



**Republic v Land Adjudication Officer, Antuamburi Adjudication Section & another;  
Ikiao (Ex parte Applicant); Stephene, Represented by Jackson Kaibunga Kareria &  
another (Interested Parties) (Environment and Land Case Judicial Review Application  
E008 of 2025) [2025] KEELC 6383 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6383 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E008 OF 2025**

**JO MBOYA, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAND ADJUDICATION OFFICER, ANTUAMBURI ADJUDICATION  
SECTION ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**TIMOTHY KIRIMI IKIAO ..... EX PARTE APPLICANT**

**AND**

**M'AMURU STEPHENE, REPRESENTED BY JACKSON KAIBUNGA  
KARERIA ..... INTERESTED PARTY**

**MBERIA M'RIMBERE REPRESENTED BY DAVID GITONGA .... INTERESTED  
PARTY**

**JUDGMENT**

1. What is before me is the substantive notice of motion application dated 17.7.2025 and wherein the Ex-prate applicant [ the subject] has sought the following reliefs–
  - i. An order of certiorari be issued, bringing to this court and quashing, the proceedings, decision and order made and signed by the 1<sup>st</sup> respondent on 14.3.3035 in A/R objection No 2841, Antuamburi Adjudication section



- ii. The cost of these proceedings be borne by the respondents and interested parties jointly and severally.
2. The Notice of Motion Application is premised on the various grounds which have been highlighted in the body thereof. In particular, it has been contended that the 1<sup>st</sup> respondent proceeded to and entertained objection proceedings relating to plot Number 1464 Antuamburi Adjudication section long after the issuance of the certificate of finality.
3. Moreover, it has been posited that the proceedings and the consequential decision of the 1<sup>st</sup> respondent were/are contrary to the provisions of sections 26 and 27[b] of the *Land Consolidation Act*; and thus the 1<sup>st</sup> respondent acted ultra vires. In addition, it has also been averred that the actions of the 1<sup>st</sup> respondent are contrary to and in violation of the rules of natural justice; the due process and the right to fair hearing in terms of article 50 of the *Constitution* 2010.
4. The Notice of Motion application is also premised on the amended statement of facts dated 17.7.2025; the affidavit in verification of the statement of facts sworn on the 2.7.2025; and the various annexures attached thereto.
5. The Respondents filed grounds of opposition dated the 25.7.2025; and wherein the respondents contended that the application beforehand is premature, misconceived and legally untenable. Furthermore, the respondents also contended that the court was divested of the requisite jurisdiction to entertain and adjudicate upon the subject application. In addition, it was stated that the objection proceedings and the decision complained of were made intra vires by the 1<sup>st</sup> respondent.
6. The interested parties duly instructed and retained counsel. However, the learned counsel for the interested parties did not file any replying affidavit or grounds of opposition. Nevertheless, learned counsel attended court, filed written submissions and participated in the proceedings.
7. The application came up for hearing on 28.7.2025 and whereupon the advocates for the parties covenanted to canvas the application by way of oral submission.
8. Learned counsel for the ex parte applicant adopted the grounds at the foot of the substantive notice of motion application; the contents of the statement of facts; the averments at the foot of the affidavit in verification of the statement of facts and the contents of the various annexures attached thereto, including the objection proceedings and the impugned decision.
9. Learned counsel for the Ex parte applicant thereafter raised and highlighted five [5] key issues for consideration by the court. Firstly, learned counsel for the Ex parte applicant submitted that there was no valid objection capable of being entertained and adjudicated upon by the 1<sup>st</sup> respondent. In particular, counsel submitted that the 1<sup>st</sup> respondent could only entertain and adjudicate upon an objection [ if any] before the closure of the adjudication section in terms of section 27 of the *Land Consolidation Act*, Chapter 283 Laws of Kenya. However, in respect of the instant matter, it was posited that the 1<sup>st</sup> respondent purported to entertain and adjudicate upon the objection more than 8 years after the closure of the adjudication register and after the adjudication register had been forwarded for titling. Moreover, it was submitted that the titles had equally been issued in respect of the suit property.
10. To the extent that the 1<sup>st</sup> respondent had already issued the certificate of finality and thereafter forwarded the register for titling, it was contended that the 1<sup>st</sup> respondent became functus officio; and could not purport to entertain the objection proceedings. In short, it was submitted that the impugned objection was rendered invalid.



