



Republic v Chief Land Registrar & 2 others; Marg Ridge Estate Limited (Ex parte) (Miscellaneous Application E003 of 2024) [2025] KEELC 7194 (KLR) (13 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7194 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

MISCELLANEOUS APPLICATION E003 OF 2024

JA MOGENI, J

OCTOBER 13, 2025

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE
LAW REFORM ACT CAP 26 OF LAWS OF KENYA**

AND

IN THE MATTER OF ORDERS 53 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF SECTION 14 & 79 OF THE LAND REGISTRATION ACT CAP 300

AND

**IN THE MATTER OF SECTIONS 4 & 8 OF THE
FAIR ADMINISTRATIVE ACTIONS ACT OF 2015**

AND

IN THE MATTER OF REVIEW OF TITLE LR NUMBER 21179 (I.R 219594)

AND

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY
FOR ORDERS OF CERTIORARI AND PROHIBITION**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

DIRECTOR OF SURVEY 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND



JUDGMENT

1. By a Notice of Motion dated 24/05/2024, brought under Section 8 of the Law Reforms Cap 26, Order 53 Rule 3 of the Civil Procedure Rules 2010, the Ex parte Applicant seeks for the following Orders:
 - a. An order of Certiorari to remove into this Honorable Court for the purposes of quashing the decision of the 1st Respondent of cancelling, revoking or expunging the Applicants title to LR Number 21179 (IR 219594).
 - b. An order of prohibition restraining the Respondents by themselves, their servants, officers, agents or persons acting on their behalf from acting in a manner that violates the Applicant's right to the occupation and use of its parcel of land known as to LR Number 21179 (IR 219594) or in a manner that violates the Applicant's rights to property guaranteed under Article 40 of *the Constitution* of Kenya.
 - c. An order of MANDAMUS pursuant to the leave granted to compel the 1st Respondent to restore in the land Register entries relating to the Applicant's ownership of land known as LR No. 21179 (IR 219594).
 - d. Any other order the Court may deem fit.
 - e. The costs of this Application be provided for.
2. Earlier the Ex Parte Applicant had approached the Court vide a Chamber Summons dated 15/05/2024 seeking leave to bring the Notice of Motion Application and for leave which were granted on 17/05/2024 and the Court directed the Ex Parte Applicant to file the substantive Motion within 21 days and the granted leave operated as stay.
3. The grounds of the Motion are contained in the Notice of Motion and the Statutory Statement as verified by the Affidavit of Stephen Njoroge Kirumba all dated 24/05/2024 filed once the leave was granted. The Applicant stated that the former Director of the Ex Parte Applicant was issued with a lease dated 18/06/2020 and thereafter a Certificate of Title on 21/07/2020 for a term of 99 years from 1/12/1990.
4. That from the time of allotment and issuance of certificate there has been no competing right of ownership over the property with the Applicant to date and that Margaret Wairimu Magugu on 28/09/2020 transferred the property to the Applicant and these ownership rights subsisted up till the 1st Respondent unlawfully and unprocedurally cancelled the Applicant's title.
5. This action of cancellation was not communicated to the Applicant and neither the former proprietor but that the Applicant came to know about this after perusing the Affidavit of one Gildine Gatwiri Karani dated 21/12/2021 filed in ELC No. 123 of 2021 at Thika a matter that was withdrawn by the Applicants as evidenced by annexure 'SNK-04' and 05. That the suit was withdrawn since the parties were engaged in negotiation towards settlement of the suit mentioned herein.
6. Thus, the Applicant has termed the action of cancellation of the Applicant's certificate as ultra vires since the 1st Respondent allegedly has no power to effect cancellation of a Certificate of Title. At the same time the Applicant avers that the procedure of cancellation was marred with improprieties offending the principles of Natural Justice, Article 47 of *the Constitution* as well as Section 4 of the Fair



