



Wamala v Chief Magistrates Court Milimani Law Courts & 4 others; Kagwima & another (Interested Parties) (Environment and Land Judicial Review Case E005 of 2025) [2025] KEELC 6597 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6597 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2025
CA OCHIENG, J
OCTOBER 2, 2025**

BETWEEN

ABDUL RAHMAN ERIAH WAMALA APPLICANT

AND

**CHIEF MAGISTRATES COURT MILIMANI LAW COURTS . 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT
DIRECTOR OF SURVEY 4TH RESPONDENT
CHIEF LAND REGISTRAR 5TH RESPONDENT**

AND

**PETER NJOROGE KAGWIMA INTERESTED PARTY
KIAMBU DANDORA FARMERS COMPANY LIMITED .. INTERESTED PARTY**

RULING

1. What is before Court for determination is the ex parte Applicant’s Chamber Summons application dated the 10th February 2025 where he seeks for the following Orders:
 1. Spent.
 2. Abandoned on 30th April 2025.
 3. That this Honourable court be pleased to grant leave to the Applicant herein to apply for an order of prohibition prohibiting and/or barring the Respondent from continuing with any case, making any decision, intimidating, harassing and/or threatening the Applicant herein in



relation to Land Reference Number Nairobi/Block 173/283 and or the alleged Title Number 15400/564 without subjecting the Applicant's title to scrutiny and going into the chain of acquisition.

4. That this Honourable court be pleased to grant leave to the Applicant to apply for an order of mandamus compelling the 4th Respondent to cancel the FR's which are overlaid on LR No. 11379/3 which lead to the creation of Title No. 15400 and for the 5th Respondent to cancel or revoke the illegal Title No. 15400 or any other title arising from the same since the same are illegal, null and void as the same were not acquired legally.
 5. That leave granted herein do provide as stay of the proceedings in the lower court.
 6. That the costs of this application be provided for.
2. The application is premised on grounds on its face and on the verifying affidavit of Abdul Rahman Eriah Wamala. He avers that the 1st Interested Party lodged a complaint against him in relation to his parcel, Nairobi/Block 173/283 claiming that the said parcel is his and without verifying his title. Further, that police officers under the command and directions of the 3rd Respondent arrested him. Subsequently, a decision to Charge him was made without interrogating his title's root or authenticity and he was arraigned in Court. He claims that the action amounts to intimidation and harassment.
 3. He explains that his title originated from a title issued to the 2nd Interested party in 1970 and that he is aware that there are Survey reports from the government surveyor revealing that there are several FRs, which are overlaid on Title No. 11379/3 hence it would be in the interest of justice that the illegal FRs be cancelled together with the titles which they created, to enable the genuine owners like himself who purchased their parcels from the 2nd Interested Party to have their peace in the suit land.
 4. He states that he was informed by the directors of the 2nd Interested party that the titles created as LR No. 15400 have never existed as no genuine title could emanate from LR No. 11379/4 as no title existed by that number, since the original Title No. 11379 was divided into three (3) parcels, which created 11379/1, 11379/2 and 11379/3. Further, that with the aim of stealing, some people hatched a scheme and created Title No. 11279/4 from 11379/1 which was not possible as Title No. 11379/4 could only be created from the original title No. 11379, which is not the case.
 5. He asserts that the problem which the legal purchasers of part of LR 11379/3 are facing is created by officials from the Ministry of Lands and Survey department in collusion with other public officers misleading that government had acquired LR No. 11379/3 which could not be possible as the parcel was private land.

Responses

6. The 2nd and 3rd Respondents filed Grounds of Opposition. They contend that the Prayers sought are unconstitutional as they seek to prevent the 2nd Respondent from exercising its mandate as provided under Article 157 of *the Constitution*. Further, that due process had been followed in preferring the Charges against the Applicant as a formal complaint had been lodged with the 3rd Respondent and Charges were preferred based on the evidence availed. They reiterate that there is no reasonable evidence that the criminal proceedings are mounted for an ulterior purpose thus the application is only meant to derail the hearing of the preferred Charges.
7. The 1st Interested party filed Grounds of Opposition and a replying affidavit. He asserts that Pedval Limited, where he is a director and shareholder, is the proprietor of, LR 15400/564 (Original Number 15400/172/393) as comprised in the Certificate of Title Number I.R. 175913 and that the same is



