

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

JUDICIAL REVIEW CASE NO. ELCLJR E007 OF 2024

**IN THE MATTER OF CHAPTER 4 OF THE CONSTITUTION OF
KENYA**

IN THE MATTER OF THE LAND REGISTRATION ACT

IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT

IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

REPUBLIC

VERSUS

EXPARTE VIRGINIA GAKUHI.....RESPONDENT

JUDGEMENT

1. This Judgement is in respect of the **Notice of Motion** dated 10th July 2024 pursuant to the leave granted on 20th June 2024. It is brought under **Order 53 Rule 1, 2, 3, and 4 of the Civil Procedure Rules 2010** and all other enabling provisions of the Law.

2. It seeks for orders that:

i. Spent.

ii. An order of certiorari to quash the decision of the Land Registrar, Kajiado County whereby it was ordered on 16th April 2024 that land parcel number LR. Kajiado/Kisaju/1684 be excised and reduced in size.

iii. An order of mandamus to compel the Land Registrar, Kajiado County to revoke the boundary and acreage variance on LR. Kajiado/Kisaju/1684 as per the decision given on 16th April 2024.

iv. An injunction restraining the Land Registrar, Kajiado County whether by himself his

servants or agents or howsoever otherwise from interfering with the boundary and acreage on LR. Kajiado/Kisaju/1684.

v. A declaration that the decision of the Land Registrar, Kajiado County was and is invalid and void and of no effect.

vi. A declaration that the Land Registrar, Kajiado County is in breach of his duty under Section 16 of the Land Registration Act in that he has failed to carry out his duties.

vii. Damages arising from the matters herein and interest thereon.

viii. An order for costs.

ix. Such further and other relief be granted on the otherwise illegally performed exercise.

3. The notice of Motion is supported by the statutory statement and sworn Affidavit of Virginia Gakuhi the Exparte Applicant herein.

4. She states that she is the registered owner of parcel Kajiado/Kisaju/1684. On 20th February 2024, a site visit

was scheduled to be undertaken to determine the boundary dispute between KJD/KISAJU 1684 and 20849 respectively. She claims that the site visit was delayed due to unavailability of cars and later a clerk from the Kajiado Land Registry as well as other parties to the dispute arrived. It is his case that the Clerk as well as the other parties had held a meeting at High Point Hotel in her absence. She is not aware what transpired in the said meeting. She also claimed that the site visit was conducted by a Clerk instead of the Land Registrar as provided **Section 16 of the Land Registration Act** which was illegal and unprocedural. She averred that in a letter dated 10th April 2024, they protested the visit conducted by the Clerk as well as the meetings held at High Point Hotel. This letter was received but no action was taken. Ruling notice dated 16th April 2024 was issued although it was received later on 6th May 2024. Her advocate informed the Land Registrar that she would not be in attendance of the Ruling due to a prior scheduled doctor's appointment and that her advocate also had a

- Court hearing on the same date. However, the Ruling was delivered contrary to her right to fair hearing and fair administrative action. She also claims that she was not issued sufficient notice for the Ruling. And that the Ruling to alter her property's acreage was contrary to the rules of natural justice and fair administrative action since she was not granted a fair hearing.
5. Despite service the Respondent did not file any response to the notice of motion.
 6. This Application was canvassed by way of written submissions.

Submissions of the Exparte Applicant

7. On whether the Respondent acted ultra vires, unlawfully, and in violation of the Constitution and other Statutes, it was submitted that The Land Registrar's decision issued on 16th April 2024 was an abuse of office, having been made without the Applicant being furnished with any report, surveyor's findings, hearing notice, or opportunity to challenge or review the conclusions that affected her

land. The Land Registrar therefore failed to observe the principles of **Section 4 of the Fair Administrative Action Act** and as held in **Republic v The National Transport & Safety Authority & 10 others Ex Parte James Maina Mugo [2015] eKLR**. It was also submitted that the Respondent failed to comply with **Section 16 and 18 of the Land Registration Act** which requires any alterations, adjustments or determinations to boundaries be done upon proper notice to all affected proprietors and after conducting a hearing and inquiry citing **Republic v Land Registrar, Thika & Another Ex Parte Elizabeth Kamene Ndolo [2015] eKLR** where the Court held that a decision altering land records without affording the proprietor a chance to respond contravenes the law and must be quashed.

