



**Republic v Nyandarua & 2 others; Muriuki (Interested Party); Kanyago (Ex parte Applicant)
(Judicial Review E002 of 2023) [2025] KEELC 7220 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7220 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
JUDICIAL REVIEW E002 OF 2023
LN MBUGUA, J
OCTOBER 1, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR NYANDARUA 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

AND

EPHRAIM WAHOME MURIUKI INTERESTED PARTY

AND

WILLIAM MUKUNDI KANYAGO EX PARTE APPLICANT

JUDGMENT

1. The background of these proceedings is that both the exparte applicant and the interested party are claiming ownership to parcel Nyahururu Municipality Block 2/618 of which the interested party has a certificate of lease dated 6.10.2022, while the exparte applicant also has a lease dated 20.6.2023. On 7.8.2023, the interested party filed the case Nyahururu CM ELC NO. 33 OF 2023 against the exparte applicant seeking orders inter alia, that the suit plot belongs to him exclusively. That case is ongoing before the chief magistrate’s court.
2. The exparte applicant avers that vide a letter dated 13.9.2023, the land registrar purported to cancel his title, prompting him to file these judicial review proceedings.



3. The substantive Notice of Motion application was filed on 11.12.2023 in which the Exparte applicant seeks the following orders;
- a) That an order of certiorari do issue to quash the 1st respondent's decision on 13th September 2023 cancelling the applicant's certificate of lease to the parcel of land Nyahururu Municipality Block 2/618.
 - b) That an order of prohibition to issue prohibiting the 1st respondent from in any way or manner whatsoever registering any transaction(s) in the register of the suit property purporting to cancel the ex parte applicant's lease to the parcel of land Nyahururu Municipality Block 2/618.
 - c) That an order of prohibition to issue prohibiting the 2nd respondent through his agents, officers and or assignees from continuously interfering with the ex parte applicant's proprietorship of the parcel Nyahururu Municipality Block 2/618 by intimidating and harassing the ex parte applicant to surrender his certificate of lease.
 - d) That an order of mandamus to issue directing the 1st respondent to remove any entry in the register of Nyahururu Municipality Block 2/618 cancelling the ex parte applicant's title and restore the name of the ex parte applicant in the register as the proprietor of the Nyahururu Municipality Block 2/618.
 - e) That costs of the application be provided".
4. The application is premised on the supporting and further affidavit of the applicant. He avers that he is the lawfully registered owner of the suit parcel vide the certificate of lease dated 20.6.2023. That he was sued in the magistrate's court by the interested party who also has a lease to the suit land. Upon realizing that there are two certificates of leases, the applicant lodged a restriction on the suit land.
5. However, when the matter was in court, the interested party influenced the 2nd respondent to intimidate and harass the applicant and the 1st respondent. Then the 1st respondent wrote a letter to him dated 13.9.2023 purporting to cancel the title of the exparte applicant, yet he had never been called to a hearing. The applicant contends that the actions of the 1st respondent are ultra vires and have the effect of sealing his fate in the case before the magistrate's court.
6. The Attorney General opposed the suit on behalf of the respondents vide Grounds of Opposition filed on 29.5.2024 where it is denied that the 2nd respondent has tried to intimidate the applicant and that no green card has been availed to show that applicants title was cancelled. Nevertheless, any such cancellation was done in line with the provisions of Section 79 (2) of the *Land Registration Act*.
7. The respondents have also filed a replying affidavit of 12.6.2024 sworn by M.A. OMULLO, a Land Registrar in Nyandarua and Samburu Counties. He averred that he was summoned to the DCI headquarters in Nairobi to record statement. He was informed that DCI had been conducting investigations regarding the suit property. It was then discovered that the applicant had a new title on 23.6.2023 to the suit land which was obtained by fraud. This is what prompted the deponent to cancel the title of the applicant.
8. The interested party too opposed the suit vide his replying affidavit dated 22.2.2024 where he asserts a claim of ownership to the suit land. That since there are two certificates of title, it was necessary for investigations to be conducted, but he had no role in the cancellation of the title of the applicant.



