



**Kiro v Chief Land Registrar; Gakuo & another (Interested Parties) (Environment and Land  
Judicial Review Case E018 of 2025) [2025] KEELC 7705 (KLR) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7705 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E018 OF 2025**

**MN KULLOW, J  
NOVEMBER 7, 2025**

**BETWEEN**

**RAPHAEL GITAU KIRO ..... APPLICANT**

**AND**

**THE CHIEF LAND REGISTRAR ..... RESPONDENT**

**AND**

**JAMES MWANGI GAKUO ..... INTERESTED PARTY**

**THE DIRECTOR OF SURVEY ..... INTERESTED PARTY**

**JUDGMENT**

**A. Introduction**

1. On 20<sup>th</sup> March 2025, this Court (Hon. Justice C.G. Mbogo) granted leave to the Ex Parte Applicant, Raphael Gitau Kiro, through the firm of M/s Mike Muthumba & Company Advocates, to apply for an order of mandamus against the Chief Land Registrar compelling him, by himself, his servants, agents and/or persons acting under his authority, to rectify the Certificate of Lease dated 28<sup>th</sup> January 2004 issued for parcel Nairobi/Block 119/3313 to correspond with the actual parcel on the ground, being Nairobi/Block 119/3311. This was done pursuant to the Applicant's application by way of Chamber Summons dated 19<sup>th</sup> March 2025, which came before the Court for directions on 20<sup>th</sup> March 2025.
2. In the foregoing, the Applicant thereafter filed a Notice of Motion dated 9<sup>th</sup> April 2025 (the substantive application herein), seeking:
  - a. That an order of Mandamus against the Chief Land Registrar compelling him by himself, his servants, agents and/or persons directly working under him to rectify the Certificate of Lease dated 28.01.2004 issued for parcel Nairobi/Block 119/3313 to match the corresponding parcel Nairobi/Block 119/3311 on the ground.



- b. That the costs of this application be provided for.
3. The application is supported by the Supporting Affidavit of Raphael Gitau Kiro, sworn on 9<sup>th</sup> April 2025, and the annexures thereto. The Applicant avers that he holds a share certificate issued by Githurai Ting'ang'a Company Limited in respect of land parcel Nairobi/Block 119/3313, which he has occupied and developed since 1984. He contends that through an administrative error, the said parcel was registered in the name of the 2<sup>nd</sup> Interested Party, James Mwangi Gakuo, who is in fact in ground occupation of the abutting parcel Nairobi/Block 119/3311.
  4. The Applicant annexed copies of the certificate of lease, share certificate, authenticated survey plan F/R 311/78, and a physical planner's report confirming the ground position. He deposes that the error deprives him of his right to obtain title, violates his constitutional right to property under Article 40, and that there are no internal mechanisms available for rectification since he is not the registered proprietor. He therefore prays that the Court compels the Chief Land Registrar to rectify the anomaly.

### **Response to the Application**

5. In response, the Attorney General, on behalf of the Chief Land Registrar, filed Grounds of Opposition dated 24<sup>th</sup> April 2025. It is contended that the Applicant in substance seeks cancellation of a registered title, an act outside the statutory mandate of the Registrar. The Attorney General avers that an order of mandamus can only compel performance of a statutory duty, and no such duty exists authorising the Registrar to cancel or alter ownership of land. It is further asserted that the Registrar's power under Section 79 of the *Land Registration Act*, 2012 is limited to minor or formal errors and that compelling the Registrar to cancel a title would amount to requiring him to perform an illegality. Finally, the Respondent maintains that judicial review concerns the decision-making process, not the merits of the decision, and that the Applicant has failed to demonstrate any procedural impropriety or breach of duty warranting the intervention of this Court.

### **Supplementary Affidavit**

6. The Applicant thereafter filed a Supplementary Affidavit sworn on 24<sup>th</sup> April 2025, reiterating his position and responding to the Respondent's Grounds of Opposition. He clarified that his application seeks an order of mandamus and not an order of certiorari, and that he does not seek cancellation of title, but merely rectification of an error apparent on the face of the register. He maintained that under Section 79 of the *Land Registration Act*, 2012, the Chief Land Registrar bears a statutory duty to correct errors on the title, and that this Court equally retains jurisdiction under Section 80 of the same Act to compel such rectification.
7. The Applicant further deposed that the error in registration arose from failure by the Respondent to properly ascertain the ground occupation prior to titling, and that both he and the 2<sup>nd</sup> Interested Party are aware of the anomaly. He averred that the 2<sup>nd</sup> Interested Party, being in occupation of the adjoining parcel Nairobi/Block 119/3311, has no objection to the rectification sought, and that the continued existence of the erroneous title violates his constitutional right to property under Article 40 of *the Constitution* of Kenya, 2010.

