



**Limuru Road Estate Developers Limited & another v Inspector General  
of Police & another (Environment and Land Judicial Review Case  
10 of 2023) [2025] KEELC 7286 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7286 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 10 OF 2023  
MAO ODENY, J  
OCTOBER 27, 2025**

**BETWEEN**

**LIMURU ROAD ESTATE DEVELOPERS LIMITED ..... 1<sup>ST</sup> APPLICANT**

**BIBLE MISSION OF EAST AFRICA REGISTERED TRUSTEES 2<sup>ND</sup> APPLICANT**

**AND**

**THE INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**GILBERT MAJENGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 14<sup>th</sup> December, 2023 by the Applicants seeking the following orders:
  - a. That this Honourable Court be pleased to issue an order of prohibition prohibiting the Respondents, their agents, servants or employees from entering, remaining, guarding all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 and from interfering with the 1<sup>st</sup> Applicant's peaceful and quiet possession all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289. (sic)
  - b. That this Honourable Court be pleased to issue an order of prohibition to prohibiting the 1<sup>st</sup> Respondent, his agents, servants or employees from investigating, or inquiring into the allegation by the 2<sup>nd</sup> Respondent of an offence of obtaining land registration of all that parcel of land known as Nakuru Municipality Block 20/52 subdivided into Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality



Block 20/289 by false pretense contrary to section 320 (a) of the Penal Code, in view of the fact that the issue of ownership has been determined by a court of competent jurisdiction. (sic)

- c. That this Honourable Court be pleased to issue an order of Mandamus compelling the 1<sup>st</sup> Respondent to remove the police officers that have been deployed to guard all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 and to keep peace while the 1<sup>st</sup> Applicant develops all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 without interference from the 2<sup>nd</sup> Respondent, his agents and or servants.
  - d. That the Respondents do pay the Applicants, costs of this application.
2. The application was supported by the sworn affidavit of Geoffrey Makana Asanyo, the Managing Director of Applicant dated 13<sup>th</sup> December, 2023, where he deponed that the 1<sup>st</sup> Applicant purchased all those parcels of land known as Nakuru Municipality Block 20/288 and Nakuru Municipality Block 20/289 from the 2<sup>nd</sup> Applicant, which were transferred to it and took possession thereof.
  3. The Applicant deponed that sometime in September 2023, the Nakuru West, head of Directorate of Criminal Investigation called Olaf Konnerup, one of the Trustees of the 2<sup>nd</sup> Applicant over the proprietorship of Nakuru Municipality Block 20/52. On 12<sup>th</sup> October 2023, the Nakuru West, head of Directorate of Criminal Investigation visited the offices of the Applicants' advocates and served a notice compelling the attendance of Olaf Konnerup in accordance with section 52(1) of the National Police Act, 2011.
  4. That on 26<sup>th</sup> October 2023, the Applicants' advocates wrote a letter to the Directorate of Criminal Investigation Nakuru West and gave a background of the matter, and, further on or about the 27<sup>th</sup> October, 2023, officers from the Directorate of Criminal Investigation Nakuru West arrested the 1<sup>st</sup> Applicant's employees who were working on all that parcel of land known as Nakuru Municipality Block 20/289 but they were later released.
  5. The Applicant also deponed that on 3<sup>rd</sup> November 2023, officers from the Directorate of Criminal Investigation Nakuru West arrested two employees of the 1<sup>st</sup> Applicant and assisted some unknown persons to illegally enter into all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 22.
  6. Further that the 1<sup>st</sup> Applicant arranged to have extra security in all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 but on 4<sup>th</sup> November, 2023 at about 3.30a.m, police officers from Kaptembwo Police Station stormed into the suit parcels of land and chased away all the security personnel that had been deployed by the 1<sup>st</sup> Applicant.
  7. It was the 1<sup>st</sup> Applicant case that, its Director reported the matter to the Regional Criminal Investigations Officer (RCIO), County Criminal Investigation Officer (CCIO) and the Nakuru County Criminal Investigations Officer (CCIO), the Nakuru West, head of Directorate of Criminal Investigation, and had a meeting on 6<sup>th</sup> November 2023, with Regional Criminal Investigations Officer (RCIO), Nakuru County Criminal Investigations Officer (CCIO), the Nakuru West, head of Directorate of Criminal Investigation, and was informed that the 2<sup>nd</sup> Respondent had made a report that he together with other members of Bible Baptist Church were claiming ownership of all that parcel of land formerly known as Nakuru Municipality Block 20/289 and that the Nakuru West.



