

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT NAIROBI**

**ELC LAND MISC JR APPLICATION NO. E156 OF 2025**

**RAHAB NJOKI NJOROGE .....**

**APPLICANT**

**VERSUS**

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

**RESPONDENT**

**JUDGEMENT**

1. What is before Court for determination is the Applicant's Notice of Motion application dated 7<sup>th</sup> January 2025 where she seeks the following Orders:

- a) That the Honourable Court be pleased to grant a Judicial Review order of mandamus compelling the Respondent to certify a copy of the Title LR No.8812/1/I.R 18670 as a true copy of the original for purposes of registration and issuance of individual sub titles in respect of Original Deed Plans No.384086, No. 384079 & No. 384090 relating to land parcels no.LR 8812/11(Original No. 8812/1/12) LR 8812/4

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**(Original no.8812/1/5) and LR 8812/15 (Original no. 8812/1/16) respectively in favour of the Applicant within 14 days from the date of the order.**

**b) Spent.**

**c) That the costs of this application be borne by the Respondent.**

**d) That any further appropriate orders be made as the court may deem fit.**

2. The application is premised on the Applicant's statement and verifying affidavit. She contends that on 28<sup>th</sup> November 2023, she applied for registration by way of transmission, following confirmation of the Grant of Letters of Administration on 8<sup>th</sup> January 2019 at the Kitale High Court in respect to the estate of Njoroge Kinuthia (deceased). The transmission was in respect to Original Deed Plans **No. 384086, 384079 and 384090** relating to parcels **No. LR 8812/11 (Original No. 8812/1/12) LR 8812/4 (Original no. 8812/1/15) and LR 8812/15 (ORIGINAL No. 8812/2/16).**

3. She asserts that she availed necessary documents to accompany the application and paid the requisite fees, and thereafter all the applications were stamped, booked and she was issued with booking numbers. However, she has consistently made follow up at the Land registry on the status of the registration and issuance of titles in relation to the individual parcels, and has in all instances, now over a year, been advised that the file cannot be traced.
  4. She avers that she is ninety (90) years old and is apprehensive that her demise might catch up with her before she could bequeath the individual parcels to her children. Further, that she stands to suffer irreparable damage should the application be denied. She insists that it is also necessary that any further transactions or dealings in the said parcels be forbidden, so that her interest is protected.
  5. The application was first filed in the High Court. In opposition, the Respondent filed a Notice of Preliminary Objection dated at 20<sup>th</sup> February 2024 contending that the
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High Court had no jurisdiction to preside over the matter. The suit was eventually transferred to this Court.

6. The application was canvassed by way of written submissions.

### **Submissions**

7. The Ex parte Applicant submits that she has put forth a good case for issuance of the orders sought and that the Respondent is empowered to certify, sign and seal a true copy of any registered instrument, and subsequently register sub-parcels and issue individual titles. Further, that to avoid a situation where the orders of this Court are rendered nugatory, the Court should issue a status quo order in relation to the suit parcels.
8. She submits that the Respondent has abdicated his public duty and he has not been responsive in attending to her application for registration and issuance of the titles in contravention of Article 232 of the Constitution.

9. To buttress her averments, she relied on the following decisions: **Kenya National Examination Council v Republic Ex parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR, Mwani & another v Land Registrar Kajiado North (Ngong) & another (Judicial Review E012 OF 2022) [2023] KEELC 20058 (KLR) (25 September 2023)(Judgement), Wainaina Kigathi Mungai v Land Registrar Kilifi & PS, Ministry Of Lands [2017]KEHC 6557(KLR), Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (CIV) (18 February 2015) (Ruling) and Stanley Kangethe Kinyanjui v Tony Ketter & 5 others [2013] eKLR.**

10. On its part, the Respondent's submissions focused on the High Court's lack of jurisdiction to determine this matter and urged the court to dismiss the application.

### **Analysis and Determination**

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**11.** Upon consideration of the instant Notice of Motion application including the Statement of Facts, affidavits and rivalling submissions, the only issue for determination is whether the Applicant has made out a case for the grant of an order of mandamus.

**12.** The Applicant seeks Judicial Review orders of mandamus to compel the Respondent to certify a copy of the Title **LR No.8812/1/I.R 18670** as a true copy of the original for purposes of registration and issuance of individual sub titles in respect of Original Deed Plans **No. 384086, No. 384079 & No. 384090** relating to land parcels nos. **LR 8812/11(Original No. 8812/1/12), LR 8812/4 (Original no. 8812/1/5) and LR 8812/15 (Original No. 8812/1/16).**

**13.** It is her case that it is now over one year since the original Deed Plans **No. 384086, 384079 and 384090** were surrendered to the Lands Registry for registration and issuance of sub titles in relation to the individual parcels and

since she made the application, the Respondent is yet to complete it.