11. The second issue that was raised by learned counsel for the ex parte applicant touched on and concerned the lack of jurisdiction on the part of the 1<sup>st</sup> respondent. In this regard, it was submitted that the objection which had been filed had been overtaken by events; taking into account that the adjudication register stood closed. Moreover, learned counsel submitted that no objection could be heard when the provisions of section 27 of the [Land Consolidation Act](#), Chapter 283, Laws of Kenya; had already accrued and or come into force.
12. Thirdly, learned counsel for the Ex parte applicant has submitted that the actions by the 1<sup>st</sup> respondent were ultra vires the provisions of section 26 of the [Land Consolidation Act](#). To this end, it was submitted that the 1<sup>st</sup> respondent could not purport to nullify the subdivision arising from plot No 1464 without affording the registered owner thereof the opportunity to be heard. Furthermore, it was posited that the 1<sup>st</sup> respondent had no jurisdiction to nullify a certificate of title issued in accordance with the [Land Registration Act](#). To this end, counsel referenced the provisions of sections 15, 16,26 and 80 of the [Land Registration Act](#); and submitted that it is only a court of Law that can revoke a certificate of title and not 1<sup>st</sup> respondent.
13. The next issue that was raised by counsel for the Ex-parte applicant touched on and concerned unreasonableness, illegality and procedural impropriety. In this respect, counsel submitted that the 1<sup>st</sup> respondent acted illegally and unreasonably by bringing on board and dealing with plot Number 2266 Antuamburi, whereas the said plot was not the subject of the original objection. To this end, counsel has invited the court to take cognizance of annexure TKI 4 annexed to the affidavit in verification of facts.
14. Finally, learned counsel for the Ex parte applicant has also submitted that the 1<sup>st</sup> respondent violated the rules on natural justice when same proceeded to nullify and/ or cancel the subdivision arising from plot Number 1464 Antuamburi Adjudication section without affording the title holders an opportunity to be heard. It was further submitted that the actions by the 1<sup>st</sup> respondent contravened the provisions of article 50 of the [Constitution](#), 2010; and thus the court should set aside the objection proceedings and the resultant decision for being unconstitutional.
15. Other than the foregoing, learned counsel for the Ex-parte applicant also submitted on the doctrine of legitimate expectation; and contended that the owners of the title that arose from the subdivision of plot 1464 Antuamburi Adjudication section had a legitimate expectation that their title[s] could not be impeached and nullified without regard to the due process of law. However, it was submitted that the actions of the 1<sup>st</sup> respondent have infringed upon the legitimate expectation of the Ex-parte applicant and the holders of the title[s] that arose from the sub-division of plot No 1464 Antuamburi.
16. Flowing from the foregoing submission[s], learned counsel for the applicant has invited the court to find and hold that the substantive motion is merited. To this end, the court has been implored the Court to grant the order of certiorari and to quash the objection proceedings and resultant decision made by the 1<sup>st</sup> respondent.
17. The learned counsel for the respondents adopted and relied on the grounds of opposition dated 25.7.2025 and thereafter highlighted two [2] key issues. Firstly, learned counsel submitted that the objection proceedings and the decision taken by the 1<sup>st</sup> respondent fell within the purview and mandate of the 1<sup>st</sup> respondent. In particular, it was submitted that the 1<sup>st</sup> respondent had the authority to entertain and adjudicate upon the objection which had been filed by the Ex parte applicant himself.
18. Furthermore, it was submitted that even though the objection to plot No 1464 Antuamburi Adjudication section had previously been heard and determined, the moment the court quashed the



objection proceedings and the decision, the matter reverted to the 1<sup>st</sup> respondent. To this end, it was submitted that the objection remained alive and the 1<sup>st</sup> respondent was mandated by the provisions of Section 26 of the [Land Consolidation Act](#) to entertain the proceedings; and to render the impugned decision. To this end, learned counsel has submitted that the proceedings and decision complained of were within the powers of the 1<sup>st</sup> respondent.