## **B. Submissions**

### **Applicants Submission**

8. The Applicant, through the firm of M/s Mike Muthumba & Company Advocates, filed written submissions dated 28<sup>th</sup> May 2025 in support of the Notice of Motion. Counsel submitted that the



Applicant is the lawful beneficial owner of the parcel of land known as Nairobi/Block 119/3313, having been allocated the same by Githurai Ting'ang'a Company Limited in 1984 and having been in uninterrupted occupation and possession since then.

9. It was submitted that during the survey and titling process, an error occurred whereby the said parcel was erroneously registered in the name of the 2<sup>nd</sup> Interested Party, who is in fact in occupation of the adjoining parcel Nairobi/Block 119/3311, which he has developed. The Applicant contends that the said mistake arose from the failure of the Respondent's office to verify and confirm ground occupation before issuing the title, and that the continued existence of the erroneous Certificate of Lease has deprived him of his right to obtain title to the land he occupies and has developed for over four decades.
10. Counsel further submitted that the Chief Land Registrar is under a clear public legal duty to rectify errors in the land register pursuant to Section 79(1) of the *Land Registration Act*, 2012, which empowers the Registrar to correct entries in cases of formal or material errors or omissions and to amend the register where an error is apparent. It was further argued that the Registrar's inaction in correcting the known anomaly constitutes a violation of the Applicant's legitimate expectation and an infringement of his constitutional right to property protected under Article 40 of *the Constitution* of Kenya, 2010. The Applicant urged the Court to find that the Chief Land Registrar has a statutory duty to ensure that the land register accurately reflects the true position on the ground and that, in this case, the exercise of that duty can only be realized through an order of mandamus.
11. It was further submitted that the existence of the two parcels in their current state offends Section 30(2) of the *Land Registration Act*, which provides that only one certificate of lease or title may be issued in respect of each parcel of land. Counsel contended that the Applicant, being the person in actual occupation of Nairobi/Block 119/3313, cannot obtain a valid title so long as the erroneous title in the name of the 2<sup>nd</sup> Interested Party remains unrectified.
12. The Applicant therefore invited the Court to invoke its supervisory jurisdiction under Section 80 of the *Land Registration Act*, 2012, which grants the Court power to order rectification of the register where a registration was obtained by fraud or mistake, and to compel the Chief Land Registrar to correct the error.
13. In support of his position, counsel cited the case of Soroya Investments Limited -Vs- Registrar of Titles & 2 Others [2018] eKLR, where the Court recognised the Registrar's power under Section 79(2) of the *Land Registration Act* to direct rectification of a land register in cases of fraud or error. Reliance was also placed on Guchu & 3 Others -Vs- Kamau (Suing as the Personal Administrator of the Estate of Antony Kamau Njuguna – Deceased) [2025] KEELC 939 (KLR), where the Court held that there can only be one valid title to a parcel of land and that overlapping ownerships are not permissible under Kenyan land law.
14. Counsel further cited Miriam Njoki Karanja -Vs- Chief Land Registrar & 2 Others [2020] eKLR, in which the Court held that the register may be rectified to reflect the true position where a registration was made by mistake to the detriment of the rightful owner. The Applicant thus urged the Court to allow the application and issue the orders sought, submitting that he is an elderly man aged over 80 years, and that justice demands the rectification of the error to secure his right to property under Article 40 of *the Constitution*.

### **Respondents' submission**

15. The Respondent, through the Office of the Attorney General, filed written submissions dated 26<sup>th</sup> June 2025 opposing the application. Counsel submitted that the Applicant, under the guise of seeking rectification, was in fact seeking the cancellation of a registered title in the name of the 2<sup>nd</sup> Interested