- wrongly identified as Plot No. 296 on L.R. 11379/3 by the Applicant. Further, that Pedval Limited purchased the parcel from Amboseli Court Limited on 18th August 2016.
8. He claims that about 29th March 2021, the Applicant trespassed onto the suit property and forcefully caused malicious destruction thus Pedval Limited filed MCELC/E106/2021 and an application under a certificate of urgency seeking for an injunction against the Applicant's illegal interference with the suit property. Further, on the 26th August 2021, the Court delivered a Ruling ordering the Applicant and other defendants in MCELC/E106/2021 to refrain from interfering with the parcel pending the hearing and determination of the suit but in utter contempt as well as blatant disobedience of the Court Order, the Applicant continues to occupy the suit property and has proceeded to construct apartments and leased them, thus granting the orders sought will be an affront to the res judicata doctrine. Further, it will also be tantamount to sitting on Appeal against the Order of the Court in the said MCELC/E106/2021.
 9. He points out that this court in Milimani ELCC/E335/2022 Silas Irungu Karuri v Peter Nganga Chege and Milimani Civil Application Number 35 of 2018 Republic v The National Land Commission and 6 Others held that the 2nd Interested Party's ownership of L.R. No. 11379/3 ceased to exist when the Government compulsorily acquired the same in 1974 and as such, the 2nd Interested Party is incapable of passing any good title to the Applicant in respect of the property that was formerly known as L.R. No. 11379/3, as the Applicant claims.
 10. Further, that the instant application also offends the Sub Judice doctrine as there is a case that is currently ongoing before this Court and touching on the subject parcel, being Milimani MCELC/E106/2021 Pedval Limited v Uma Kevin Otieno.
 11. He asserts that the 2nd Respondent's decision to Charge the Applicant is legal and in line with its mandate as spelt out under Article 157 of *the Constitution* while the 3rd Respondent exercised its powers under *the Constitution* and section 24 (e) of the *National Police Service Act* in investigating the crimes that the Applicant committed and acted within its legal mandate thus the instant application is a veiled attempt at misdirecting this Court to violate *the Constitution* by directing and controlling the 2nd Respondent..
 12. He contends that the application is against public interest as it seeks to subvert the course of justice by acquitting a criminal without the rigors of the criminal justice system. He urges the court to strike out the application, contending that it is not accompanied by a Statutory Statement as is requisite under Order 53 and is therefore defective. He pleads that even if leave were to be granted, the same should not operate as a stay to the criminal proceedings in MMCR/E963/2024 Republic v Abdul Wamala.
 13. The application was canvassed by way of written submissions.

Submissions

14. The Applicant submits that since the matter leading to the filing of the application revolves around title which goes into land ownership, this court has jurisdiction to determine it under Article 162 (2) of *the Constitution* and Section 13 (2) of the *Environment and Land Court Act*. Further, that it has supervisory jurisdiction over the Magistrates court in relation to land ownership, adding that the decision to Charge him was pegged on a decision of this court being Petition 35 of 2018 which has been misinterpreted.
15. He submits that the fact that his title which was issued by the 5th Respondent was rubbished without being scrutinized in evidence amounts to abuse of power and the rules of natural justice. Further, that



at the leave stage, the court does not examine the merits of the case but merely assesses whether the Applicant has an arguable prima facie case.

