



REPUBLIC OF KENYA



KENYA LAW
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Republic v County Government of Nyeri; Kingori & another (Ex parte) (Judicial Review E001 of 2023) [2025] KEELC 5661 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5661 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
JUDICIAL REVIEW E001 OF 2023
JO OLOLA, J
JULY 31, 2025
IN THE MATTER OF: AN APPLICATION FOR PREROGATIVE
ORDERS OF MANDAMUS
AND
IN THE MATTER OF: REGISTRATION OF TRANSMISSION
DOCUMENT FOR PLOTS NUMBER 27
AND 37 NDUNYU MARKET

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF NYERI DEFENDANT

AND

PAPIUS WAMAGURU KINGORI EX PARTE

PHILIP NGO THO KINGORI EX PARTE

RULING

1. By the Notice of Motion dated 3rd November, 2023, Papius Wamaguru Kingori and Philip Ngotho Kingori (the Ex-Parte Applicants) pray for an order that the court be pleased to issue an Order of Mandamus to compel the Respondent to register transmission forms to give effect to the registration of the 1st Ex-Parte Applicant as the owner of half ½ of Plot Number 27 and the 2nd Ex-parte Applicant as the owner of Plot Number 32 Ndunyu Market.



2. The application which is supported by an affidavit sworn by the 1st Ex-parte Applicant is premised on the grounds:
 - i. That pursuant to the orders of the High Court, half of Plot No. 27 and Plot No. 32 situated at Ndunyu Market were transmitted respectively to the Ex-parte Applicants;
 - ii. That the Respondent's register shows that the Plots are still in the name of the deceased registered owner – Anna Wambui Kingori; and
 - iii. That in spite of several requests for the Respondents to comply, it has been unresponsive and hence this application.
3. The County Government of Nyeri (the Respondent) did not file anything in response to the application. They did however file submissions in opposition thereto.
4. I have carefully perused and considered the application before the court as well as the submissions and authorities placed before the court.
5. By their application before the court, the two Ex-parte Applicants seek for orders of mandamus to compel the County Government of Nyeri to register transmission forms to give effect to the registration of the 1st Ex-Parte Applicant as the owner of half (½) of Plot No. 27 and the 2nd Ex-parte Applicant as the owner of Plot No. 32 situated at Ndunyu Market within Nyeri County.
6. Those prayers arise from the Ex-parte Applicants' contention that they acquired the stated properties pursuant to the orders of the High Court and accuse the Respondent County Government of failing to register their names accordingly as the proprietors thereof.
7. In *Republic v Kenya National Examination Council ex-parte Gathenji & Others* [1997] eKLR, the Court of Appeal explained the applicable principles for an Order of Mandamus to issue as follows:

“The next issue we must deal with is this: What is the scope and efficacy of an Order of *Mandamus*? Once again we turn to *Halsbury's Laws of England*, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says:-

“The Order of *Mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty.

Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made 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.”
8. In the instant matter, the Ex-Parte Applicants assert that the two plots initially belonged to their father the late Asaph Kingori Kiige and that upon his death, the same were transmitted to their mother



Hannah Wambui Kingori. The Applicants further aver that upon their mother's death, the properties were transmitted to their two names and that they have submitted the transmission forms to the relevant offices but the same are yet to be registered in their names.

9. As it were, the Applicants have not provided any evidence of any transmission forms effecting registration from their father's estate to that of their mother and subsequently from their mother's estate to themselves. There was also no evidence in support of the fact that they had submitted any documents to the Respondents to take any specific action. Indeed, while they claim that they have been paying rates, rent and other fees to the Respondents on the belief that the properties had been registered in their names, no evidence of such payments were exhibited in the application.
10. It follows that I did not find any basis upon which to compel the Respondent to take any action. The Motion dated 3rd November 2023 lacks merit and the same is dismissed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 31ST DAY OF JULY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Kebuka Wachira Advocate for the Applicant
- c. No appearance for the Respondents
- d. No Appearance for the Ex-parte Applicants