19. Learned counsel for the respondents submitted that the current application by the Ex parte applicant is a deliberate attempt by the applicant to invite this court to sit on appeal on the decision of a court of coordinate jurisdiction. Learned counsel contended that the dispute beforehand had been dealt with and disposed of vide Meru HCC Mis Application No 40 of 2011; and thus the issues now being canvassed are res judicata.
20. Premised on the foregoing, learned counsel for the respondent has submitted that the court is therefore divested of jurisdiction and the application ought to be dismissed.
21. Learned counsel for the interested parties intimated to the court that they had filed written submissions and which submissions counsel sought to adopt and rely on. Suffice it to underscore that the submissions on behalf of the interested party dated 28.7.2025 were duly adopted as part of the interested party's submission. In addition, learned counsel for the interested party submitted that the decision of the adjudication officer, which had previously been made in respect of objection No 2841, was quashed by the court vide Meru HCC Mis Application No 40 of 2011. In this regard, it was submitted that the quashing of the objection proceeding and the decision restored the parties to the status quo Ante.
22. Moreover, it was submitted that upon the quashing of the objection proceeding[s] and resultant decision, the matter reverted to the 1<sup>st</sup> respondent, who was obliged to re-hear the objection de novo. In particular, it was submitted that the 1<sup>st</sup> respondent was seized of the jurisdiction to entertain the objection in terms of Section 26 of the [Land Consolidation Act](#).
23. The second issue that has been raised by learned counsel for the interested party is to the effect that the certificate of finality which was issued and signed by the 1<sup>st</sup> respondent only impacted upon and concerned the plots which had no pending objections or where there were no pending legal proceedings. In this case, it has been submitted that plot Number 1464 Antuamburi adjudication section had a pending suit before the court and hence the 1<sup>st</sup> respondent was within his statutory mandate to act or comply with the resultant decision of the court.
24. Furthermore, it has been submitted that the certificate of finality issued in terms of Section 27 of The [Land Consolidation Act](#) does not apply where there are pending proceedings. In this regard, counsel has reiterated that the pendency of the proceedings negates the application of the certificate of finality in respect of a plot that is being addressed by a court of law.
25. The next issue raised by the learned counsel for the interested party is to the effect that the entertainment and adjudication of the objection by the 1<sup>st</sup> respondent and resultant decision were intra vires. In particular, it has been submitted that upon the delivery of Judgment vide Meru HCC MIS App 40 of 2011; the objection reverted to the 1<sup>st</sup> respondent and same was obliged to hear the pending objection.
26. Learned counsel for the interested party has submitted that the title[s] which arose from the subdivision of plot No. 1464 Antuamburi were illegal and unlawful. In this regard, it was submitted that the beneficiaries of the said titles did not accrue any right or interest capable of being protected under the law. Further and in any event, it was posited that the doctrine of indefeasibility of title does not extend to titles acquired illegally.