16. To buttress his averments, the ex parte Applicant relied on the following decisions: Republic v Chief Magistrates' Court at Milimani Law Courts, Director of Public Prosecutions & 2 Others (Interested Parties); Ex Parte Applicant: Pravin Galot [2020] KEHC 7529 (KLR), David Oloo Onyango v The Attorney General, Civil Appeal No. 152 of 1982 (unreported), Vivo Energy v National Land Commission [2020] eKLR and Sysvana Mpabwanayo Ntanyamira v Allen Waiyaki Guchuhi & Another [2016] KEJC 4176 (KLR).
17. On their part, the 2nd and 3rd Respondents submit that this Court lacks jurisdiction to hear and determine the instant application as it does not fall within this Court's mandate, which is derived from Article 162 (2) (b) of *the Constitution* and operationalized by the *Environment and Land Court Act* No. 19 of 2011. They argue that jurisdiction to grant the prayers sought, including prohibitory orders falls within the Constitutional and Human Rights Division thus any attempt to expand the Court's jurisdiction beyond its defined limits would contravene the principle of separation of powers and the doctrine of specialized jurisdiction.
18. Further, that the 2nd Respondent is an independent office with the Constitutional mandate of instituting and undertaking criminal prosecutions while the 3rd Respondent is clothed with both Constitutional and statutory mandate to investigate every criminal complaint reported. It is pointed out that in compliance with the principles of natural justice, the Applicant was summoned by the 3rd Respondent and given an opportunity to present his version of the incident and recorded statements. Further, upon concluding investigations, it was established that there was a reasonable suspicion that an offence had been committed.
19. They submit that the ex parte Applicant failed to demonstrate illegality, irrationality or procedural impropriety in a manner that demands the intervention of this Court as there is no demonstration that the 2nd and 3rd Respondents breached the provisions of *the Constitution* or the law or that they abused their office. Further, that there is no evidence of malice, unlawful actions, harassment or intimidation or manipulation of court process so as to seriously deprecate the likelihood that the Applicant might not get a fair trial as provided under Article 50 of *the Constitution*.
20. To buttress their averments, the 2nd and 3rd Respondents relied on the following decisions: Cascade Company Limited vs Kenya Association of Music Production (KAMP) & Others, Petition No. 7 of 2014 High court, Murang'a, Pauline Raget Adhiambo Agot v DPP and 5 Others (2010) Petition No. 446 of 2015 and Karisa Chengo & 2 others vs Re (2015) eKLR.
21. In his submissions, the 1st Interested Party fully adopts and reiterates the facts as set out in his Grounds of opposition and replying affidavit. He submits that this Court should decline the invitation to exercise its judicial mind over issues that offend the Res Judicata principle and subjudice principle for want of jurisdiction to do so. To this end, he points out that the validity of Title No. LR 15400 and all parcels of land created therefrom by way of subdivision is a question that has now been settled by this Court in ELCC/E335/2022 while the non-existence of a parcel of land with the Title No. L.R. No. 11379/3 was settled by this Honourable Court in Civil Application Number 35 of 2018 where the Court held that the 2nd Interested Party's ownership of L.R. No. 11379/3 ceased to exist when the Government compulsorily acquired the same in 1974.
22. He also submits that the ex parte Applicant has no locus standi and his application is vexatious as he is seeking for this Court to issue judicial review order of Mandamus in respect of property that was formerly known as L.R. No. 11379/3, which he does not own. Further, that the application has failed



to meet the threshold for grant of leave since the ex parte Applicant does not have locus standi, the issues being raised are not arguable and have a low chance of success as they have been determined and settled in other cases and there is no decision complained of that has been made by a public body or a tribunal exercising a public function in respect of the Order of Mandamus and Prohibition orders being sought.

23. He also submits that in view of the fact that the Applicant abandoned prayer 2 of his application when the matter came up for hearing on 30th April, 2025 his prayer for stay is also mute.
24. To buttress his averments, the 1st Interested Party relied on the following decisions: Florence Maritime Services Limited & Another v Cabinet Secretary Transport & Infrastructure & 3 Others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021), County Council of Nandi V Ezekiel Kibet Rutto & 6 Others [2013] eKLR and Republic v Nairobi City County Assembly Service Board Ex parte Applicant Pauline Sarah Akuku [2022] eKLR.