- Administrative Actions Act, 2015. The Applicant was not invited to attend any meeting or given any information or reasons why the 1st Respondent reached the decision of cancellation and or revocation of title.
7. The Applicant has termed the action of the Respondents as an infringement on the right to property as guaranteed under Article 40 of *the Constitution*.
 8. The Application is opposed by the Respondents vide a joint Replying Affidavit sworn on 1/10/2014 sworn by Omolo Patroba and he has deponed that he works with the Department of Lands, Ministry of Lands, Public Works, Housing and Urban Development as the Assistant Director Land Administration.
 9. He averred that the registration of new grants is a long process and he itemized eight steps that lead to registration of title by the Registrar of Titles. He further stated that records of LR 21179 are missing and efforts to trace them have proved futile because it is either misplaced, lost or stolen although there is evidence that a Letter of Allotment referenced 41680/V11/56 and dated 9th April 1991 was issued by the Commissioner of Lands to a firm known as Wibeso Investments Ltd. That at the time of the allocation the parcel of land was unsurveyed and identified as residential plot 1A on plan 41680/VII/54a.
 10. He deponed that based on the Letter of Allotment, a correspondence file number 130683 was later opened by the Commissioner of Lands in favour of Wibeso Investments Ltd as indicated on file opening card serial number 7604 and that the said Wibeso Investments Ltd later accepted the offer and paid the requisite fees which was acknowledged by the Commissioner of Lands vide an official receipt number D-180273 dated 5th September, 1995 which covered among others, stand premium of Kesh 1,540,000.
 11. According to the Respondents, once the Letter of Allotment was issued to Wibeso and payment made the land under dispute became private land and was therefore not available for allocation, and a grant was prepared by the Commissioner and executed and registered on 26th October 1995 as IR No. 67273.
 12. Accordingly, a copy of the Letter of Allotment dated 4/03/1990 and referenced 41680/VII/26 was issued to Margaret Wairimu Magugu over an unsurveyed residential plot – Kiambu. Yet according to the letter the suit property fell in Kiambu Municipality and the authority to allocate the suit property was contained in file number 23136/VIII/37 for Thika Municipality whereas the same should have read Kiambu Municipality. The other observation he made was that the suit property fell within the jurisdiction of Thika Municipality so the letter was copied to the Town Clerk Thika.
 13. Further he averred that the allocation was pursuant to the recommendation of the plot allocation committee meeting of 6th and 15th May 1987. Additionally, that according to authentication slip issued by the Director of Surveys it indicated that LR 21179 represented in Survey Plan Number 234/108 was for a property situated South of Kiambu Municipality and not Kiambu Municipality.
 14. That there is no evidence that Margaret Wairimu Magugu ever accepted the offer made and payments made until 28/05/2020 when a receipt number 5372518 is alleged to have been issued and the grant hurriedly registered on 21/07/2020.
 15. He depones that the Letter of Allotment issued to Margaret Wairimu Magugu was for a property measuring 22.0 Ha yet the lease document is for a property measuring 25.0 Ha which is an increase in acreage and this increase would require revaluation and payment of additional fees in terms of stand premium and land rent which evidence is not available to support the increase.



16. Also, that the lease document issued to Margaret Wairimu Magugu, the Applicant is suspect as it does not reflect the stand premium, which would ordinarily be the consideration for alienation of public land and so he avers that the Margaret Wairimu Magugu over LR 21179 the suit property are not authentic records and that the valid title are the one in the name of Wibeso Investments Limited as per annexure OP 1 of documents.
17. The Application was canvassed by way of written submissions and the Applicant through the Law Firm of J. M. Kariuki & Company Advocates filed his submissions on the 17/01/2025 and the Deputy Chief State Counsel, filed the Respondents' submissions dated 31/07/2025. The Applicant identified the following issues for determination and submitted that the Ex parte Applicant was not accorded fair Administrative action as envisaged in *the Constitution*:
 - i. Whether the 1st Respondent had power and/or authority to cancel revoke and expunge the Ex-parte Applicant's Title?
 - ii. Whether the 1st Respondent's decision to cancel, revoke and expunge the Ex-parte Applicant's title was unlawful and irregular?
 - iii. Whether the Ex-parte Applicant is entitled to the reliefs sought?
18. In his submissions the Applicant referred to the land law provisions of Sections 24, 26, 79(1&2) and Section 80 (1) of the *Land Registration Act*. He also relied on several cases including Multi-Equipped Limited Vs. Registrar of Titles Nairobi & another (Environment and Land Judicial Review Case E010 of 2024) [2024] KEELC 5056 (KLR) (2 July 2024), Court of Appeal in Mombasa Appeal No. 98 of 2016 Super Nova Properties Limited & another Vs. District Land Registrar Mombasa & 2 others; Kenya Anti-Corruption Commission & 2 others (Interested Parties) [2018] eKLR, Harrison Kiambuthi Wanjiru & another v District Land Registrar Nairobi & 3 Others [2022] eKLR, Republic Vs. District Land Registrar Thika Lands Registry; Susan Mutiso & 2 Others (Interested Parties); Ex - Parte Micheal Kamande Gachukia [2019] eKLR and Pastoli Vs. Kabale District Local Government Council & Others, (2008)
19. In summary the Applicant submitted that the 1st Respondent's decision to cancel, revoke and expunge the Ex-parte Applicant's title without giving its Director an opportunity to be heard was unreasonable, unlawful, irregular and contra to the Ex- parte Applicant's right to fair administrative action. Either way, the decision was ultra-vires as the 1st Respondent purported to exercise authority it does not have.
20. The Respondents on the other hand submitted that the Wibeso Investment is the proprietor of the suit property having been registered in October 1995 and the records in the name of the Applicant were expunged from Registry Records on 18/01/2022.
21. The Respondent went to great lengths to share evidence of the investigation leading to the cancellation of the Ex-parte Applicant's title. He referred to various constitutional provisions stating that the suit is an anti-thesis to the binding nature of values and principles of governance in land administration. That the suit is meant to perpetuate corruption and fraud in land administration. It is the Respondent's submission that Section 79 and 80 provide for rectification of the register by the Registrar.
22. He relied on the cases of Reserve Bank of India vs Peerless General Finance & Investment Co. Ltd and Others {1987} 1SCC 424, Kizito Mark Nyaywa vs Minister of State for Internal Security for Internal Security and Provincial Administration & Another [2011] eKLR, and Super Nova Properties Limited & Another vs District Land Registrar Mombasa & 2 Others; Kenya Anti-Corruption Commission & 2 Others (Interested Parties) (Civil Appeal 98 of 2016) [2018] KECA 17 (KLR) (19 April 2018)