27. Additionally, it was submitted that the Ex parte applicant cannot be heard to invoke and rely on the doctrine of legitimate expectation, where the certificate of title was unlawful and illegal. For good measure, it was submitted that the doctrine of legitimate expectation cannot be relied on to evade; circumvent; and defeat the law.
28. Arising from the foregoing, learned counsel for the interested party has invited the court to hold and find that the substantive application before the court is premature and misconceived and that same also constitutes an abuse of court process. To this end, the court has been invited to dismiss the application with costs to the interested parties.
29. Having reviewed the substantive notice of motion, the contents of statutory statement of fact; the affidavit in verification of statement of facts; and annexures there to and upon considering the response filed by the respondent; and upon taking into account the oral submission which were ventilated on behalf of the parties, I come to the conclusion that the determination of the subject turns to three [3] key issues; whether the 1<sup>st</sup> respondent was seized of the requisite jurisdiction to entertain and adjudicate upon Objection number 2841 Antuamburi Adjudication section or otherwise; whether the decision by the 1<sup>st</sup> respondent was ultra vires or otherwise; and whether the 1<sup>st</sup> respondent breached/violated the Ex parte applicants right to fair trial; the rules of natural justice; or legitimate expectation.
30. Regarding the first issue, namely; whether the 1<sup>st</sup> respondent was seized of the requisite jurisdiction to entertain the objection filed by the Ex parte applicant; it is important to recall that the ex parte applicant was the one who lodged objection number 2841 in respect of plot Number 1464, Antuamburi Adjudication section. For good measure, the Ex parte applicant was not happy with the decision that had been made by the adjudication committee.
31. Subsequently, the objection that had been filed by the Ex parte applicant was heard and determined by the 1<sup>st</sup> respondent [differently constituted]. Notably, the objection was disposed of vide decision rendered on 31.3.2011.
32. Suffice to state that the decision by the land adjudication officer delivered on 31.3.2011 was challenged by the interested parties herein. The said decision was the subject of Judicial review proceedings, namely; Meru HCC Mis App 40 of 2011.
33. It is common ground that the said Judicial review proceedings were heard and determined vide Judgment rendered on 20.4. 2018; whereupon the court [differently constituted] allowed the judicial review proceedings. In particular, the court proceeded to and quashed the decision of the land adjudication officer, which had effectively allowed the objection filed by the current Ex parte applicant.
34. The dispute beforehand turns on the legal implication[s] of the decision of the court, which quashed the objection proceeding and the decision that was previously made. According to the Ex parte applicant, the court did not make any further order directing the hearing and rehearing of the objection filed. In this regard, the Ex parte applicant has contended that the 1<sup>st</sup> respondent was therefore divested of jurisdiction to entertain and adjudicate upon the objection.
35. Moreover, the Ex parte applicant has also submitted that the 1<sup>st</sup> respondent's jurisdiction to entertain and adjudicate upon the objection [if at all] was circumscribed by the provisions of section 27 of the *Land Consolidation Act*. In this regard, it was submitted that the 1<sup>st</sup> respondent could only hear the objection provided that no certificate of finality had been issued.
36. However, in respect of the instant matter, it was submitted that a certificate of finality had been issued and thus the objection which was pending before the 1<sup>st</sup> respondent was rendered invalid. In any event,



it was posited that it was the 1<sup>st</sup> respondent who had failed to register a caveat against the suit property, leading to the issuance of the title.

37. On the other hand, the respondents and the interested parties have submitted that following the delivery of judgment vide Meru HCC JR 40 of 2011; and wherein the court quashed the objection proceeding[s] and the resultant decision, the matter reverted to the 1<sup>st</sup> respondent. In particular, it was submitted that the judgment of the court restored the status quo ante, meaning that the objection remained pending and thus same had to be heard afresh.
38. In a nutshell, the respondents and the interested parties, have contended that the 1<sup>st</sup> respondent had jurisdiction to entertain and adjudicate upon the objection.
39. I beg to state that the judgment rendered vide Meru HCC JR No 40 of 2011 quashed the previous objection proceedings and the resultant decision. The net effect of the said Judgement was that the objection number 2841, which had been lodged by the current Ex parte applicant, remained in situ and same was therefore open to consideration by the 1<sup>st</sup> respondent. It is instructive to highlight that it is only the objection proceedings and the decision that were quashed; and not the objection itself.
40. Additionally, it is not lost on me that the court that handled Meru HCC JR 40 of 2011 could only deal with the process that was deployed in the hearing of the objection proceedings; and the decision arrived at. The court could not entertain the objection itself. To this end, the objection could only revert to and be heard by the designated statutory body, namely; the 1<sup>st</sup> respondent.
41. Furthermore, it is important to reiterate that in so far as the objection had been filed timeously and in accordance with the provisions of section 26 of the *Land Consolidation Act*, then the 1<sup>st</sup> respondent was statutorily enjoined to hear and determine the same. For good measure, the jurisdiction of the 1<sup>st</sup> respondent would only cease upon hearing of the objection, albeit subject to the supervisory jurisdiction of the court.
42. I beg to underscore that where the 1<sup>st</sup> respondent has heard an objection, but the objection proceedings and the resultant decision were quashed by the court, the matter automatically reverts to the 1<sup>st</sup> respondent for hearing or rehearing. It is prudent for the court hearing the judicial review matter/ proceeding[s] to make a consequential order to re-hear or hear the objection de-novo. Such a consequential order operates to bring clarity and coherence. However, the failure to make the consequential order does not by and of itself; deprive the 1<sup>st</sup> respondent of his statutory obligation.
43. To buttress the foregoing position, I beg to reference the decision in the case of Dhiman vs Shah [2025] KECA, where the Court of Appeal stated thus:

“It seems clear to us beyond peradventure that this Court set aside the entire High Court judgment dated 16<sup>th</sup> September, 1999. The consequence is that all consequential orders that flowed from that ex parte judgment were also, ipso facto, set aside. The result was that the parties were returned to status quo ante, as they were before the judgment was entered. Without the ex parte judgment, the respondent would have no basis for applying to sell suit property by public auction; and, therefore, would have no basis to bid at such public auction; or obtain a vesting order pursuant to such successful bidding. All these subsequent actions were based on the validity of the Ex parte judgment, which was set aside by this Court. The result is that the sale at public auction, as well as the vesting order – both of which were based on the ex parte judgment and derived their validity from it were, by operation of law, set aside by this Court’s judgment dated 31<sup>st</sup> July, 2015. [Emphasis supplied].



44. On the need for the court to make consequential orders and for the sake of clarity, the court proceeded and observed thus:

“We readily concede that this Court’s judgment would have been much clearer if it had included the phrase ‘and all consequential orders’. However, the purport of the judgment as it is psychedelically clear: this Court intended the parties to return to the High Court for a rehearing of their case. It would have been pointless to so require the parties to rehear their case if, in fact, the subject matter of the suit, the suit property, irreversibly remained in the hands of the respondent as adjudged by the impugned ex parte order which was set aside. [Emphasis supplied]

45. Furthermore, the legal position that the matter would automatically revert to the 1<sup>st</sup> respondent was highlighted in the case of Peter Kimandiu vs Land Adjudication Officer Tigania West Adjudication Section 2016 eKLR, where the Court of Appeal held thus:

“The upshot is that this appeal has merits and is allowed. We set aside the decision of the High Court made on the 21<sup>st</sup> November 2014 and substitute therefor an order granting the order of certiorari to issue forthwith to bring before the High Court for quashing the decision of the Land Adjudication Officer, Tigania, made on 22<sup>nd</sup> January 2010 in respect of land parcels numbers. 1196, 1249 and 2286 within Antuamburi Adjudication Section. The dispute shall be remitted back to the Land Adjudication officer for hearing and determination in accordance with the law. The costs of the appeal shall be borne by the 1<sup>st</sup> respondent. We so order. [Underlining supplied].

46. My understanding of the position expounded by the Court of Appeal is to the effect that where the objection proceeding[s] and the decision arising therefrom are quashed, the dispute/ objection is reverted to the land Adjudication officer for hearing and determination de novo. That is exactly the import and tenor of the Judgment that was rendered on 20.4.2018. Quite clearly, the Objection that was filed cannot/ could not be left hanging in the air.

47. Before concluding on this issue, it is important to address the concern that was raised by learned counsel for the applicant pertaining to the import of section 27 of the Land Consolidation Act. Suffice it to posit section 27 of the Land Consolidation Act addresses two aspects, namely; where the certificate of Finality has been issued; and where all the objections affecting the disputed land have been heard and determined. Furthermore, the section refers to the phrase whichever is later.

48. For ease of reference, the provisions of section 27 are reproduced as hereunder:

“After the expiration of sixty days from the date of the certificate mentioned in section 25, or on the determination of all objections in accordance with section 26, of this Act, whichever shall be the later, the Adjudication Register shall be final.

49. To my mind, for as long as the proceedings vide Meru HCC JR 40 OF 2011; remained pending, it cannot be said that all the objections proceeding affecting plot 1464 Antuamburi had been determined. In this regard, my position is that the 1<sup>st</sup> respondent still had the requisite jurisdiction to entertain the objection in line with the Judgment of the court.