9. On 7.11.2024, the court gave directions for the suit to be heard by way of written submissions. The submissions of the applicant were filed on 17.2.2025 where he avers that the land registrar has no powers to cancel a title as was held in the case of Republic vs. Land Registrar, Nakuru District and Another; Nakuru war Memorial Hospital Ltd (2024) KEELC 5368 (KLR) where it was stated that;

“The court is of the opinion that if the 1st respondent had no legal authority to cancel the certificate of lease in the first place then it would have been an exercise in futility to accord the applicant a hearing before doing that which was ultra vires. In other words, no matter how many hearing opportunities the 1st respondent would have accorded the applicant that would not have granted him the legal authority to revoke the certificate of lease. In the premises, the court shall not examine the allegation of breach of the rules of natural justice or fair administration action.....

The court is further of the opinion that there is no provision of law either in the Land Act or the Land Registration Act, which authorizes a Land Registrar to cancel a certificate of title on account of his own negligence”.

10. The submissions of the Interested Party are dated 24.24.4.2025 where it is argued that the title of the applicant was cancelled on 13.9.2023 in accordance with the law, that is Section 79 (2) of the land Registration Act, as there was already a certificate of lease by the time the applicant applied to be issued with a title too. It was argued that inquiries conducted revealed that the title of the applicant was obtained through fraud.

11. It is submitted that since the title has been cancelled, the order of prohibition cannot suffice.

12. Citing the proceedings before the magistrate’s court, it is argued that the applicant has lodged a counterclaim to be declared as the lawful owner of the suit property, thus once the suit is heard and determined, the legal lawful owner will be determined. Thus, the order of mandamus should not be granted.

13. I did not see the submissions of the respondent.

Determination

14. The scope and purpose of judicial review was set out by the Court of Appeal in the case of Municipal Council of Mombasa v Republic and Another 2002 eKLR as follows;

“Judicial review is concerned with the decision -making process, not with the merits of the decision itself. The Court would only be concerned with the process leading to the making of the decision”.

15. The court will deal with the issues at hand on two fronts; The first one being whether this court should issue prohibitory orders against the DCI prohibiting that entity from interfering with the applicants proprietorship of the suit property, and secondly whether the orders sought against the Land Registrar in relation to the cancellation of the applicants title are warranted.

16. In regard to the orders sought against the 2nd respondent, the DCI, I make reference to the case of Cattwright v Chief Magistrates Court Milimani Law Courts & 7 others (Environment & Land Petition E041 of 2024) [2024] KEELC 13263 (KLR) (19 November 2024) (Ruling), where it was stated that;

QUOTE{startQuote “}



For the investigatory agencies, in this case the 3rd respondent, it is not in doubt that where it is suspected that a criminal offence has been committed, then the police do have a duty to investigate any complaint once it has been made. The DCIO need only establish a reasonable suspicion that an offence has been committed in order to prefer charges. This was the position taken in the case of Republic v Commissioner of Police and Another ex parte Michael Monari & Another [2012] eKLR”

17. It has emerged that there are two titles to the same suit property. According to the 1st respondent, the office of the DCI had been investigating the issue for a while. This far, I find that there is no basis to put a yoke on the mandate of the DCI. After all, the existence of two titles could be the work of criminal elements. If the DCI can unearth the culprits, so be it. This far, I find that the orders sought against the 2nd respondent are not merited.

18. On the cancellation of the title of the applicant, I make reference to the provisions of Section 79 (2) which state that;

“.....notwithstanding Subsection 1, the registrar may rectify or direct the rectification of the register or document where the document in question has been obtained by fraud”.