8. Further that the head of Directorate of Criminal Investigation had summoned one of the trustees of the 2<sup>nd</sup> Applicant to record a statement over the ownership of the said property, whereby the said officers decided that while they were investigating or inquiring into the matter, there should be no development on all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 and that the said properties should be guarded by police officers.
9. That the 1<sup>st</sup> Applicant has now been prevented from carrying out any development on all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 thus denying it from enjoying any benefit thereof, which is causing it irreparable loss and harm, hence it is in the interest of justice that the orders sought herein are granted.

### **Applicants' Submissions**

10. Mr. Konosi, counsel for the Applicants filed submissions dated 3<sup>rd</sup> February, 2025, and identified the following issues for determination:
  - a. Whether the Applicants are entitled to the judicial review orders of prohibition and mandamus?
  - b. Who is entitled to costs of this application?
11. Counsel gave a background to the suit and submitted that on 21<sup>st</sup> June, 1996, the Applicant after satisfying all the conditions, a lease was issued by the then Commission of Lands, which lease was registered and on 30<sup>th</sup> October 1996, and subsequently the 2<sup>nd</sup> Applicant was issued with a Certificate of Lease.
12. It was counsel's submissions that in 2008, the 2<sup>nd</sup> Applicant filed Nakuru High Court Civil suit No. 337 of 2008 against Gilbert Majengo and Robinson Nyarangi seeking the following orders:
  - a. A declaration that they are the lawful proprietor of land parcel L.R. Nakuru Municipality Block 20/52 and the church thereon and the defendants are trespassers thereon.
  - b. An eviction order as against the defendants by themselves, their servants. Agents, assigns and/or against any other person acting on their behalf.
  - c. A perpetual injunction to restrain the defendants, their agents, servants, employees and or any other person acting on their behalf from dealing with the said land and church in a manner adverse to the plaintiffs' interests therein.
  - d. Costs and interests at court rate.
  - e. Any other relief that this Honourable Court may deem just and fit to grant,
13. Mr. Konosi further submitted that by a counterclaim dated 10<sup>th</sup> December 2008, Gilbert Majengo sought the following prayers:
  - a. An order for the cancelation of the title document issued to the plaintiff in respect of Title Nakuru Municipality Block 20/52. In the alternative
  - b. A declaration that the Plaintiff holds the suit land Nakuru Municipality Block 20/52 in trust for the Bible Baptist Church to which the Defendants are pastor and caretaker respectively and



the registration of the church as the proprietor of the suit land is proper both in law and in Equity.

- c. A declaration that the Plaintiff holds the suit land Nakuru Municipality Block 20/52 in trust for the Baptist Bible Church to which the Defendants are pastor and caretaker respectively and the registration of the church as the proprietor of the suit land is proper both in law and Equity.
  - d. A declaration that the occupation by the Bible Baptist Church of the parcel of land known as Title Nakuru Municipality Block 20/52 is overriding to the title held by the Plaintiff and that such title is subject to the Bible Baptist Church's.
  - e. Costs and interest.
  - f. Any other remedy that this Honourable court shall deem fit and just to grant in the circumstances.
14. Mr. Konosi stated that the court delivered a ruling dated 16<sup>th</sup> February, 2011, and held as follows :
- “In view of these matters, I come to the conclusion that the defendants do not represent the general membership of the church in this matter; that they were only permitted to use the church building on the suit property as licensees. Their license has been revoked and their continued use of the church building amounts to trespass. The defense and counterclaim disclose no reasonable defense and no reasonable cause of action. No amount of amendment can breath (sic) life in any of the two pleadings and a full trial of the issues herein will be a futile exercise. For these reasons, both the defense and counterclaim are struck out and judgment, in terms of the plaint, is entered in favour of the plaintiffs. Costs of the suit and the applications are awarded to the plaintiffs.
15. Further that on 25<sup>th</sup> May, 2011, Vitalis Lumiti, Japhet Owala and Rose Wairimu (suing on their own behalf and as representatives of 111 others) filed Nakuru High Court Civil Suit No. 117 of 2011(OS) filed a suit seeking the determination of the following questions:
- a. Whether the property known as Nakuru Municipality Block 20/52 is the personal property of Baptist Bible Mission of East Africa.
  - b. In what capacity does the Baptist Bible Mission of East Africa and or the trustees thereof hold the property known as Nakuru Municipality Block 20/52.
  - c. That does the registration of the lease in Nakuru Municipality Block 20/52 under the provisions of land (Perpetual Succession) Act. Cap. 286 Laws of Kenya create a trust and constitute the plaintiffs as cestui que trust and the defendant as trustees.
  - d. That what is the space of scope of the powers of the Defendants in so far as the dealings with the parcel of land known as Nakuru Municipality Block 20/52 is concerned.
  - e. Do the Defendants have a right to evict or cause eviction of the Plaintiffs from the land parcel herein and can the defendant dispose off (sic) the parcel of land to the detriment of the plaintiffs herein.
  - f. Who ought to pay the costs of these summons.
16. It was counsel's submission that the said suit was struck out when the 2<sup>nd</sup> Applicant raised a preliminary objection.



