



**Presbyterian Church of East Africa (Uthiru Church) v County Lands Registrar, Kiambu County (Judicial Review Miscellaneous Application E006 of 2025) [2025] KEELC 8574 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8574 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E006 OF 2025**

**JA MOGENI, J**

**DECEMBER 4, 2025**

**IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF  
KENYA, 2010**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF  
KENYA**

**BETWEEN**

**PRESBYTERIAN CHURCH OF EAST AFRICA (UTHIRU  
CHURCH) ..... APPLICANT**

**AND**

**THE COUNTY LANDS REGISTRAR, KIAMBU COUNTY ..... RESPONDENT**

**JUDGMENT**

1. This application is dated 14/05/2025 and is brought under Section 8 (2) & 9 of the *Law Reform Act* Cap 26 Laws of Kenya, Section 3, 4, 7 & 9 of the *Fair Administrative Action Act*, 2015, Order 53 Rule 3 of the Civil Procedure Rules seeking the following orders;
  1. An order of Mandamus compelling the County Land Registrar, Kiambu County to comply and give effect to the Judgment and Decree of the Court of Appeal in Presbyterian Church of East Africa (Uthiru Church) & Another vs Kihoro & 3 Others (Civil Appeal 303 of 2018) [2022] KECA 49 (KLR) (4<sup>th</sup> February 2022) (Judgment) by registering the Ex Parte Applicant herein PRESBYTERIAN CHURCH OF EAST AFRICA (Uthiru CHURCH), as the lawful



and rightful owner of all that parcel of land known as LAND REFERENCE Dagoretti/Uthiru/T.382.

2. An Order of Mandamus compelling the County Lands Registrar, Kiambu County to rectify the land register in respect of Land Reference Dagoretti/Uthiru/T.382 and issue a title deed to the Ex Parte Applicant herein Presbyterian Church Of East Africa (Uthiru Church).
3. Costs of these proceedings be borne by the Respondent.
2. The Application is based on the grounds set out in the Statutory Statement accompanying the Application for leave dated 5/05/2025 and Verifying Affidavit accompanying the said Application sworn on 6<sup>th</sup> May 2025.
3. According to the Applicant, through a member and Session Clerk of the Applicant Mary Wanjiru Njoroge she averred that the Applicant is the lawful and rightful owner of all that parcel of land known as Land Reference Number Dagoretti/Uthiru/T.382. The Applicant's ownership of the parcel of land is a consequence of the decision of the Court of Appeal in Presbyterian Church of East Africa (Uthiru Church) & Another vs Kihoro & 3 Others (Civil Appeal 303 of 2018) [2022] KECA 49 (KLR) (4<sup>th</sup> February 2022) (Judgment).
4. The Court of Appeal in its Judgment delivered on 4/02/2022 stated as follows:

“In the upshot we find that the appeal is merited. Accordingly, we hereby set aside the Judgment and decree of the trial Court dated 9<sup>th</sup> April 2018 in its entirety and substitute therefor an order dismissing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' suit. The appellants' counter-claim dated 13<sup>th</sup> August 2013 is hereby allowed in its entirety. The 3<sup>rd</sup> Respondent's cross-appeal has merit and is hereby allowed. As regards costs, we order that each party bears its own costs of the appeal as well as the costs of the matter that gave rise to this appeal. Orders accordingly.”
5. The Applicant annexed copies of the Judgment and the Decree dated 29/09/2022 as annexure 'MWN 1 a & b'. At the same time they annexed a copy of the Statement of Defence and Counter Claim marked as 'MWN 2' where they had prayed for declaration that the 3<sup>rd</sup> Defendant who is the Applicant is the rightful owner of the suit property and is entitled to be registered as such by adverse possession, they also sought cancellation of the title held by the deceased and lastly an order directing the District Land Registrar Kiambu to rectify the register and issue the 3<sup>rd</sup> Defendant with a title deed over the suit property.
6. That the effect of the orders by the Court of Appeal was to declare the Applicant as the lawful and rightful proprietor of the suit property Land Reference Number Dagoretti/Uthiru/T.382 and the Land Registrar Kiambu was directed to cancel the title held by Wanjiru Kihoro and to rectify the land register and issue a title deed in favour of the Applicant.
7. Despite the clear and binding orders issued by the Court of Appeal, the Respondent has failed, neglected and/or refused to implement and give effect to the Judgment and Decree of the Court. As a result, the Applicant issued a Notice of Intention to sue dated 11/03/2025 as annexure 'MWN-3' but the Respondent is yet to comply even after receiving the Notice on 12/03/2025.
8. The Respondent has continued to exacerbate the situation, by disregarding the lawful Court orders and refusing to perform her statutory duties which constitutes a blatant violation of the Applicant's constitutional rights to fair administrative action and property contrary to the provisions of Article 47 and 40 of *the Constitution* respectively.