50. Simply put, I find and hold that the 1<sup>st</sup> respondent was seized of the requisite jurisdiction to entertain and adjudicate upon the objection that had been filed by the Ex parte applicant. Moreover, it is instructive to underscore that the 1<sup>st</sup> respondent herein highlighted that the entertainment and



adjudication of the objection proceedings was underpinned by the Judgment rendered by this court, differently constituted. [See the preamble of the objection proceedings, which references Meru ELC JR No. 40 of 2011].

51. Regarding the question as to whether the 1<sup>st</sup> respondent acted ultra vires his mandate, it is instructive to observe that the 1<sup>st</sup> respondent's jurisdiction was circumscribed by the provisions of sections 26 & 27 of the Land Consolidation Act, Chapter 283, Laws of Kenya. Instructively, the moment the objection proceedings and the decision arising therefrom were quashed by the court vide Meru HCC Miscellaneous application No. 40 of 2011 [JR], the position reverted to the status ante.
52. In the premises and without belabouring the point; I come to the conclusion that the entertainment and adjudication of the objection by the 1<sup>st</sup> respondent was within the parameters of Section 27 of the Land Consolidation Act. Simply put, the impugned actions were intra vires.
53. Turning to the next issue whether the whether the 1<sup>st</sup> respondent breached/violated the Ex parte applicants right to fair trial; the rules of natural justice; or legitimate expectation, it is worthy to recall and reiterate that learned counsel for the Ex parte applicant contended that by cancelling and nullifying the titles that arose from the subdivision of plot No. 1464 Antuamburi Adjudication Section, the 1<sup>st</sup> respondent acted contrary to Article 50 of the Constitution.
54. I wish to address the subject complaint in a three-pronged manner.
55. Firstly, it is not lost on me that the subdivision of plot No. 1464 Antuamburi Adjudication section was informed by the decision of the 1<sup>st</sup> respondent dated 31.3.2011, which was thereafter quashed by the court. It is instructive to observe that the quashing of the objection proceedings and the consequential decision of the land Adjudication officer by the court impacted upon the subdivision and the consequential title arising therefrom.
56. To this end, the ex parte applicant herein cannot now be heard to complain that the nullification or cancellation of the subdivision was contrary to the rules of natural justice. In any event, the actions by the 1<sup>st</sup> respondent amounted to surplusage because the sub-divisions stood cancelled vide judgment delivered on 20.4.1018; which quashed the Objection proceeding[s]; and the resultant decision.
57. Secondly, the objection which had been lodged, namely; objection number 2841, challenged the title number 1464 Antuamburi. It then means that if the said plot was interfered with during the pendency of Meru HCC JR 40 of 2011, then the 1<sup>st</sup> respondent was within his statutory mandate to address the consequential sub-divisions. In any event, the provisions of Section 26 conferred the 1<sup>st</sup> respondent with powers to address any errors or incorrect entries affecting the register.
58. Finally, I wish to state that the titles arising from the sub-division and which underpin the contention of breach of legitimate expectation appear to have been procured during the pendency of Meru HCC JR 40 of 2011. In this regard, the impugned titles were obtained contrary to the doctrine of Lis pendens.
59. The legal implication and tenor of the doctrine of lis pendens have been the subject of various court decisions. In the case of Cooperative Bank of Kenya Ltd vs Patrick Kang'ethe Njuguna & another [2017] eKLR, the Court of Appeal expounded on the scope and extent of the doctrine.



60. For coherence, the court stated as hereunder;

Do courts still recognize the doctrine? The ITPA was repealed by the *Land Registration Act* (LRA) Number 3 of 2013; whose Section 107 (1) of the LRA provides for the saving and transitional provisions of the Act, and provides that:-

“Unless the contrary is specifically provided for in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.”