Analysis and Determination

25. Upon consideration of the Chamber Summons application dated the 10th February 2025 including the Grounds of Opposition, respective affidavits and submissions, the only issue for determination is whether the Applicant has met the threshold for grant of leave to institute judicial review proceedings seeking orders of prohibition and mandamus in respect to the suit property.
26. The Ex parte Applicant seeks leave to apply for an order of prohibition prohibiting or barring the Respondent from continuing with any case, making any decision, intimidating, harassing or threatening him in relation to Land Reference Number Nairobi/Block 173/283 and or the alleged Title Number 15400/564 without subjecting his title to scrutiny and going into the chain of acquisition. He further seeks leave to apply for an order of mandamus compelling the 4th Respondent to cancel the FR's which are overlaid on LR No. 11379/3 which lead to the creation of Title No.15400 and for the 5th Respondent to cancel or revoke the illegal Title No. 15400 or any other title arising from the same. The ex parte Applicant however abandoned the application for leave to apply for an order of certiorari to quash the Chief Magistrates Court Criminal Case No. E 963 of 2024.
27. The Respondents including the 1st Interested Party have opposed the instant application for leave. They contend that the suit is res judicata and sub judice as other Courts have already made determination on validity of Title No. LR 15400 and all parcels of land created therefrom by way of subdivision in ELCC/E335/2022 and non-existence of a parcel of land with the Title No. L.R. No. 11379/3 in Civil Application Number 35 of 2018.
28. Order 53 Rule 1 of the Civil Procedure Rules prescribes the procedure of commencing Judicial Review and stipulates inter alia:
 - ‘(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
 - (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.
 - (3) The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.



- (4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise: Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.’
29. The yardstick for grant of leave was stated as follows in *Meixner & Anor v Attorney General* [2005] 2KLR 189:
- “The leave of court is a prerequisite to making a substantive application for judicial review. The purpose of the leave is to filter out frivolous applications. The granting of leave or otherwise involves an exercise of judicial discretion.... The test to be applied in deciding whether or not to grant leave is whether the applicant has an arguable case.”
30. On judicial review, Lord Diplock in the case of *Council for Civil Service Unions vs. Minister for Civil Service* [1985] A.C. 374, at 401D set the standards of judicial review and stated that:
- “Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.’
31. Further, in the case of the *Republic v National Transport & Safety Authority & 10 others Ex parte James Maina Mugo* [2015] eKLR, it was held that:
- ‘It follows therefore that where the resolution of the dispute before the Court requires the Court to make a determination on disputed issues of fact that is not a suitable case for judicial review. The rationale for this is that judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal. It follows that where an applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect determine the merits of the dispute the Court would not have jurisdiction in a judicial review proceeding to determine such a dispute and would leave the parties to ventilate the merits of the dispute in the ordinary civil suits.’
32. It is trite that Judicial Review challenges the administrative action of a person in position of authority. Further, it seeks to demonstrate that the actions of the person in authority was ultra vires, irrational, improper and violated the rules of Natural Justice.
33. In this instance, from the averments in the respective affidavits including the Grounds of Opposition, the ex Parte Applicant claims that his title originated from a title issued to the 2nd Interested party in



1970 and that he is aware that there are Survey reports from the government surveyor revealing that there are several FRS, which are overlaid on Title No. 11379/3.

34. I note the ex parte Applicant has not denied that the validity of Title No. LR 15400 and all parcels of land created therefrom by way of subdivision has been settled in ELCC/E335/2022 while the non-existence of a parcel of land with the Title No. LR. No. 11379/3 was settled in Civil Application Number 35 of 2018 where the Court held that the 2nd Interested Party's ownership of L.R. No. 11379/3 ceased to exist when the Government compulsorily acquired the same in 1974. From these facts alone, I opine that the instant application is actually res judicata. I further note that the instant application was not accompanied by a Statutory Statement as stipulated under Order 53 of the Civil Procedure Rules and I hence find it defective.
35. Based on the facts before me while relying on the legal provisions cited and associating myself with the decisions quoted, I find that the ex parte Applicant has not demonstrated how the 2nd and 3rd Respondents acted illegally, irrationally and ultra vires their powers.
36. From the evidence presented by the parties, I opine that since the Courts of Competent jurisdiction had actually dealt with the issue of root of title where the ex parte Applicant's title emanated from, if the ex parte Applicant was aggrieved with the said Courts' decisions, he should have appealed instead. In my view the ex parte Applicant seeks the Court to make a determination of the contested matters once more touching on the root of his title but this can only be done in a civil suit where viva voce evidence can be adduced.
37. In the foregoing, I find that the ex parte Applicant has not met the criteria for grant of leave to commence judicial review orders of mandamus and prohibition and will decline to grant him the orders as sought.
38. In the circumstances, I find the Chamber Summons application dated the 10th February 2025 unmerited and will dismiss it but make no order as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF OCTOBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Were for Exparte Applicant

Ms Ntabo for 2nd and 3rd Respondent

Court Assistant: Joan