17. That Vitalis Lumiti, Japhet Owala, Rose Wairimu and 52 others filed Nakuru High Court Petition No 44 of 2012 against Olaf Konnerup, the 2<sup>nd</sup> Applicant and George Orina seeking the following reliefs:
- a. A declaration that the acts of the 1<sup>st</sup> Respondent vowing to use his skin and colour to evict the petitioners herein from the suit land is an act of discrimination contrary to the provisions of article 27(4), (5) of *the Constitution* of the Republic of Kenya.
  - b. A declaration that the trust deed procured by the 2<sup>nd</sup> Respondent is null and void and inconsistent to the provisions of article 65(3) of *the Constitution* and should therefore be cancelled.
  - c. A declaration that the acts of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein to evict the petitioners from the suit land is in violation of Articles 3(1), 10(1)(c), 10(2)(a)(c), 27, 29(c), (40)(1)(a)(b) and 65(3) of *the Constitution* hence are unconstitutional, null and void.
  - d. An order of prohibition prohibiting the Respondents from evicting the petitioners from the church premises and or in any way from selling, transferring or interfering with the parcel of land in any way whatsoever.
  - e. That the court calls for the records of the proceedings of the lower court matters under its supervisory jurisdiction.
  - f. An order that the registration of the parcel of land in the name of the Bible Baptist Mission of East Africa was illegal and fraudulent.
  - g. An order directing the Commissioner of Lands to register the petitioners as owners of the parcel of land.
  - h. Or that such other orders as this honourable court shall deem just.
  - i. Costs of this application.
18. Mr. Konosi stated that the said petition was also dismissed vide a judgment delivered on 18<sup>th</sup> July, 2019, and all persons who were illegally occupying all that property known as Nakuru Municipality Block 20/52 were evicted sometime in 2012.
19. According to counsel, in 2013, the 2<sup>nd</sup> Applicant subdivided all that parcel of land known as Nakuru Municipality Block 20/52, into two parcels namely Nakuru Municipality Block 20/288 and Nakuru Municipality Block 20/289, whereby the 1<sup>st</sup> Applicant purchased all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 from the 2<sup>nd</sup> Applicant who transferred to the 1<sup>st</sup> Applicant who took vacant possession thereof.
20. Mr. Konosi submitted that the application is uncontroverted as no replying affidavit was filed, and relied on the case of Kennedy Otieno Odiyo & 12 others vs Kenya Electricity Generating Company Limited [2010] eKLR, According to counsel, the 1<sup>st</sup> Respondent's officers have acted ultra-vires by deploying police officers to guard the suit properties and interfere with the Applicants right to peaceful enjoyment and development of land, and yet the issue of ownership has been conclusively determined by courts of competent jurisdiction and the 2<sup>nd</sup> Respondent has exhausted all legal avenues to challenge the title.
21. Counsel relied on Article 40 of *the Constitution* of Kenya and the cases of Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd [2002] KECA 8 (KLR), Pastoli vs Kabale District Local Government Council & Others [2008] 2EA 300 and Muciimi Mbaka & Co Advocates vs Town



Clerk, City Council of Nairobi [2012] eKLR, and urged the court to grant the orders sought as prayed with costs.