including the case of Republic vs Chief Land Registrar Registrar of Title & Attorney General [2020] KEELC 2713 (KLR) among others.

Analysis and Determination

23. The Court has now carefully considered the evidence placed before it and the pleadings and written submissions of the parties and the Court finds that the issues for determination are as follows:-
 - i. Whether the Applicant was accorded Fair Administrative Action.
 - ii. Whether the Respondent's decision to revoke the Ex parte Applicant's title contravened the rules of natural Justice and the Ex-parte Applicant's right to be heard as well as his legitimate Expectation.
 - iii. Whether the Chief Land Registrar had jurisdiction to revoke the Exparte Applicant's title.
 - iv. Whether the orders sought in the Notice of Motion are merited.

Whether the Applicant was accorded Fair Administrative Action

24. In Judicial Review (JR) proceedings for orders of certiorari and mandamus, the focus is on the process, not the merits of the decision. This means one must address whether the decision-making authority acted within its legal powers and followed due process, rather than arguing whether the decision itself was substantively correct or based on sufficient evidence
25. The Ex-parte Applicant having been registered as the proprietor of the suit property had a legitimate expectation that his/her rights would be protected under Articles 40 and 47 of *the Constitution* and as such the decision to revoke the Ex parte Applicant title by the 1st Respondent was not in compliance with the rules of natural justice.
26. It is the submission of the Ex parte Applicant that the orders issued to expunge its title were ultra vires and the Land Registrar had no powers to do the same.
27. The 1st Respondent did submit extensively on the processes that took place in registration and investigation of title when it was suspected that there was fraud. However, the process described does not indicate how the Ex-parte Applicant was consulted or even invited to participate in a process that can be said to be fair and allowing the Applicant to ventilate on their title.
28. The Ex parte Applicant in their pleadings has stated that they were not served with Summons from the 1st Respondent to appear before it to be heard on the issue of title. From the extensive submissions made by the 1st Respondent's Counsel it is his position that the suit property belongs to Wibeso Investment Limited.
29. I note that there is a ruling made in Court Criminal Case No. 1139 of 2003 relating to trespass on the suit property where the Applicants filed a constitutional reference challenging their arrest for trespass on the suit property.
30. From the Ruling, I note that the Ex-parte Applicant was not a party to the Constitutional Reference and it culminated in the decision to affirm the title of Wibeso Investment Limited and a finding that the Applicants had not trespassed on their own suit property.
31. From the proceedings though since the Ex-parte Applicant was not a party to reference, the Court would not be wrong to hold that the Exparte Applicant was condemned unheard which is against



the cardinal rule of natural justice. See Halbury Law of England, 5th Edition 2010 Vol.61 at para 639, which states:-

“The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the audi alterman partem rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a Court.”

