REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JUDICIAL REVIEW NO. E016 OF 2025

REPUBLIC ……..APPLICANT

VERSUS

DEPUTY COUNTY COMMISISONER – TIGANIA CENTRAL ……...…..1ST RESPONDENT

DISTRICT LAND AND ADJUDICATION OFFICER TIGANIA CENTRAL/EAST …….……2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL …….3RD RESPONDENT

AND

NAHASHON KARUTI KARITHI …… INTERESTED PARTY

MARGARET MUKONATHU ……..EXPARTE APPLICANT

RULING

1. What is before me is the Chamber Summons application dated **7th October 2025;** brought pursuant to the provisions of **Article 47 of the Constitution, 2010; sections 8 & 9 of the Law Reform Act; and Order 53 Rule 1 & 2 of the Civil Procedure Rules 2010;** and wherein the Applicant has sought the following reliefs:
    - *(i) That this Honourable court be pleased to certify this application as urgent and issue the order sought in the first instance.*
    - *(ii) That honorable court do grant leave for the Ex-parte applicant to apply for the judicial review writs, to wit,*

certiorari to bring to this court and quash the proceedings and the decision delivered on 4/8/2025, being an appeal to the minister No. 42/2024 & 43/2024 over land parcels 2411 & 7360 Giithu Adjudication Section.

(iii) *That the said order for leave to file judicial review do operate as stay of the implementation of the said decision and or interested party's dealings with quiet user and enjoyment of the suit lands by the Ex-parte Applicant pending hearing and determination of the substantive notice of motion to be filed.*

(iv) *Costs of this Judicial Review be awarded to the applicant.*

2. The instant application is premised on various grounds which have been enumerated in the body thereof. Furthermore, the application is said to be supported by the affidavit of Margaret Mukonathu [the deponent]; the statement of facts; the affidavit in verification of facts and assorted annexures attached thereto.

3. The subject application came up for directions before the court on 14th October 2025; whereupon the court observed that the application had been crafted in the name of the Republic as the applicant. Nevertheless, it was apparent that the name of the republic had been invoked and deployed prematurely, long before leave was procured and obtained. To this end, the court declined to grant leave at the Ex-parte stage and directed that the application be served. Moreover, the court indicated that same shall be desirous to hear the applicant on the question as to whether leave can be granted in favour of the republic.

4. The application was thereafter set down for hearing on 23rd October 2025. For good measure, the applicant appeared before the court and thereafter intimated to the court that same was desirous to adopt and rely on the contents of the application; the grounds highlighted in the body thereof; and the affidavit in verification of the statement of facts. In addition, the applicant also invited the court to grant an order to be taken to the deputy county commissioner Tigania Central, who issued the impugned decision on behalf of the cabinet secretary for lands.

5. Despite having been served, neither the respondents nor the interested party appeared before the court. Furthermore, the said parties also failed to file any response to the subject application.

6. Having reviewed the chamber summons application; the supporting affidavit; the statement of facts; the affidavit in verification of the statement of facts and upon considering the short oral submissions made by the applicant, I come to the conclusion that the determination of the subject matter turns on two [2] key issues, *namely*; whether leave to file judicial review proceedings can be issued in favour of the republic or otherwise; whether the subject application is competent and legally tenable or otherwise.

7. Regarding the first issue, *namely*; whether leave can issue in favour of the republic, it is important to underscore that judicial review proceedings are instituted upon the issuance of leave. Moreover, it is common ground that leave can only be sought for and be granted [if at all] to the aggrieved/affected party, who is ordinarily the subject/citizen whose rights have been infringed upon. Notably, at the leave stage, the

applicant is the one seeking leave to be allowed to institute the judicial review proceedings.

8. Additionally, there is no gainsaying that the name of the republic [previously the crown] can only be invoked and deployed after leave has been sought and obtained. For good measure, the republic takes over the conduct of the substantive judicial review, albeit on behalf of the aggrieved party, who thereafter becomes the Ex-parte applicant.

9. To my mind, the name of the republic cannot be invoked and deployed prior to and before the issuance of leave. In this case, the invocation and deployment of the name of the republic [sic] as the applicant before the issuance of leave is tantamount to putting the cart before the horse. Such a scenario is unorthodox. The invocation of the name of the republic at this juncture negates the entirety of the subject application. Simply put, the application is rendered invalid and fatally incompetent.

10. Before concluding on this issue, it is instructive to reference the holding in the case of ***Jotham Mulati Welamondi v Chairman, Electoral Commission of Kenya [2002] KEHC 1123 (KLR),*** the court [Hon. Justice A. Ringera, Judge [as he then was] stated as hereunder;

> ***Last, but not least, the objection that the application is made in the name of the wrong person is well merited. In FARMERS BUS SERVICE AND OTHERS V THE TRANSPORT LICENSING APPEAL TRIBUNAL (1959) E.A. 779, the East African Court of Appeal held that prerogative orders are issued in the name of the crown and applications for such orders must***

be correctly intituled. On Kenya's assumption of Republican status on 12th December 1964, the place of the crown in all legal proceedings was taken by the Republic. Accordingly, the orders of Certiorari, Mandamus or Prohibition now issue in the name of the Republic and applications therefor are made in the name of the Republic at the instance of the person affected by the action or omission in issue. In the premises, the proper format of the substantive motion for Mandamus would have been

