



**Standard Chartered Bank Kenya Limited v National Land Commission
 (Judicial Review Originating Motion Application E249 of 2025)
 [2025] KEHC 16252 (KLR) (Judicial Review) (10 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16252 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
 JUDICIAL REVIEW
 JUDICIAL REVIEW ORIGINATING MOTION APPLICATION E249 OF 2025
 RE ABURILI, J
 NOVEMBER 10, 2025
 IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION
 ACT, 2015
 AND
 IN THE MATTER OF: THE LAND ACT, NO. 35 OF 2012
 AND
 IN THE MATTER OF: AN APPLICATION BY THE APPLICANT
 STANDARD CHARTERED BANK KENYA
 LIMITED FOR LEAVE TO APPLY FOR
 JUDICIAL REVIEW BY WAY OF AN
 ORDER OF MANDAMUS DIRECTED TO
 THE NATIONAL LAND COMMISSION**

**BETWEEN
 STANDARD CHARTERED BANK KENYA LIMITED APPLICANT
 AND
 NATIONAL LAND COMMISSION RESPONDENT**

JUDGMENT

1. The Originating Motion dated 12th August 2025 is brought under the provisions of the Fair Administrative Action Rules, 2024. The applicant seeks an order of Mandamus to be issued by this



court, directed at the National Land Commission, compelling it to exercise its statutory power under section 151(b) of the *akn ke act 2012 6 Land Act*, 2012 to authorise the applicant to serve the section 90 and 96 statutory notices by way of substituted service through an advertisement in one or more newspapers with national circulation. In the alternative to the prayer for mandamus, the applicant prays that a declaration be made under section 11 (2) (b) of the *akn ke act 2015 4 Fair Administrative Action Act* that the applicant is entitled to serve the notices required under sections 90 and 96 of the *akn ke act 2012 6 Land Act* and any further notices required in order for the applicant to exercise its statutory power of sale over L.R. 209 4063 Nairobi, L.R. 209 4058 Nairobi, L.R. MN I 9626 Mombasa, Nakuru Municipality Block 9 47 and L.R. 209 4062 Nairobi through substituted service by publishing the notices in the Kenya Gazette and in a newspaper of national circulation. The applicant also prays for costs of the application.

2. The Originating Motion is premised on the grounds on the face of the Originating Motion, supported by the supporting affidavit sworn by Vitalis Muthoka, on 12th August, 2025, the Principal, Stressed Asset Group, East Africa of the applicant, Standard Chartered Bank of Kenya Limited and who is authorised to swear the affidavit on the applicant's behalf and annexures thereto.
3. The applicant's case as narrated in the depositions of Mr Vitalis Muthoka is that the applicant advanced various credit facilities to Nakumatt Holdings Limited and that these credit facilities were secured by the securities provided by Nakumatt Investments Limited and Creative Enterprises Limited. The securities were:

A. From Nakumatt Investments Limited:

- a. Guarantees dated 11th February 2011 and 5th April 2013;
- b. Charge dated 27th January 2012 over L.R. 209 4063 Nairobi;
- c. Charge dated 27th January 2012 over L.R. 209 4058 Nairobi;
- d. Charge dated 11th February 2011 over L.R. MN I 9626 Mombasa; and
- e. Charge dated 11th February 2011 over Nakuru Municipality Block 9 47.

B. From Creative Enterprises Limited:

- a. Guarantee dated 21st January 2014; and
 - b. Charge dated 11th February 2011 over L.R. 209 4062 Nairobi.
4. The applicant annexed copies of the said securities at pages 1 to 126 of the exhibit annexed to the affidavit and marked "VM-1." It is claimed that Nakumatt Holdings Limited defaulted in paying the credit facilities advanced and therefore the need arose to serve the notices required under section 90 and 96 of the *akn ke act 2012 6 Land Act*.
 5. The applicant claims that it has however not managed to serve these statutory notices upon the persons to be served cannot be traced. That the extensive efforts undertaken by the applicant to serve the notices including hiring enquiry agents to try and trace the officers of the chargors as set out in paragraphs 10 to 16 of Vitalis Muthoka's affidavit, have not borne any fruit.
 6. That due to the difficulties that the applicant encountered in serving the statutory notices on the chargors, the applicant, through its advocates Hamilton Harrison & Mathews, wrote to the respondent on 28th October 2022 explaining that it was not possible to serve the notices personally or by post and requested the respondent to issue an order for substituted service of the section 90 and 96 notices