32. Fair Administrative Action is described in Article 47 of the Constitution as follows:-

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

33. The Law that the Land Registrar relied on in rendering his Ruling states in Section 79 of the Land Registration Act sub-section (a) and (b):-

“No alteration affecting the title of the proprietor may be made pursuant to sub section(1) without the proprietor’s consent unless:

- a. The proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission or;
- b. It would for any other reason be unjust for the alteration not to be made;

Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.”

34. It is evident from the above provision of law that a written notice of ninety days should be given to the proprietor before such an intention of alteration is made.

35. The Registrar who registered and issued the Certificate of Title in the name of Margaret Wairimu and registered the transfer to the Exparte Applicant cancelled the title on 18/01/2022 after having issued Summons to Margaret Wairimu to appear dated 2/03/2021. It is however not clear if the Ex Parte Applicant did appear at all before the Registrar before cancellation of title.

36. Further it is not clear whether a hearing took place after the Summons were issued. If the Registrar had made a finding that there should be any alteration on the title, then he ought to have given the Exparte Applicant a Notice of 90 days whether the Ex parte Applicant had headed to the Summons or not. Which from my perusal of documents of the 1st Respondent’s on record he did not issue but just delivered a Ruling revoking the Applicant’s title.

37. It is apparent Article 47 of the Constitution requires just fair administrative action should be lawful reasonable and procedurally fair. This Court finds that it is not clear whether the Applicant was given a right to be heard and further no issuance of a Notice on Intended revocation of the title deed was issued and therefore the right procedure was not followed.

38. This Court therefore finds that the Ex parte Applicant was not accorded a Fair Administrative action as required by law.



Whether the Respondent’s decision to revoke the Ex parte Applicant’s title contravened the rules of natural Justice and the Ex parte Applicant’s right to be heard as well as his legitimate Expectation.

39. In the case of Sceneries Limited v National Land Commission (2017) eKLR, the Court held that;

“The right to a fair hearing under Article 50(1) of *the Constitution* encompasses several aspects. these includes, the individual being informed of the case against her/him, the individual being given an opportunity to present/her/his side of the story or challenge the case against her/him and the individual having the benefit of a public hearing before a Court or other independent and impartial body.”

40. This Court finds that in the event any hearing was conducted, then the Applicant was not present yet drastic orders were issued against the Applicant. The Applicant was therefore not accorded a fair hearing as provided by Article 50 of *the Constitution*.

Whether the Land Registrar, had jurisdiction to revoke the Ex parte Applicant’s title.

41. Though duly summoned the Ex Parte Applicant failed to appear before the Registrar to set forth its case. The Land Registrar in canceling the title noted that the property had been registered illegally to one Margaret Wairimu who had transferred it illegally to the Ex Parte Applicant while there was an initial owner so he revoked the Applicant’s title deed. But did the Land Registrar have power to revoke the said registered title deed? Before the Ex parte Applicant’s title was revoked was the right procedure used?

42. The only way that a determination would have been arrived as to whether or not the title deed that was held by the Ex parte Applicant would have been found to be illegally obtained would have been through a suitable judicial proceeding and in essence that would mean that there was a Court process that determined this. There has been no allegation nor have there been documentation on this and therefore this Court finds that there was no such judicial process that involved the Ex Parte Applicant.

43. In this regard therefore there was no way that the title deed would have been legally revoked nor was there any due process in revoking the said title. See the case of Republic v Registrar of Tiles Mombasa & 4 Others Ex-Parte A.K. Abdulgani Limited [2018] eKLR, where the Court held that;

“What was the right procedure to follow in asserting the Respondent’s and interested parties’ interest in the suit land? Surely, not by ultra vires action of revocation of grant of title but by suitable judicial proceedings in that behalf.

In a recent decision, Franns Investments Limited v. The Registrar of Titles, Mombasa & 2 Ors., Mombasa Petition No. 63 of 2012 this Court has ruled on the issue as follows: “It is clear that it is now settled that Registrar of Tiles or the Land Registrar as the case may be does not have power to revoke title to land.”

44. Consequently this Court finds that without a legal judicial process determining the legality of the title issued to the Ex parte Applicant, the Land Registrar had no jurisdiction to determine the matter and therefore had no powers to revoke the title. The action of the Land Registrar was ultravires and he acted beyond his given mandate.