**14.** On administrative action, Section 7 of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to— (a) a court in accordance with section 8; or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law. Subsection (2) provides that a court or tribunal under subsection (1) may review an administrative action or decision on any of the grounds listed in the said section.

**15.** Further, Article 47 of the Constitution stipulates thus:

***‘(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action. (3) Parliament shall enact***

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*legislation to give effect to the rights in clause (1) and that legislation shall— (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.'*

**16. Lord Diplock in the case of Council for Civil Service Unions vs.**

**Minister for Civil Service [1985] A.C. 374, at 401D** clearly set the standards of judicial review when he stated that:

*“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as*

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***“Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.’***

**17.** The circumstances where an order of mandamus would issue were well

articulated in the Court of Appeal case of **Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR** where they stated inter alia:

***“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***

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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 or 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...These principles mean that an order of mandamus compels 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.”

18. The question we need to ponder is whether the Respondent has a role that includes certifying a copy of the Title as a true copy of the original and issuance of individual sub titles as claimed by the Applicant? The Supreme Court in **National Land**

**Commission v Attorney- General & 7 others [2015]**

**eKLR** stated that:

**“That the Ministry of Land is the special entity with authority to register and issue land title, in this Court’s opinion, bears restating. Land title, by its singularity as the mark of entitlement to landed property, is the ultimate expression of a vital property right, quite apart from being the very reference point in numerous financial and business transactions, national and international. On that account, the sole national repository to issue, and to guarantee the validity and integrity of title, is the central State machinery, as a player on the international plane, acting through the Executive organ.”** Emphasis Mine

**19. In East African Court of Appeal in The District Commissioner Kiambu vs. R and Others Ex parte Ethan Njau Civil Appeal No. 2 of 1960 [1960] EA 109, it was stated that:**

**“Mandamus to the registrar is certainly one method of putting right an erroneous entry in the**  
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**register, and is peculiarly applicable when the fault is alleged to lie with the registrar. If that official refused to act in circumstances in which he should act, mandamus would appear to be appropriate. There seems to be no reason why it should not lie in a case where it is necessary to invoke the wider powers of a court...Mandamus will not be granted if the performance of the act involves a breach of the law.** Emphasis added.

**20.** In this instance, the Respondent who is the Chief Land Registrar has declined to undertake his official duties to the detriment of the Applicant. Further, the Respondent except for claiming they cannot access the file has failed to effect transfer by transmission to the Applicant, the Original Deed Plans No. 384086, 384079 and 384090 relating to parcels No.LR 8812/11 (Original No. 8812/1/12) LR 8812/4 (Original no. 8812/1/15) and LR 8812/15 (Original No. 8812/2/16).

**21.** I note the Respondent has not denied that the Applicant availed necessary documents to accompany her application and paid the requisite fees, and thereafter all the

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applications were stamped, booked and she was issued with booking numbers. Further, the Respondent did not provide any plausible explanation on why there was a delay, despite the Applicant's consistent follow ups for over one year, with the Land Registry on the status of the registration and issuance of titles in relation to the individual parcels.

**22.** In relying on the facts as presented including the cited judicial authorities, I find that failure by the Respondent to effect transfer by transmission of the aforementioned parcels of land to the Applicant, is against the rules of Natural Justice and violated her Constitutional right to property. I opine that since the Respondent did not controvert the averments herein, it amounts to an admission of negligence of duty on his part. Further, his actions are contrary to his legal mandate and contravene the Constitutional principles of reasonability and procedural fairness as the basic rules of natural justice were not observed in the process herein. It is my considered view that since the Applicant furnished the

Respondent with all the relevant documents including Deed Plans, there is no reason why he should not effect registration relating to parcels **No.LR 8812/11 (Original No. 8812/1/12) LR 8812/4 (Original no. 8812/1/15) and LR 8812/15 (Original No. 8812/2/16)**, to her.

**23.** On the issue of costs, since this generally abides the outcome of the suit, I find that the Respondent should be made to bear the same.

**24.** It is against the foregoing that I find the Applicant's Notice of Motion application dated 7<sup>th</sup> January 2025 merited and will proceed to allow it in the following terms:

- i. A judicial review order of mandamus be and is hereby issued compelling the Respondent to certify a copy of the Title LR No. 8812/1/I.R 18670 as a true copy of the original for purposes of registration and issuance of individual sub titles in respect of Original Deed Plans No. 384086, No. 384079 & No.384090**

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**relating to land parcels no.LR 8812/11(Original No.8812/1/12)LR 8812/4 (Original no. 8812/1/5) and LR 8812/15 (Original no. 8812/1/16) respectively in favour of the Applicant within 14 days from the date of the order.**

**ii. Costs to the Ex parte Applicant.**

**DATED SIGNED AND DELIVERED AT NAIROBI THIS  
17<sup>TH</sup> DAY OF DECEMBER, 2025**

**CHRISTINE OCHIENG  
JUDGE**

**In the presence of:**

**Sifuna for Applicant**

**Court Assistant: Joan**