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OF KENYA.....RESPONDENT

EX PARTE

JOTHAM MULATI WELAMONDI"

11. This court has had an occasion to speak to the same issue in a previous matter. In the case of ***Augustine Mutua Mburugu Joshua Mathonga M'Mbui (legal representative of Samuel Mugambi Mburugu and M'Mbui M'Rithaa, respectively – Deceased) vs Sub-County Land Adjudication & Settlement Officer (Imenti North/Imenti South/Meru Central & Buuri) & another; Judicial Review E006 of 2025 [unreported],*** the stated as hereunder;

> *To my mind, the failure to bring the application for judicial review in the name of the republic [as prescribed under the law] renders the entire proceedings before the court fatally incompetent and thus a nullity ab initio. Moreover, I hold the view that the defect*

under reference does not relate to a procedural technicality. On the contrary, the defect highlighted goes to the root of the jurisdiction and thus vitiates the entire proceedings.

12. The foregoing position touched on and concerned a scenario where the applicant brought the substantive motion in their own name and not in the name of the Republic. However, in the instant case, the name of the republic has been brought and invoked prematurely.

13. Turning to the second issue, it is important to highlight that the primary pleading that governs judicial review proceedings is the statement of facts and the affidavit in verification of the verification of facts. Instructively, the statement of facts is where the applicant is called upon to implead the primary reliefs to be sought; or propagated before the Court.

14. The applicant herein has indeed filed a statutory statement. However, at the foot of the segment dealing with reliefs sought, the applicant has stated thus:

    (a) Grant of leave for the exparte applicant to apply for judicial review writs to wit, certiorari to bring to this court and quash the proceedings and the decision delivered on 4th August 2025, being appeal to the minister no. 42 of 2024 and 43 of 2024 over land parcels 2411 and 7360 Giithu Adjudication Section.

    (b) An order for leave to file judicial review do operate as stay of the implementation of the said decision and or interested parties dealing with quiet user and enjoyment of the suitlands by the Ex-parte Applicant pending hearing and determination of the substantive Notice of Motion to be filed.

(c) Costs of the judicial review be awarded to the applicant.

15. What is apparent is that the Ex parte applicant is seeking leave at the foot of the statement of facts. The question that does arise is what happens the moment the leave is granted. To my mind, the entire application is stillborn for want of the substantive reliefs [if at all] to be sought.

16. The contents of a statement of facts which underpins judicial review proceedings were expounded on by the Court of Appeal in the case of ***Commissioner of Excise and Customs and Silvanus Onema Owaki t/a Marenga Petrol Station (2002) eKLR,*** where the court stated as hereunder;

> *We would observe that it is the verifying affidavit not the statement to be verified, which is of evidential value in an application for judicial review. That appears to be the meaning of rule 1 (2) of Order LIII . This position is confirmed by the following passage from the Supreme Court Practice 1976 Vol. 1 at paragraph 53/1/7:*
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> ***"The application for leave "By a statement" - The facts relied on should be stated in the affidavit (see R. v. Wandsworth JJ., ex p. Read [1942] 1 K. B. 281). "The statement" should contain nothing more than the name and the description of the applicant, the relief sought, and the grounds on which it is sought. It is not correct to lodge a statement of all the facts, verified by an affidavit***."
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> *At page 283 of the report of the case of R. V. Wandsworth Justices, Viscount Caldecote C.J. said:*

" The Court has listened to argument on the proper procedure or remedy in the case of the exercise by an inferior court of a jurisdiction which it does not possess. It is, however, not necessary here to consider whether or not there has been a usurpation of jurisdiction, because there has been a denial of justice, and the only way in which that denial of justice can be brought to the knowledge of this court is by way of affidavit. For that reason, the court is entitled, indeed, it is bound, if justice is to be done, to look at the affidavit just as it would in an ordinary case o f excess of jurisdiction."

17. In the absence of the substantive/primary reliefs to be sought being pleaded in the statement of facts, the entire application is rendered incompetent. In this regard, the grant of leave [if at all] would be an act in vanity and futility, in so far as it will serve no useful purpose.

18. In the premises, I am afraid that the entire application before the court is premature, misconceived and thus legally untenable. Moreover, I hold the humble view that the issues that have been addressed do not touch on procedural technicality. On the contrary, the pertinent issues raised go to the root of the substance and thus impact on the jurisdiction of the court.

FINAL DISPOSITION.

19. For the reasons which have been adverted to in the body of the ruling, it is evident that the chamber summons application is fatally incompetent and thus legally untenable. Furthermore, the defects highlighted are incapable of redemption *vide* an amendment.

20. In the upshot, the final orders that commend themselves to this court are as hereunder;

(i) The Chamber Summons Application dated 7th October 2025 be and is hereby struck out.

(ii) No orders as to costs.

21. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 23RD DAY OF OCTOBER 2025.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].
JUDGE

In the presence of:

Hussein -Court Assistance

Margaret Mukonathu – the Applicant in person

No appearance for the Respondents

No appearance for the Interested Party