



**Republic v Chief Land Registrar & another; Criticos & another
(Ex parte Applicants) (Judicial Review Miscellaneous Application
E011 of 2023) [2025] KEELC 8680 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8680 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E011 OF 2023
CG MBOGO, J
DECEMBER 11, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

ATTORNEY-GENERAL 2ND RESPONDENT

AND

HON. BASIL CRITICOS EX PARTE APPLICANT

H.E. MAMA NGINA KENYATTA EX PARTE APPLICANT

RULING

1. The 1st ex parte applicant filed the notice of motion dated 11th June 2025, expressed to be brought under Article 10(2) (b) and 40 of *the Constitution* of Kenya, Sections 3A 34 and 63 of the *Civil Procedure Act* as read together with Sections 3, 13 and 29 of the Land and Environment Court Act, Section 26 of the *Land Registration Act* and Section 5(1) of the *Judicature Act* seeking the following orders as against the 1st respondent:-

1. Spent.
2. Pending the hearing and determination of this application, the 1st Respondent, its agents, servants, surveyors and other government officials or any other third party be restrained by any means whatsoever and howsoever from allocating, creating parallel titles, transferring or subdividing or entering into possession of the 1st Decree Holder’s property number L.R. 10287/7 (I.R. 252528/1) delineated on survey Plan Number 198892 measuring 1062.Ha situated in East of Taita Township in Taita District.



3. The 1st Respondent be Ordered to forthwith issue to the 1st Decree Holder a provisional Certificate of Title in respect of his property number L.R. 10287/7 (I.R. 252528/1) delineated of survey Plan Number 198892 measuring 1062.Ha situated East of Taita Township in Taita District in accordance with the Application 14th February 2025.
 4. An Order be issued to the 1st Respondent to comply with the Decree dated 4th March 2024 and order dated 11th December by cancelling and revoking all illegal titles in respect of the 1st Decree Holder's property L.R. 10287/7 (I.R. 252528/1) delineated on survey Plan Number 198892 measuring 1062.Ha situated East of Taita Township in Taita District.
 5. An Order compelling the 1st Respondent to file a report of compliance within 14 days of the issuance of the Orders issued by this Court.
 6. Costs of the Application.
2. The application is premised on the grounds set out on its face and the supporting affidavit sworn by the 1st Ex Parte applicant/decree-holder on 11th June, 2025. The subject dispute concerns the 1st ex parte applicant/decree holder's suit property known as L.R. 10287/7 (I.R. 252528/1) measuring approximately 1062 Hectares. The 1st ex parte applicant/decree holder deposed that the 1st respondent has declined to implement the decree of this court dated 4th March 2024 directing the latter "to process, execute and engross the certificates of title in respect of the suit land and release the same to the Ex parte Applicants within 30 days from the date hereof without fail."
 3. He deposed that this court's ruling delivered on 11th December, 2024 relied upon the 1st respondent's sworn statements as set out in paragraphs 20 and 21 in the replying affidavit sworn by the Chief Lands Registrar dated 3rd July 2024 indicating that the title to the suit land was collected by counsel for the 1st Decree-Holder (Walker Kontos & Co. Advocates) on 8th November 2022. As a result, the court ruled that his application for contempt could not stand as title had already been issued and collected on his behalf. Hence, the court directed that he applies for a provisional title.
 4. The 1st ex-parte applicant/decree holder further deposed that upon lodging an application for a provisional title as ordered by the court, the 1st respondent raised illegal and spurious conditions as a pre-requisite for effecting this court's decree by, requiring him to present a copy of the title to the subject land, court order and deed plan and a ground report from the National Land Commission (NLC). The 1st ex-parte applicant/decree holder deposed that the NLC's mandate does not extend to the suit property being private land.
 5. Moreover, the position adopted by the 1st respondent in the current suit that he surrendered 3000 acres out of the suit property to the Settlement Fund Trustees (SLF) is in direct contradiction to the above-mentioned statements contained in the replying affidavit of the Chief Lands Registrar sworn 3rd July 2024. He urged the court not to allow the 1st respondent to depart from the position adopted in the suit resulting in the decree dated 4th March 2024 that, title to the suit property was issued in his name and collected on his behalf by the firm of Walker Kontos & Co. Advocates on 8th November 2022.
 6. The 1st ex-parte applicant/decree holder deposed that he is apprehensive that the 1st respondent will sub-divide the suit land and transferring the same to settlers thereby, contravening his right to property enshrined under Article 40 of *the Constitution* of Kenya as read together with Section 26 of the *Land Registration Act* which prohibits the issuance of parallel title deeds over the same parcel of land.
 7. The 1st respondent opposed the application through the replying affidavit sworn on its behalf by Stephen Maina Mwangi on 8th July 2025 in his capacity as Deputy Director – Land Adjudication