8. As such, the Respondent's decision violated **Article 47 of the Constitution** citing **Dry Associates Ltd v Capital Markets Authority & Another [2012] eKLR**.

9. On whether the Exparte Applicant was entitled to the orders sought, it was submitted that the Respondent's

actions had caused irreparable harm and violated the Applicant's proprietary and constitutional rights and the court should quash the decision and grant the prerogative reliefs sought.

Analysis and determination

10. I have considered the Notice of Motion, the written submissions, the authorities cited. I find that the issues for determination are:

- i. Whether the Applicant has proved that the Land Registrar's decision dated 16th April 2024 was arrived at erroneously;***
- ii. Whether the Applicant is entitled to the orders sought in the Application;***
- iii. Who should bear the costs of this application?***

11. The Applicant, claims that the Land Registrar's decision/Ruling dated 16th April 2024 determining a

boundary dispute between her parcel of land being Kajiado/Kisaju/1684 and another parcel being Kajiado/Kisaju/20849 was erroneously arrived at. Her grounds are that she was not given a fair hearing because the disputing parties had prior meeting to discuss the dispute in her absence and that the site was visited by the respondent's Clerk and not the Land Registrar and Surveyor as outlined under **Section 18 of the Land Registration Act.**

12. A judicial review is premised on the decision making process to determine whether the decision was arrived at legally and regularly. This was held by the Court of Appeal in **Matemu v Trusted Society of Human Rights Alliance & 5 others (Civil Appeal 290 of 2012)** [2013] KECA 445 (KLR):

"... The general evidentiary standard applicable in judicial review of the procedural propriety of appointments process is that there must be a showing by the claimant that there were substantive defects in that procedure,

fundamental omissions, or a consideration of extraneous considerations as to render the cumulative process unconstitutional...”

13. In the documentary evidence produced by the Applicant, there is a Ruling dated 3rd May 2024 to determine the boundary dispute between parcels Kajiado/Kisaju/1684 vs 20849 which shows that there were 11 members present including the Applicant, Stephen Mutuko for the District Surveyor, Philip Saruni for the District Land Registrar, an advocate, a private surveyor and a developer among others.

14. This letter shows that the Exparte Applicant- Virginia Gakuhi testified indicating that her land was originally 15 acres which she subdivided into 9 portions. Upon sale of some acres, she discovered that the remaining parcel was less in acreage and that her neighbours had encroached on her land and hence filing of the dispute.

15. The other present party by the name Lucy Waithera indicated that she surveyed her land to pave way for the road as per the mutation form and that is when she

discovered her sister's land had encroached on her land and sought that the beacons be re-established.

16. The Land Registrar then determined the dispute by adopting the Surveyor's report.

17. The Surveyor's report dated 27th February 2024 produced as evidence is illegible.

18. From the list of members present at the site visit to determine the dispute, the name Philip Mulee does not appear on the list of those present. Therefore, the claim that the site visit was conducted by the Clerk one Mr. Philip Mulee remained unsupported. The Exparte Applicant also claimed that there was a prior meeting held at High Point Hotel between said Philip Mulee and the other party which stained the integrity of the process. This Court finds that this claim was not substantiated as there was no evidence to show that any such meeting was held, or if at all, that it was detrimental to the dispute determination process.

19. I am not satisfied that the boundary dispute decision making process was illegal, irregular or erroneous to warrant issuance of the orders sought by the Applicant.

20. The Notice of Motion is hereby dismissed with no orders to costs.

Dated, Signed and Delivered virtually at Kajiado this 11th day of December 2025.

L.KOMINGOI

JUDGE.

IN THE PRESENCE OF:

N/A FOR THE EXPARTE APPLICANT

N/A FOR THE RESPONDENT

COURT ASSISTANT – PETER.