- Party and the transfer of ownership to himself, which the Chief Land Registrar has no statutory authority to effect.
16. It was contended that the Applicant's prayers, though couched as an order of mandamus, would have the effect of materially altering proprietary interests, which goes beyond the administrative powers of rectification provided for under Section 79 of the [Land Registration Act](#), 2012. Counsel emphasized that the Registrar may only rectify the register to correct formal matters, minor errors, or omissions that do not materially affect ownership, or with the consent of all affected parties. Consequently, an order of mandamus cannot be issued to compel the performance of an act that is illegal or ultra vires the statutory mandate of the officer sought to be compelled.
  17. In elaborating this argument, counsel referred to the statutory framework under Section 79 of the [Land Registration Act](#), which expressly limits the Registrar's power of rectification to instances of non-material errors, typographical corrections, or consensual alterations. Counsel further argued that cancellation or amendment of a title affecting proprietary rights is exclusively within the jurisdiction of the Court under Section 80(1) of the [Land Registration Act](#), which empowers the Court, and not the Registrar, to direct rectification where a registration has been obtained by fraud or mistake.
  18. The Respondent thus submitted that to compel the Registrar to substitute the registered owner's name with that of the Applicant would amount to the Court directing an officer to commit an illegality under the guise of enforcing a statutory duty. The Attorney General therefore maintained that the Applicant's motion was misconceived in law, and the orders sought could not be granted through judicial review.
  19. On the nature and scope of judicial review, the Respondent relied on the decisions of the Supreme Court in *Judges and Magistrates Vetting Board -Vs- Centre for Human Rights and Democracy & Others* [2014] eKLR, and the Court of Appeal in *OJSC Power Machines Limited & Others -Vs- Public Procurement Administrative Review Board & Others* [2017] eKLR, for the proposition that judicial review is concerned with the process by which a decision is made, and not with the merits of the decision itself. Counsel submitted that the Applicant's grievance touches on the substance of ownership and the correctness of registration, which are matters of title requiring evidentiary evaluation and cannot be determined through judicial review. It was contended that no illegality, procedural impropriety, or unreasonableness had been demonstrated in the Respondent's conduct to justify the Court's intervention by way of mandamus.
  20. The Respondent also raised the issue of inordinate delay, pointing out that the impugned Certificate of Lease was issued on 28<sup>th</sup> January 2004, yet the Applicant moved the Court only in 2025, more than twenty years later, without offering a satisfactory explanation for the delay. Counsel relied on *Republic -Vs- Mwangi Nguyai & 3 Others ex parte Harun Nguyai* (High Court Misc. App. No. 89 of 2008), where the Court held that judicial review proceedings are a special and exceptional remedy which must be instituted promptly and within reasonable time to uphold public interest and finality in administrative decisions. It was submitted that the Applicant's long delay undermines the equitable and discretionary nature of judicial review reliefs.
  21. In conclusion, counsel for the Respondent urged that the present motion, being fundamentally a claim for ownership and cancellation of title, should have been pursued through a substantive civil suit under Section 80 of the [Land Registration Act](#), where all affected parties, including the 2<sup>nd</sup> Interested Party, could participate fully. The Respondent thus prayed that the application be dismissed with costs.



### C. Analysis And Determination

22. I have carefully considered the Notice of Motion dated 9<sup>th</sup> April 2025, the Supporting and Supplementary Affidavits of the Applicant, the Grounds of Opposition filed by the Respondent, together with the parties' respective written submissions and authorities cited. Having done so, it is my considered view that the application raises two key issues for determination, namely:
- I. Whether the Chief Land Registrar has a public legal duty to rectify the Certificate of Lease for parcel Nairobi/Block 119/3313 under Section 79 of the Land Registration Act, 2012; and
  - II. Whether the Applicant is entitled to the judicial review order of mandamus sought in the circumstances of this case.
23. On the first issue, it is not in dispute that the Certificate of Lease for parcel Nairobi/Block 119/3313 was issued on 28<sup>th</sup> January 2004 in the name of the 2<sup>nd</sup> Interested Party, while the Applicant contends that he has been in occupation of the same parcel since 1984. The question for the Court is whether the Chief Land Registrar has the statutory authority to rectify the register to correct what the Applicant terms as an "erroneous registration".
24. The starting point is examining Section 79 of the LRA which governs rectification of land register by the Registrar. It provides, inter alia, that the Registrar may rectify the register or instrument presented for registration in formal matters and in the case of errors or mistakes and for purposes of updating the register. Sub-sections 2, 3A and 4 of the said Section read:
- (2) No alteration affecting the title of a proprietor may be made pursuant to sub-section (i) 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.
  - (3A) A person aggrieved by the decision of the Registrar under this section may apply to the court for any necessary orders.
  - (4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under this Section and without prejudice to the generality of the foregoing, the regulations may provide for:-
    - a) The process of investigation including notification of affected parties.
    - b) Hearing of the matters raised; and
    - c) The criteria to be followed in coming up with the decision
25. In addition, Rule 92 (2) and (3) as pointed out at paragraph 12 hereinabove, stipulates that;
- a) The Registrar shall issue a notice of intention to rectify the register under 79(2) of the Act, in Form LRA 91 set out in the Sixth schedule.
  - b) An order by a Registrar issued under section 79 of the Act shall be in Form LRA 92 set out in the Sixth Schedule. (Emphasis added)