and Settlement wherein it was deposed under paragraph 13 thereunder, that the subject land was donated following a letter issued by the 1st ex parte applicant/decree-holder and communication from Kenya Trade Development dated 18th March, 1997. Further, that the suit property has been planned, surveyed and demarcated and the necessary documentation issued to the residents of Kachero Settlement Scheme parcel no.1-1012 subsuming the subject property.

8. The 1st respondent deposed that the court is functus officio on account of its judgment dated 4th March, 2024, and the resultant decree dated 26th March, 2024. Moreover, the 1st ex parte applicant's/decree holder application dated 23rd December, 2023 was premised under Order 53 rule 3 of the Civil Procedure Rules whereby, the court entered its decision dated 11th November, 2024. Consequently, this court is precluded from issuing any further orders thereto pursuant to the provisions of Section 8 of the Law Reform Act. In addition, the application before the court is a non-starter as it seeks reliefs post-judgment through a Judicial Review Application grounded under Articles 10(2) and 40 of the Constitution of Kenya. Further, there being no issue pending determination in respect of the dispute between the parties herein, there can be no basis for the grant of interlocutory orders sought.
9. In response thereto, the 1st ex parte applicant/decree holder filed his supplementary affidavit sworn on 14th July, 2025. While relying on an internal memo dated 9th August, 2020 issued by the Director of Land Adjudication and addressed to the Cabinet Secretary for Lands which memo was filed by the 2nd respondent on behalf of the 1st respondent, the SFT and others in Voi ELC No.3 of 2024 (formerly, Mombasa ELC No. 125 of 2018) Basil Criticos & Another V AIC Makutano, the 1st ex parte applicant/decree holder refuted claims that he surrendered 3000 Acres to the SFT as stated by the 1st respondent.
10. The application was canvassed by way of written submissions. The 1st ex parte applicant/decree holder raised three issues for determination as follows:-
 1. Whether the conditions imposed by the 1st Respondent on 14 April 2025 amount to refusal to comply with the decree dated 26th March 2024;
 2. Does estoppel on record apply against the 1st Respondent?
 3. Should the Orders be granted as prayed?
11. On all the issues above, the 1st ex parte applicant/decree holder submitted that following the decision of this court delivered on 4th March, 2024 no new evidence can be introduced at this stage to vary the afore-mentioned order. Further, the purported sub-division of the subject property occurred after the collection of title deed on 8th November, 2022, and also after issuance of the said decision.
12. The 1st respondent filed its submissions dated 25th July, 2025 and reiterated the averment that the court is rendered functus officio on account of its judgment issued on 4th March, 2024 and decree thereto dated 26th March, 2024. Further, the issues raised by the 1st ex-parte applicant/decree holder are not supported by the pleadings and the substantive motion filed in the Judicial Review application and are incapable of resolution through written submissions.
13. In rejoinder, the 1st ex-parte applicant/decree holder filed the supplementary submissions dated 29th July, 2025 and relied on the provisions of Section 34 of the Civil Procedure Act to argue that the court is possessed of the necessary jurisdiction to grant the reliefs craved in the instant application because those prayers complement execution of the decree dated 4th March, 2024 and the directives issued on 11th December, 2024.