53. Presently, the LRA does not prohibit the application of the doctrine of *lis pendens*; nor does any law for that matter. For this reason and in view of Section 107 aforesaid, this Court has previously held that the doctrine of *lis pendens* is still applicable to this day, albeit under common law (see. *Naftali Ruthi Kinyua v Patrick Thuita Gachure & Another* [2015] eKLR)
54. On whether the doctrine can be interpreted to mean that the filing of proceedings serves as an automatic stay of the sale; we are of the view that it cannot. As stated under the repealed Section 52 of the ITPA, an automatic prohibition of dealings or transfers of the property is only during the ‘active prosecution’ of the proceedings. Consequently, while the parties are automatically duty bound to preserve the property during the pendency of active proceedings, the same cannot be said of fresh proceedings that have just been filed and whose prosecution is yet to begin.
55. This conclusion is informed by the fact that *lis pendens* as applied in Kenya is heavily borrowed from the Indian system. However, unlike our system, the Indian one was amended to rid itself of the phrase ‘active prosecution.’ Consequently, in India, *lis pendens* kicks in from the moment proceedings are instituted, all the way through to the appellate stage. This has been the position adopted by the Supreme Court of India (see *Jagan Singh v. Dhanwanti* [2012] 2 SCC 628). Clearly, the plaintiffs under that system enjoy a wide berth in so far as the doctrine is concerned. To ensure that this new found freedom is not abused by unscrupulous plaintiffs-who may file frivolous suits in a bid to frustrate a legitimate owner’s right to deal in his land, several safeguards were put in place; from levies of compensatory costs in frivolous proceedings, to expedited proceedings and compensatory damages against vexatious plaintiffs (see *Vinod Seth v. Devinder Bajaj & Another* SCC No. Civil Appeal No. 4891 of 2010). In Kenya, however, no such measures have been legislated regarding *lis pendens*. As such, the practical approach remains that mere institution of suit does not trigger the doctrine. Rather, it is upon the active prosecution of that suit that the doctrine automatically sets in. Consequently, the contention that mere filing of suit operates as an automatic stay of dealings, fails.



61. In so far as the impugned titles were obtained contrary to the doctrine of Lis pendens, I am afraid that the doctrine of legitimate expectation cannot be invoked and relied on to sanitize the impugned titles. Moreover, I am afraid that the ex parte applicant has not satisfied the ingredients that underpin the invocation and reliance on the doctrine of legitimate expectation [See the holding of the Supreme Court in Kenya Revenue Authority v Export Trading Company Limited (Petition 20 of 2020) [2022] KESC 31 (KLR) (17 June 2022) (Judgment)]
62. Before concluding on this aspect of the matter, it is important to highlight that the Ex-parte applicant was duly heard before the land adjudication officer. For good measure, the Ex-parte applicant was afforded the opportunity to testify, produce evidence and also to cross-examine the respondents. The proceedings before the 1<sup>st</sup> respondent are well documented. In any event, the said proceedings have been annexed by the Ex-parte applicant himself.
63. Based on the foregoing, I do not understand the gist [crux] of the Ex-parte applicant's complaint that his rights to natural justice; and fair hearing were infringed. On the contrary, what is evident is that the 1<sup>st</sup> respondent duly observed the tenets [principles] of natural justice; and fair hearing. [see the holding of the Court of Appeal in the case of County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] KECA 397 (KLR) at paragraphs 71 – 73 thereof].
64. Flowing from the foregoing, I am afraid that the Ex parte applicant herein has neither established nor satisfied the threshold for the issuance of orders of judicial review in the nature of certiorari. [See the decision in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR)].

#### **FINAL DISPOSITION**

65. For the reasons that have been highlighted in the body of the Judgment, it must have become crystal clear that the notice of motion application under reference is devoid and bereft of merits. The same courts dismissal.
66. Consequently, and in the premises, the final orders that commend themselves to me are as hereunder;
  - a. The Notice of Motion Application dated 17.7.2025 be and is hereby dismissed.
  - b. Costs of the Application be and are hereby awarded to the Respondent[s] and Interested Parties.
  - c. The costs in terms of (b) above to be agreed upon; and in default to be taxed in the conventional manner
  - d. The order of Leave to operate as stay of the decision of the 1<sup>st</sup> respondent granted on 10.7.2025 be and is hereby vacated/discharged.

**DATED, SIGNED AND DELIVERED AT MERU ON THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

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

#### **JUDGE**

In the presence of:

Court Assistant Hussein

Mr. Carlpeters Mbaabu for the Ex-parte Applicant

Ms. Miranda [Senior Litigation Counsel] for the Respondent



Mr. Thurania Mutunga for the Interested Parties.

