles to NIMKEN Ltd, issued on 26th November 2008, and the transfer to Gatanga Kwao Ltd, dated 9th March 2009.



42. For instance, the title deeds of Catherine Wambui Karanja (6nd Interested Party) were issued on 15th September, 2016. The copy of the transfer in favour of David Ng'ang'a Kamau (11th Interested Party) is dated 14th September 2010. Daroda House Ltd was issued with a title on 26th February 2016 (having purchased from Gatanga Kwao Ltd). For the 3 Applicants in the motion dated 6th December, 2024, their three titles were all issued on 5th December 2022.
43. Thus, going by the documentation presented by the Applicants, the Respondent had no cause of action against them on 12th January 2009 when they filed these proceedings. From the replying affidavit of the Respondent, it was aware of the activities of some of the proposed interested parties. It ought to have joined/notified them when setting the matter down for hearing in 2023 as they were necessary parties for the full and final determination of this dispute.
44. The orders granted in the impugned judgment were not directed at the Applicants, as they were not parties to the suit when the judgment was entered. However, if the order is implemented, it will cancel the deed plans issued on 25th November 2008, thereby directly cancelling the Applicants' titles. Does this ground necessitate setting aside the judgment?
45. The merits of the impugned judgment mainly depend on the decision of the Court of Appeal in the case of Samuru Gituto Farmers Coop Society Ltd versus Chief Magistrate Court at Thika and 15 Others (2019) eKLR, which was delivered on 22nd March 2019. Particular reference is made to paragraphs 65 and 66 of that judgment hereunder;
- “ 65. Having found that the constitutional application was properly invoked; that it was not filed in abuse of the court process, and that the prima facie leadership of the Society at the time material to the original suit was the Hiram group, it only remains for us to find that this appeal is meritorious. The trial court declined to make any orders favourable to any party upon the finding that they were all acting in malafides and in abuse of the court process. The order left not only the parties, but also the 4,500 members of the Society in limbo. So, what are the appropriate orders to be made in the matter? That is the final issue.”
66. We grant that order with the result that the Orders made by P. K. Kariuki, Esq. RM on 20th and 29th August, 2008, and the orders made by Mrs. L. W. Wachira, SRM, on December, 2008 in CMCC 792/06, are declared a nullity and are hereby set aside. The proceedings in that case shall proceed in the manner and procedure prescribed by law.” (underline mine for emphasis).
46. The Court of Appeal found that the Hiram group were the prima facie officials of the Respondent as of 2006, when the case was filed before the Magistrate's Court at Thika. Furthermore, the Court of Appeal found that the letter of 1st August 2008 issued by the DCO, which had conferred leadership on the opposing team, was used to set aside the conservatory orders granted in 2006 and to obtain the impugned deed plans.
47. The Applicants contend that the case before the Chief Magistrate in Thika is still pending and recently, the Respondent took directions on hearing. While granting the orders cancelling the deed plans issued on 25th November 2008 which now impacts negatively on the Applicants' titles, the finding was premised on the Court of Appeal finding that:
- i. the Letter of 1st August 2008 by the 1st Respondent recognising the section of officials of the Ex Parte applicant was irregular.



- ii. Declaring the orders dated from the Chief Magistrate's Court in CMCC 792/2006 as null and void.
48. The Applicants contend that the Respondent failed to disclose all material issues to the court, including their subdivision and registration of some portions of L.R. number 10743 in their favour. Since they have provided evidence that they hold titles, whether obtained legally or not, it is essential to allow them to participate in the judicial review proceedings. This case is one of the pending matters that the Court of Appeal directed to be heard on the merits, hence, the Respondent cannot use the Court of Appeal decision to close them out.
49. In view of the facts presented, I am of the considered opinion that, since the orders granted directly affect all the Applicants who were not heard, it is just that they be allowed to present their case. Whether or not they have a good defence to the orders sought, the same shall be addressed during the hearing of the substantive motion inter partes.
50. For any prejudice caused to the Ex parte Applicant now Respondent, it can be compensated by an award of costs. Although the Respondent filed replying affidavit to each of applications, the prayers sought were similar hence half costs awarded on each of the applications will be fair compensation.
51. Consequently, I hold that all the applications are merited and are hereby allowed. The judgment of this court delivered on 14th November 2023 is hereby set aside. The Interested Parties are granted 14 days each to file their respective pleadings in response to the notice of motion application dated 12th January, 2009. An order of half costs on each of the applications to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025

A. OMOLLO

JUDGE

MILIMANI ELC JR 1 OF 2022 – RULING Page 11 of 11

