



REPUBLIC OF KENYA



**Arungah v Chief Land Registrar & another (Environment and Land Judicial Review
Case E001 of 2024) [2025] KEELC 7347 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7347 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2024**

**NA MATHEKA, J
OCTOBER 28, 2025**

BETWEEN

PHILIP OBANDAH ARUNGAH APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

THE HONORABLE ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. This judicial review application is dated 18th March 2025 and is brought under Order 53 Rule 1 of the Civil Procedure Rules, 2010 and Sections 8 and 9 of the *Law Reform Act* Chapter 46 Laws of Kenya seeking the following orders;
 1. That this Application be certified extremely urgent and heard ex-parte in the first instance.
 2. That leave be granted to the Applicant to file an Application for the issue of orders of mandamus against the Chief Land Registrar Registrar to compel them to reconstruct the Land Register File for Land Reference Number 19222, IR Number 696281 to facilitate registration of transfer by the Applicant
 3. That the costs of this Application be provided for.
2. The Applicant stated that he is a beneficial owner of all that property known as Land Reference Number 19222, IR Number 696281 purchased from one Mohamed Bashir Khan for a consideration of Kshs. 12,500,00.00= pursuant to Agreement for sale dated 29th March, 2016 and a duly executed transfer dated 31st August, 2017 between the said Mohamed Bashir Khan (as the Vendor) and the Applicant (as the Purchaser). After the sale and execution of the transfer in favor of the Applicant, the said Mohamed Bashir Khan surrendered the original Certificate of Title to the Property to the Applicant to effect the registration in favour of the Applicant. Thereafter, the said Mohamed Bashir



Khan left Kenya and his whereabouts are not known to the Applicant. The Property was assessed for stamp duty purposes and the Applicant paid stamp duty of Kshs. 500,040= on 20th August, 2019. Upon presentation of the Transfer for registration, the Land Registry file could not be traced. For more than four years, all efforts have been made by the Land Registry Officials to trace the file to no avail and the Applicant has been informed by the officers at the Nairobi Land Registry located at the Ardhi House that the Land Registry File relating to the Property cannot be traced.

3. The Applicant, in the efforts to have the Property registered in his name, issued {indemnity in favour of the Government of the Republic of Kenya vide a Deed of Indemnity dated 30th January, 2024 to enable reconstruction of the Land Registry File of the said Property which reconstruction did not occurs. The Respondent demands indemnity from Mohammed Bashir Khan. The Applicant wishes to exercise his constitutional right to register a transfer so as to guarantee his rights under Article 40 of *the Constitution*. The 1st Respondent is the custodian of all government records relating to land pursuant to the provisions of Section 9 of the *Land Registration Act* No. 3 of 2012. The responsibility of opening a Land Registry file and keeping custody or opening skeleton files are the administrative duties assigned to the 1st Respondent. The decision not to open a skeletonprovisional land file for four years is not expeditious, not efficient, not reasonable and not fair to the Applicant. The decision is based on a rigid and oppressive application of the lawregulations. To carry out registration of the transfer, the Land Registry File needs to be reconstructed. Failure to open the skeletonprovisional Land Registry File will mean that the Applicant loses his property and all the associated expenses and investments besides the purchase price. It is in the interest of justice that the Respondents reconstruct the Land Registry File to enable transaction to be completed and title to the Property transferred and registered in the name of the Applicant. It is lawful for the Court to intervene and issue the orders sought. The 2nd Respondent as the Chief Legal Officer of the Government of Kenya should advise the 1st Respondent to open skeletonprovisional register.
4. This court has considered the application and the submissions therein. The Respondents were served but failed to file any response. The purpose of judicial review was enunciated in the case of *Municipal Council of Mombasa vs Republic Umoja Consultants Ltd*, Nairobi Civil Appeal No.185 of 2007(2002) eKLR, where the Court of Appeal held that;

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 make the decision have the power 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 they 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 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 this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review.”