under the *akn ke act 2012 6 Land Act* by way of advertisement in one or more newspapers and for directions on the form of the notices.

7. That the respondent did not respond to the letter dated 28th October 2022 and the ex-parte applicant's advocates sent numerous reminders on 10th November 2022, 25th November 2022, 14th December 2022, 18th April 2023, 28th April 2023, 20th February 2025 and 9th May 2025. The letters that the applicant sent to the respondent requesting for a decision on the application to serve by substituted service are annexed at page 147 to 156 of the exhibit to Vitalis Muthoka's affidavit.
8. The respondent is said to have failed and or neglected to respond to any of the ex-parte applicant's letters and has refused and or declined to issue an order for substituted service to the ex-parte applicant.
9. The applicant therefore deposes that it is prejudiced by the respondent's refusal to perform its functions under section 151 (b) of the *akn ke act 2012 6 Land Act* as the applicant is unable to take steps to realise its security in accordance with the *akn ke act 2012 6 Land Act*; and that it is therefore in the interests of justice that an order of mandamus be issued as prayed.
10. Despite service of the Originating Motion upon the respondent. It has not filed any response to the Originating Motion.
11. The applicant filed written submissions dated 23rd October 2025, which I have considered in the analysis and determination hereunder.

Analysis and Determination

12. This Court having considered the originating Motion, the supporting affidavit and annexures thereto, the main issue for determination is whether the prayers sought are available to the applicant.
13. Article 47 of *akn ke act 2010 constitution the Constitution* provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. On the other hand, the implementing provisions to this Article is the *akn ke act 2015 4 Fair Administrative Action Act, 2015*. Section 7(2)(j) of the *akn ke act 2015 4 Fair Administrative Action Act* provides that a court may review an administrative action or decision if there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law.
14. Section 151 (b) of the *akn ke act 2012 6 Land Act, Cap 280* provides that:

“If the Commission is satisfied that a notice cannot be served personally or by post, either because the person to be served is evading service or for some other reason the Commissions may order service to be effected by publishing a copy in the Gazette and if it thinks fit, one or more newspapers circulating in Kenya.”
15. The applicant has demonstrated that the persons to be served on behalf of the chargors cannot be found for personal or postal service as the notices dispatched via postal service were returned to sender and despite investigations, none of the directors of the chargors can be traced. There is also sufficient evidence on record that the respondent has failed or refused to issue an order to the applicant for substituted service since 28th October 2022. This is a delay of 2 years and 8 months, which is inordinate, unreasonable and unfair to the applicant.
16. In my view, the respondent's failure to give feedback on the applicant's request for an order for substituted service has placed the applicant at a risk of not being able to realise its securities by exercising its statutory power of sale.