19. In the case of Republic v Chief Land Registrar & another Ex-parte Yosabia Kerubo Manyura [2018] eKLR, the court stated that;

“It is evident from the provisions of Section 79 (above) that the Land Registrar’s powers of rectification are limited to rectifying errors, mistakes or omissions that do not materially affect the interests of any proprietor. Cancellation of a title quite clearly would materially affect the interest of the registered proprietor. In my view, it is only the court that under Section 80(1) of the Land Registration Act, 2012 that has the power to direct the cancellation of a registration”.

20. It is evident from the provisions of Section 79 (above) that the Land Registrar’s powers of rectification are limited to rectifying errors, mistakes or omissions that do not materially affect the interests of any proprietor. Cancellation of a title quite clearly would materially affect the interest of the registered proprietor.

21. Firstly, and as seen from both the statute and case law, the powers of the Land registrar are limited in the cancellation of a title, and in the case at hand, the cancellation had materially affected the interests of the applicant.

22. Secondly, the cancellation on grounds of fraud is a serious matter as fraud has to be proved on a standard higher than on a balance of probabilities. In Kinyanjui Kamau v George Kamau Njoroge [2015] eKLR, The Court of Appeal stated:

“It is a well-established principle that allegations of fraud must be proved to a standard which is more than a balance of probabilities, though not beyond reasonable doubt.”

23. So, at what point did the 1st Respondent reach the finding that fraud had been proved as per the law? It is not lost to this court that the 1st respondent did not carry out any investigations at all. He talked of investigations conducted by the DCI.



24. Fourthly, and most disturbing is the fact that the applicant had lodged a restriction on 28.8.2023 on the suit land as reflected at entry no. 3 in the green card which reads as follows;

“No dealing until CM ELC NO. 33 OF 2023 at Nyahururu is heard and determined”

25. In light of the above entry, what justification was there for the 1st respondent to proceed to cancel the title of the applicant at entry no 4, hardly two weeks later on 13.9.2023. Wasn't the wording at entry no. 3 in the green card crafted in clear language that the restriction was to remain in force awaiting the determination of the court case? I find that it was out-rightly unlawful for the 1st respondent to proceed to cancel the title of the applicant when the issue of ownership of the suit land was already before a court of law.

26. Finally, I find that the cancellation of the applicants title was done in violation of the rules of natural justice in terms of the Fair Administrative Actions Act. To this end, I make reference to the case of Republic v Advocates Disciplinary Tribunal Exparte Apollo Mboya [2019] eKLR, where it was stated that;

“No person against whom an adverse decision might be taken should be denied a fair hearing to allow them to put their side of the case. What constitutes a fair hearing depends on the particular circumstances of the case. These include the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it has to work”.

27. The provisions of Section 79(2) of the *Land Registration Act* which the 1st respondent apparently relied upon to cancel the title of the plaintiff gives a rider on the application of the proviso as follows;

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

28. There is nothing to indicate that the applicant was given the requisite notice to present his case.

29. In conclusion, I find that the there being an ongoing case regarding the competing titles of the applicant and the interested party, then it was outrightly wrong for the 1st respondent to interfere with the due process of the law as the matter of the validity of the two titles is active before a court of law. Thus, in the end, I find that the suit filed by the applicant partially succeeds against the 1st respondent in the following terms;

1. That an order of certiorari is issued to quash the 1st respondent's decision of 13th September 2023 cancelling the applicant's Certificate of lease to the parcel of land Nyahururu Municipality Block 2/618.
2. That an order of mandamus is hereby issued directing the 1st respondent to remove any entry in the register of Nyahururu Municipality Block 2/618 cancelling the ex parte applicant's title and restore his name accordingly.
3. The restriction lodged on 28.8.2023 in the green card at entry No. 3 is to remain in force as indicated in the said Green Card.
4. Each party is to bear their own costs of this suit.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 1ST DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS..



LUCY N. MBUGUA

JUDGE

In the presence of:

vanessa CA

M/S Bor H/B for Mr. Mwangi for the Exparte Applicant

Gakuhi Chege H/B for Mrs. Wamithi for the Interested Party