9. The continual failure to register and effect the Judgment and Decree for over 3 years after its delivery is prejudicial to the Applicant's proprietary rights over the parcels of land and is also contemptuous of the Court. Additionally, it is a violation of legitimate expectation of the Applicant.
10. At the same time, the Applicant avers that the actions and/or omissions amounts to an abdication of her statutory duty and is in bad faith, unfair and an abuse of power warranting review by this Court.
11. The application was not opposed by the Respondent.

### **Determination**

12. Having considered the application, the Affidavits both in support of the Motion and in opposition thereto as well as the rivaling submissions, this is the view I form of the matter.
13. The parameters of the order of mandamus were set out by the Court of Appeal in Republic vs. Kenya National Examinations Council Ex parte Gathenji & Others Civil Appeal No. 266 of 1996 as follows:

“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 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. The order must command no more than the party against whom the application 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 .....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. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done. .... Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”

14. Section 14(c) of the *Land Registration Act*, Cap 300 Laws of Kenya, provides that the Chief Land Registrar, County Land Registrars or any other Land Registrars may, in addition to the powers conferred on the office of the Registrar by this Act “refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed.”
15. Article 47 of *the Constitution* of Kenya, reinforced by the Fair Administrative Action (FAA) Act, 2015, obligates public officers, including a Land Registrar, to ensure all their administrative actions are expeditious, efficient, lawful, reasonable and procedurally fair.



16. For the Land Registrar, this means that every decision, action or omission related to land matters must adhere strictly to these principles. Specific implications include:
- i. Lawfulness and acting within jurisdiction: A Land Registrar must ensure that any action taken (e.g., registering a title, issuing a notice, or refusing a transaction) is explicitly permitted by the relevant land laws and does not exceed their given authority.
  - ii. Procedural Fairness: Before making any decision that is likely to adversely affect a person's rights or interests (such as revoking a title, imposing a caution, or declining registration), the Registrar must follow a fair process. This includes:
    - a. Giving the affected person prior and adequate notice of the proposed action and the reasons for it.
    - b. Providing an opportunity to be heard and to make representations or provide evidence.
    - c. Informing the person of their right to legal representation, where applicable.
    - d. Notifying them of their right to an internal review or appeal mechanism.
  - iii. Giving Written Reasons: If an administrative action is taken that adversely affects a person's rights or fundamental freedoms, the Registrar is constitutionally and statutorily required to provide adequate written reasons for that action. Failure to provide reasons, without reasonable justification, can lead a Court to presume the action was taken without good cause.
  - iv. Reasonableness and Rationality: Decisions must be based on relevant facts and considerations, not made in bad faith, or for an ulterior motive. The decision must be rational in the circumstances.
  - v. Expeditious and Efficient Service: The Land Registrar has a duty to perform their functions and make decisions promptly and without unreasonable delay.
  - vi. Accountability and Transparency: All administrative acts are subject to the principles of accountability and transparency, which means their processes and decisions are open to public scrutiny and judicial review.
  - vii. Subject to Judicial Review: Any person aggrieved by the Registrar's administrative action or decision can apply for a review by a Court or an independent tribunal. The Court can set aside the decision, direct the Registrar to provide reasons, or compel them to perform their public duty.
17. In essence, Article 47 shifts the administrative law framework from a mere process-only inquiry to one that demands adherence to substantive fairness and accountability in all actions by public officers.
18. The Court of Appeal addressed the efficacy of an order of mandamus in the case of *Republic v Kenya National Examination Council Ex-parte Gathenji & Others* [1997] eKLR cited with approval in the case of *Vivo Energy Limited (Formerly Known as Kenya Shell Limited) v National Land Commission* [2020]eKLR; which stated as follows on the writ of mandamus:-

“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 Law 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.” 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 ....”

19. The Applicant has a legitimate expectation that it shall not only access but also enjoy the fruits of the Judgment once the Land Registrar cancels the title of the Respondent and confirms their title as the owner of the suit property.
20. I am satisfied that the Applicant notified the Respondent of the existence of the Judgment and Decree when it extracted and served the Decree.
21. The Applicant has a right to fair administrative action under Article 47 which it seeks to enforce before this Court. It is incumbent upon the Respondent to prove that there is justification in limiting the right under Article 24 of *the Constitution*.
22. In the premises, I am satisfied that the Ex Parte Applicant has made a case for the grant of an order of mandamus and I hereby grant the same in terms of prayer (1) and (2) of the Notice of Motion dated 14/05/2025.
23. Costs are awarded to the Ex parte Applicant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J**

**JUDGE**

In the presence of:

Mr. Orange for Ex-parte Applicant

Respondent - Absent

Mr. Melita – Court Assistant