17. The respondent's refusal or failure to communicate its decision on the applicant's request for an order for substituted service is also an abuse of discretion by the respondent and a failure to act in discharge of a duty imposed by section 151 of the *akn ke act 2012 6 Land Act*, which warrants intervention of the court.
18. By failing to give any feedback on the applicant's request for an order for substituted service for a period of 2 years and 8 months, the respondent has in my view, breached the applicant's constitutional right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair as enshrined in Article 47 of *akn ke act 2010 constitution the Constitution* of Kenya.
19. Section 7(2)(m) of the *akn ke act 2015 4 Fair Administrative Action Act*, 2015 provides that a court or tribunal may review an administrative action or decision if the administrative action or decision violates the legitimate expectation of the person to whom it relates.
20. The applicant had a legitimate expectation that the respondent would exercise its authority under section 151(b) of the *akn ke act 2012 6 Land Act* and either issue the order for substituted service or, if the applicant's request was denied or refused, inform the applicant of the reasons for refusing the application.
21. By failing to give any feedback on the applicant's request for an order for substituted service for a period of 2 years and 8 months, the respondent has breached the applicant's legitimate expectation that it would be allowed to effect service of the statutory notices through substituted service where the circumstances justify substituted service.
22. H. W. R. Wade *Administrative Law*, 6th edition, Oxford University Press at page 439 states:

“Delay in performing a legal duty may also amount to an abuse which the law will remedy. Where a British ‘partial’ was entitled by statute to enter the country ‘without let or hindrance’ but the Home Office refused her the necessary certificate of partiality except by an administrative procedure which would have made her wait for over a year, the Court of Appeal held that the certificate could not arbitrarily refused or delayed and ordered its issue.”
23. Further, in *Katiba Institute v Attorney General & 3 others; Kenya National Commission on Human Rights (Interested Party) [2019] eKLR Nyakundi J* held:

“As per Article 259 (8), where *akn ke act 2010 constitution the Constitution* has not prescribed a particular time for performing a required act, the act shall be done without unreasonable delay. Six years down the line since the Act came into being, the Board has still not been operationalized. It took the filing of the instant petition to stir some movement in the right direction. This cannot by any stretch of imagination be construed to be keeping in tandem with the constitutional dictates as regards timelines. I find that this turn of events is an outright denial of the general public's right to access to justice.”
24. Under Section 11 (2) (c) of the *akn ke act 2015 4 Fair Administrative Action Act*, 2015 in proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order directing any of the parties to do any act or thing the doing of which the court considers necessary to do justice between the parties.
25. The respondent is under a statutory duty to communicate to the applicant the information sought, as stipulated in section 151 of the *akn ke act 2012 6 Land Act* and the only remedy available to the applicant is to seek for mandamus to compel the respondent to perform that statutory duty.



26. In Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR the Court of Appeal, it was held:

“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. ... What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

27. The statutory duty placed on the respondent under section 151(b) of the *akn ke act 2012 6 Land Act*, 2012 is to authorise the applicant to serve the section 90 and 96 statutory notices by way of substituted service through an advertisement in one or more newspapers with national circulation.

28. Now that the respondent has refused to exercise that statutory duty, I am satisfied that the applicant has made out a case for the judicial review remedy of mandamus.

29. Accordingly, judicial review orders of mandamus is hereby issued compelling the respondent National Land Commission to exercise its statutory duty under section 151 (b) of the *akn ke act 2012 6 Land Act* to authorise the applicant to serve the section 90 and 96 of the *akn ke act 2012 6 Land Act* statutory notices by way of substituted service through an advertisement in one or more newspapers with nationwide circulation. The authorisation shall be given within seven days of the date of service of this judgment and decree upon the respondent’s accounting officer, the Secretary Chief Executive Officer to the National Land Commission.

30. In the event that the respondent and its Chief Executive Officer Secretary to the National land Commission does not comply with the timelines given in this judgment, and owing to the inordinate time lapse, this court hereby issues a declaration under section 11 (2) (b) of the *akn ke act 2015 4 Fair Administrative Action Act* that the applicant is entitled to serve the notices required under sections 90 and 96 of the *akn ke act 2012 6 Land Act* and any further notices required through substituted service by publishing the notices in the Kenya Gazette and in a newspaper of national circulation, in order for the applicant to exercise its statutory power of sale,

31. As the respondent did not participate in these proceedings, I make no orders as to costs of the Originating Motion.

32. Decree to issue and be served upon the Respondent for compliance.

33. This file is therefore effectively closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2025

R.E. ABURILI

JUDGE