### **Analysis And Determination**

22. The issue for determination is whether the Applicants are entitled to the judicial review orders of prohibition and mandamus. The Court of Appeal in the case of *Municipal Council of Mombasa v Republic and Umoja Consultants Limited* (supra) pronounced as follows:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account irrelevant matters .... The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was no sufficient evidence to support the decision touching on violation of fundamental rights”.

23. It is trite that judicial review deals with the process of decision-making by public authorities and officials who must act within the law without exceeding their authority. It is essentially a tool for judicial control of administrative action; therefore, a court may intervene where there is demonstrated procedural impropriety, breach of the rules of natural justice, abuse of power, illegality, bad faith, irrationality, or ultra vires.
24. The Applicant approached the court for orders of prohibition and mandamus on the ground that the 1<sup>st</sup> Respondent’s officers acted ultra-vires by deploying Police Officers to guard the suit properties, hence, interfering with the Applicant’s right to peaceful enjoyment and development of land. The Applicants have sought prohibition and mandamus remedies from this court.
25. In the case of *Republic v Deputy County Commissioner, Turbo Sub-County & another; Lagat (Exparte Applicant)* [2025] KEELC 147 (KLR) stated as follows:

“... This court has power to issue an order of Certiorari, which brings into this court to quash a decision of a lower court, quasi-judicial or administrative body where it is demonstrated that it is ultra vires. An order of prohibition on the other hand is intended to forbid or prevent an action by a public body from taking place is granted alongside Certiorari. Prohibition has been said to be a similar remedy to certiorari, but one that is more prospective than retrospective. This is because whereas certiorari looks at the past, prohibition looks at the future, in that it prevents the administrative body from doing or taking an action in excess of its jurisdiction.”

26. This is a case where the issue of ownership of the suit parcels of land has already been determined by a competent court, and no appeal has been filed to challenge the ownership. The action of the Respondent in interfering, by guarding the suit parcels of land and denying the Applicant an opportunity to develop the same, is deemed to be acting ultra vires, as this is private property. Why would the Police guard private property without being invited by the owners of the suit parcels of land? On whose behalf are they acting and taking instructions? Public authorities and officials are mandated to act within the law without exceeding authority. If they do so, then the same is ultra vires which attracts the court intervention vide the judicial review process.



27. Article 47 of *the Constitution* provides:

Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

28. Natural justice was outlined in the Halsbury Laws of England Volume 1(1) page 218, as follows:

“Natural justice comprises two basic rules; first that no man is to be a judge in his own cause (nemo iudex in causa sua), and second that no man is to be condemned unheard (audi alteram partem). These rules are concerned with the manner in which the decision is taken rather than with whether or not the decision is correct”.

29. In the Court of Appeal case of Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR), the court held as follows:

“The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way...These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...”

30. I find that the Respondent acted ultra vires in a matter that has already been determined by a competent court on ownership of the suit parcels of land. The Applicants are therefore entitled to the orders sought for prohibition and mandamus compelling the Respondents to remove the Police Officers guarding the suit parcels of land, and issue the following specific orders:

- a. That an order of prohibition is hereby issued prohibiting the Respondents, their agents, servants or employees from entering, remaining, guarding all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 and from interfering with the 1<sup>st</sup> Applicant’s peaceful and quiet possession all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289.
- b. That an order of prohibition is hereby issued prohibiting the 1<sup>st</sup> Respondent, his agents, servants or employees from investigating, or inquiring into the allegation by the 2<sup>nd</sup> Respondent of an offence of obtaining land registration of all that parcel of land known as Nakuru Municipality Block 20/52 subdivided into Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 by false pretense contrary to section 320 (a) of the Penal Code, in view of the fact that the issue of ownership has been determined by a court of competent jurisdiction.



- c. That an order of Mandamus is hereby issued compelling the 1<sup>st</sup> Respondent to remove the Police Officers that have been deployed to guard all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 and to keep peace while the 1<sup>st</sup> Applicant develops all those parcels of land known as Nakuru Municipality Block 20/288 (Now Nakuru Municipality Block 20/308-337) and Nakuru Municipality Block 20/289 without interference from the 2<sup>nd</sup> Respondent, his agents and or servants.
- d. Costs of the application to the Applicants.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 27<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. A. ODENY**

**JUDGE**