14. I have carefully considered the application, the responses thereto as well as parties' rival submissions. In my view, the issue for determination is whether, on account of the *functus officio* doctrine, the court is entitled to issue any further Orders following the decree dated 26th March 2024.
15. In *Telkom Kenya Ltd v Ochanda (Suing on His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Ltd)* [2014] KECA 600 (KLR) the Court of Appeal, stated as hereunder:-

“The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.”
16. The 1st ex-parte applicant/decreed holder argued and submitted that the 1st respondent effectively disowned the statements given under oath during the proceedings resulting in the judgment delivered on 4th March, 2024 namely that it issued a title deed in respect of the subject land and aforesaid title was collected on 8th November, 2022 by Mr. Jonathan Kariga of M/S Walker Kontos & Company Advocates on his behalf, by adopting the diametrically opposed position that the subject land was surrendered vide communication dated sometimes in 1997.
17. He termed the 1st respondent's claim that the transfer process is now at an advance stage, hence no title is available for issuance as representative of an abuse of the due process of the court. Further, that the 1st respondent having affirmed his bona fide ownership of the suit land cannot claim now that same was subdivided and transferred as a result of surrender of the suit property.
18. The 1st ex-parte applicant/decreed holder argued and submitted that his contempt application dated 18th June, 2024 was dismissed by the court upon the finding that the original certificate of title was collected on his behalf on 8th November, 2022 by Mr. Jonathan Kariga from the office of M/S Walker Kontos & Company Advocates then acting for him. However, upon applying for a provisional certificate of title as recommended by this court through its decision dated 11th December, 2024 1st respondent through its letter dated April, 2025 raised spurious and novel requirements having the effect of disobeying the decree dated 24th March, 2024.
19. The court has anxiously perused and reviewed the prayers sought herein and is satisfied that the 1st ex-parte applicant/ decreed holder is not inviting it to undertake a merit-based review of the judgment delivered on 4th March, 2024.
20. In the subject proceedings, the court is required to inquire as to whether it is being invited to reconsider the merits of its decision rendered on 4th March, 2024. From a careful reading of the decree dated 26th March, 2024 the court is satisfied that the issue of ownership of the subject property was conclusively and finally determined on 4th March, 2024. For clarity the aforesaid decree of 26th March, 2024 provides, inter alia as hereunder:-

“That an order of mandamus is hereby issued directing the 1st respondent to issue and release to the ex parte applicants the original certificate of title in respect of as the registered proprietors thereof in the performance of his statutory duties and obligations under Sections 26 and 30 of the [Land Registration Act](#) 2012.”
21. For clarity, the question of surrender of the suit property is incapable of being canvassed in these proceedings as it would entail revisiting the issue of ownership of the subject land, upon which issue the court has already pronounced itself via its judgment. The subject application relates to the aftermath of



the application for provisional title consequent to the ruling of this court delivered on 11th December, 2024.

22. In the premises, this court finds that it is not precluded from entertaining the subject application on the basis of the functus officio doctrine. The decision of the court dated 4th March, 2024 and resultant decrees and orders presuppose the existence of the subject land measuring approximately 1062 hectares. On the strength of the aforementioned decree, the 1st respondent is obliged to register the applicants as the lawful proprietors thereof.
23. From the above, the notice of motion dated 11th June, 2025 has merit, and it is allowed in the following terms:-
 1. The 1st respondent is hereby ordered and directed to forthwith issue to the 1st ex-parte applicant/ decree holder with a provisional certificate of title in respect of his property number L.R. 10287/7 (I.R. 252528/1) delineated of survey Plan Number 198892 measuring 1062.Ha situated East of Taita Township in Taita District.
 2. The 1st respondent is hereby directed to comply with the decree dated 4th March, 2024 by cancelling and revoking all illegal titles in respect of the 1st ex-parte decree holder's property L.R. 10287/7 (I.R. 252528/1) delineated on survey Plan Number 198892 measuring 1062.Ha situated East of Taita Township in Taita District.
 3. The 1st respondent is hereby directed to file a report confirming compliance within 14 days from the date.
 4. The 1st ex-parte applicant/decree holder is awarded the costs of this application, and the same to be borne by the 1st respondent.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY

THIS 11TH DAY OF DECEMBER, 2025.

HON. MBOGO C.G.

JUDGE

11/12/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Otieno holding brief for Mr. Allen for the 1st Ex-parte Applicant/Decree holder

Mr. Allan Kamau for the Respondents