5. It is trite law that a court exercising judicial review jurisdiction is only concerned with the procedural propriety of a decision and not the merits. The court cannot be invited in a judicial review proceeding to act as an appellate court to reverse the decision of the 1st Respondent.
6. This position was adopted by the court in *Associated Provincial Picture Houses, Ltd. vs Wednesbury Corporation* (1947) 2 All E.R 680. As a result, it is only in exceptional circumstances that the court can consider merits of a decision. These exceptional circumstances were enumerated by the learned Mumbi Ngugi J in *Republic vs Public Procurement Administrative Review Board & 2 others Ex Parte*



- Sanitam Services (E.A) Limited (2013) eKLR, while citing the Associated Provincial Picture Houses Ltd. vs Wednesbury Corporation (supra) namely:

where the administrative body has acted outside its jurisdiction, has taken into account matters it ought not to have taken into account, or failed to take into account matters it ought to have taken into account; or that it has made a decision that is ‘so unreasonable that no reasonable authority could ever come to it.’”

7. The remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision- making process as was held by Mumbi Ngugi J in the case of Republic vs Public Procurement Administrative Review Board & 2 others Ex Parte - Sanitam Services (E.A) Limited (supra),

That the purpose of the remedies availed to a party under the judicial review regime is to ensure that the individual is given fair treatment by the authority to which he has been subjected. The purpose is not to substitute the opinion of the court for that of the administrative body in which is vested statutory authority to determine the matter in question.”

8. It was incumbent upon the Applicant to demonstrate that the decision-making organ, in this case, the 1st Respondent acted ultra vires in making the impugned decision. In the case of Seventh Day Adventist Church (East Africa) Limited vs Permanent Secretary, Ministry of Nairobi Metropolitan Development & another (2014) eKLR, the court held that;

Where an applicant brings judicial review proceedings with a view to determining contested matters of facts with an intention of securing a determination on 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.”

9. Similarly, in the case of Commissioner of Lands vs Kunste Hotel Limited (1997) eKLR (E & L) 1 at page 249, the Court of Appeal stated that;

But it must be remembered that Judicial Review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected.”

10. In Halsbury’s Laws of England 4th Edition Volume 2 Page 508 where it is stated that;

Certiorari is a discretionary remedy which the Court may refuse to grant even when the requisite grounds for its grant exist. The Court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The judicial discretion of the Court being a judicial one, must be exercised on the basis of evidence and sound legal principles.”

11. This Court will therefore be guided by the above principles and other binding precedents and the relevant laws in determining the matter at hand. The Judicial Review process is concerned with the decision making process and not with the merits of the decision itself. Further, that a Court hearing an application for Judicial Review should not sit as an appellate Court and such orders will not be granted as a matter of course but are a discretion of the Court which must consider if such orders are most efficacious in the circumstances of each case.



12. In the case of Republic vs Inland Revenue Commissioner Ex Parte Opman International 1986 1ALL E.R 328, the Court held that the fact that there is an alternative procedure available to address a particular grievance does not mean one cannot apply for the remedy of Judicial Review. The Court stated that;

Judicial Review is however the procedure of last resort and is a residual procedure which is available in those cases where the alternative procedure does not satisfactorily achieve a just resolution of the applicant's claim”

13. In the case of Speaker of National Assembly vs Karume C.A Civil Application No. 92 of 1992 (2008 1 K.L.R 426), the Court of Appeal stated that where there is a clear procedure to address a particular grievance, it should be followed.

14. Be that as it may, Judicial Review orders are granted at the discretion of the Court. Courts therefore have the discretion to refuse to grant such orders even where a foundation has been laid for the same although such discretion must be used sparingly. In the case of Bluesea Shopping Mall Limited vs City Council of Nairobi & Others C.A Civil Appeal No. 129 of 2013 (Nairobi), the Court of Appeal said the following on the issue of discretion in Judicial Review applications:

In administrative law matters, Courts have discretion to withhold a remedy of Judicial Review even where a substantive foundation has been laid because administrative law remedies are inherently discretionary. But Courts are slow to deny the remedy. The discretion to refuse to grant Judicial Review orders where they are merited must be very sparingly exercised.”

15. As discussed above, the Judicial Review process is concerned with the decision making process and not with the merits of the decision itself. In the circumstances of this case, there is no decision to consider. The Chief land Registrar has not made any decision and the applicant wants him to be compelled to reconstruct a file! I find that the Applicant's judicial review application before this court lacks merit and is dismissed. No orders as to costs as the same was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF OCTOBER 2025.

N.A. MATHEKA

JUDGE