Whether the orders sought in the Notice of Motion are merited.

45. In the instant case the Court has already found that the Land Registrar acted in excess of his powers by revoking the title deed issued to the Ex parte Applicant without following due process and therefore this Court would not shy away from quashing the said decision which was made without Jurisdiction.
46. However, whether this Court should prohibit the Respondents from entering the suit property or not is, in my view, is a matter beyond the scope of this determination. Yet, it is not an issue which can be wished away as inconsequential because it touches on ownership of the suit property. The Court cannot issue an order that would bar a party from a suit property without properly establishing the ownership. These are in my view issues which ought to be properly investigated and evidence adduced. They are not matters which can simply be determined based on the title held by the Ex Parte Applicant which according to *the Constitution* is simply prima facie evidence of title which title can be challenged if found to have been unlawfully acquired.
47. As was held in *Sanghani Investment Limited vs. Officer in Charge Nairobi Remand and Allocation Prison* [2007] 1 EA 354:

“Section 8 of the *Law Reform Act* specifically sets out the orders that the High Court can issue in judicial review proceedings and the orders are, mandamus, certiorari and prohibition. A declaration does not fall under the purview of judicial review for the simple reason that the Court would require viva voce evidence to be adduced for the determination of the case on the merits before declaring who that owner of the land is. Judicial review on the other hand is only concerned with the reviewing of the decision making process and the evidence is found in the affidavits filed in support of the application.Whereas it is true that the underlying dispute herein is ownership of the land, Judicial Review proceedings is not a forum where such a dispute can be adjudicated and determined as there would be a need for viva voce evidence to be adduced on how the land was acquired and came to be registered in the names of the Applicant; whether the title is genuine or not. In cases where the subject matter or the question to be determined involves ownership of land, and the rights to occupy land namely occupation, and disposition, there would be need to allow viva voce evidence and cross-examination of the witnesses which is not available in judicial review proceedings. Even if the Respondents had filed documents, they would be copies that would not be sufficient to establish authenticity of the title. The original documents would need to be produced at a full hearing where oral evidence would be adduced. It may indeed be true that the notice that is impugned is irregular or unlawful and an order of certiorari would be deserved, but it is not in every case that the Court will grant an order of judicial review even though it is deserved. Judicial review being discretionary remedy will only issue if it will serve some purpose. Certiorari is a discretionary remedy, which a Court may refuse to grant even when the requisite grounds for it 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 discretion of the Court being a judicial one must be exercised on the basis of evidence and sound legal principles. So that in this case, even though this application were properly before this Court and the application had merit, the Court may not have granted an order of certiorari because it would not be the most efficacious remedy in the circumstances. Even if the notice under challenge is quashed, the issue over the ownership of the land still stands and it will require determination by way of filing pleadings and viva voce evidence at another forum preferably the Civil Courts.”



- 48. In the instant case the Applicant has sought for an order of prohibition against the Respondents. Now, given the circumstances surrounding the issue of title and ownership as is presented in this case, even if I were to grant the orders sought herein, the issue of validity of the Applicant’s title would remain unresolved and since there is already in existence a constitutional reference finding emanating from an earlier suit on trespass revolving around the same suit property substantially between different parties, it is my view that the issue of title to land ought to be determined before a forum in which viva voce evidence will be taken so that appropriate orders can be made and the matter brought to finality. To grant the reliefs sought without determining the ownership of the suit land would in my view be an exercise in futility.
- 49. 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 as was stated in R vs. Secretary of State for Education and Science ex parte Avon County Council (1991) 1 All ER 282, at P. 285.
- 50. It follows therefore that where the resolution of the dispute before the Court requires the Court to make a determination on keeping away a party from a suit property whose ownership is disputed like in the instant suit and the facts are clearly disputed then this is not a suitable case for Judicial Review.
- 51. Accordingly, whereas I find that the 1st Respondent’s actions are prima facie improper, I decline to grant the orders sought in order for the parties to prosecute the appropriate legal proceedings to determine the issues of ownership of the disputed parcel of land.
- 52. In the premises there will be no order as to costs.

Orders Accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 13TH DAY OF OCTOBER, 2025.

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**MOGENI J
JUDGE**

In the presence of:-

- Mr. Kimanthi for the Ex-parte Applicant
- Mr. A. Kamauf for the 1st, 2nd and 3rd Respondents
- Melita – Court Assistant

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**MOGENI J
JUDGE**