26. These provisions clearly establish that the power of the Registrar to rectify the register is administrative and limited. The Registrar may correct typographical errors, misdescriptions, or non-material discrepancies. However, where the rectification would affect the ownership or title of a registered proprietor, such action cannot be taken administratively and requires the intervention of the Court under Section 80 of the *Land Registration Act*, 2012. Section 80(1) of the same Act provides that: “Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”
27. The provision further limits rectification affecting a registered proprietor’s title unless it is shown that the proprietor had knowledge of or substantially contributed to the omission, fraud, or mistake. It therefore follows that the distinction between Sections 79 and 80 is crucial: Section 79 governs administrative corrections by the Registrar, while Section 80 vests the power to cancel or amend a title in the Court upon proof of fraud or mistake.
28. The term “rectification of register” is defined in Black’s Law Dictionary, 10<sup>th</sup> Edition, page 1467 as “a process by which a person whose name was wrongly entered in or omitted from the record can compel the recorder to correct the error.” This definition reinforces the legal principle that rectification may involve correcting clerical or administrative errors but does not extend to substantive alteration of ownership unless by judicial sanction.
29. In the present case, the Applicant seeks an order of mandamus to compel the Chief Land Registrar to rectify the register by altering the name of the registered proprietor of Nairobi/Block 119/3313. Such rectification would unquestionably affect proprietary rights and cannot be deemed a mere formal or clerical amendment. The Registrar has no statutory mandate under Section 79 to undertake such a correction without the consent of the registered proprietor or an order of this Court under Section 80. To compel the Registrar to do so would amount to directing him to act ultra vires his powers.
30. The Court is also guided by the constitutional protection of property under Article 40 of *the Constitution* of Kenya, 2010, which guarantees every person the right to acquire and own property individually or in association with others. However, the protection of property rights must be balanced with the due process of law governing land registration and rectification. The Respondent’s inaction cannot be said to violate Article 40 where the Registrar lacks legal authority to perform the act sought to be compelled.

**Issue No:2 Whether the Applicant is entitled to the judicial review order of mandamus sought in the circumstances of this case.**

31. On the second issue, the law is clear that mandamus will issue only where there exists a public duty imposed by statute which a public officer has failed to perform to the detriment of a person who has a corresponding legal right. This principle was clearly articulated in *Republic -Vs- Kenya National Examinations Council ex parte Gathenji & Others* [1997] eKLR, where the Court held that mandamus cannot be used to compel the performance of an act that is illegal or beyond the officer’s powers. Applying that principle to the present case, the act of cancelling or substituting a registered title is outside the administrative powers of the Chief Land Registrar and therefore cannot be compelled by mandamus.
32. The Court is also mindful that judicial review proceedings are not intended to determine the merits of ownership but to review the legality of the decision-making process. In the instant matter, the Applicant’s complaint is substantive and not procedural.



33. It concerns the rightful ownership of land and not any administrative unfairness by the Respondent. Such issues, involving competing claims of title, are best ventilated through a regular suit under Section 80 of the [Land Registration Act](#), where evidence can be adduced and the Court can make a definitive pronouncement on ownership.
34. Having carefully considered all the pleadings and submissions, this Court is not unmindful of the Applicant's grievance and the circumstances he describes. It is evident that the Applicant genuinely believes that an error may have occurred during the titling process, and the Court does not take lightly the hardship that such a situation may occasion, particularly to a person who has been in long-term occupation of land.
35. However, the material placed before the Court does not, in my view, meet the threshold necessary to establish that the Chief Land Registrar bears a statutory duty which he has failed to perform and which can properly be enforced by way of mandamus. The Applicant's claim raises issues of ownership and rectification that require the Court to examine the merits of title and factual occupation, matters that fall outside the limited scope of judicial review. The Court is therefore constrained to find that although the Applicant's complaint may call for administrative clarification or recourse under Section 80 of the [Land Registration Act](#), 2012, it cannot be resolved through the present judicial review proceedings.

#### **D. Final Disposition And Orders**

36. In light of the foregoing analysis, and for the reasons set out above, this Court finds that the orders sought by the Applicant cannot be granted within the limited scope of judicial review. The power to alter or amend a register in a manner that affects ownership of land is expressly reserved for the Court under Section 80 of the [Land Registration Act](#), 2012, and not for the Registrar acting administratively under Section 79 of the Act. The order of mandamus sought to compel the Chief Land Registrar to rectify the register would therefore amount to requiring the Registrar to perform an act that lies outside his statutory mandate.
37. Consequently, the Notice of Motion dated 9<sup>th</sup> April 2025 is hereby dismissed.
38. On the issue of costs, the Court is mindful of the nature of this dispute and the age of the Applicant. In the circumstances, and in the interest of justice, I direct that each party shall bear its own costs.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT Nairobi ON THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Judgment delivered in the presence of: -

Mr. Mutambo for the Applicant

No appearance for the Respondent

No appearance for Interested Parties

Philomena W. Court Assistant

