



Republic v Director of Surveys & 2 others (Environment and Land Judicial Review Case E015 of 2024) [2025] KEELC 18493 (KLR) (17 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E015 OF 2024
FM NJOROGE, J
DECEMBER 17, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR OF SURVEYS 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

THE REGISTRAR OF LANDS KILIFI 3RD RESPONDENT

JUDGMENT

1. In the Judicial Review notice of motion dated 22nd October 2024 the applicant seeks the following orders:
 - a. That judicial review for (sic) orders of mandamus do issue to bring into the Environment and Land Court for purposes of compelling the 1st respondent by itself, its servants, employees and/or agents or any other person working under him to cancel from the Survey Map Sheet Number 13 of the Kilifi Jimba registration section Plot Numbers Kilifi/Jimba/470 and Kilifi/Jimba/471 and rectify the map sheet to reflect the original plot number Kilifi/Jimba/148;
 - b. That judicial review orders of mandamus do issue to bring into the Environment and Land Court for purposes of compelling the respondents by themselves, their servants, employees and or agents or any other personal working under them to register the mutation serial number 04571006 with regard to plot number Kilifi/Jimba/148 and issue titles with regard to the resultant subdivisions Kilifi/Jimba/148;
 - c. That the cost of this application be borne by the respondents.
2. The grounds on which the application is premised are that the ex parte applicant is among persons who are in occupation of plot number Kilifi/Jimba/148, having been recognized by the Ground Reports



dated 25th February 2023 and 8th July 2021 done by Malindi Sub County Lands Adjudication and Settlement Officer which confirmed the occupation of the ex-parte applicant on the subject plot Kilifi/Jimba/148; that the plot Kilifi/Jimba/148 is currently registered in the names of the Government of Kenya and the ex parte applicant and other persons are intended to benefit by being issued titles with regard to the portions they occupy on the said parcel. The title deeds to be issued to the occupants will correspond to the size of the area they are in occupation of; a survey has already been conducted and a mutation prepared; previously Kilifi/Jimba/148 had been subdivided into two portions number Kilifi/Jimba/470 and number Kilifi/Jimba/471 and registered in the names of third parties which were canceled from the land records in the Kilifi Land Registry and the Green Card reverted back to the original plot number Kilifi/Jimba/148. Subsequently the Director of Lands Adjudication and Settlement raised the mutation Serial Number 04571006 in respect of Kilifi/Jimba/148 which is now earmarked to be subdivided and the resultant subdivisions to be registered, with those in occupation of the land being beneficiaries as per the ground report dated July 2021. The said mutation has since been forwarded to the Sub-County Surveyor Malindi vide letter dated 10th July 2024, who has failed to sign and or present the same to the 2nd and 3rd respondents for registration. The Director of Surveys has also failed to effect the changes in the survey map and or Plan Number 13 of the Kilifi Jimba Registration Section to reflect the actual status of plot number Kilifi/Jimba/148. The applicant claims that his rights under Article 40 of *the Constitution* of Kenya are being violated by the actions and omissions of the respondents of failing to effect the registration of the mutation to enable him acquire title over the suit property. He has developed the plot by erecting a perimeter wall around it. No reason has been given for the failure to register the said mutation or the failure to rectify the survey map and or Plan Number 13 of the Kilifi Jimba registration section by removing the cancelled subdivisions number 470 and 471 to reflect plot no. Kilifi/Jimba/148; that the respondents are public officers and they are in violation of Articles 10 and 47 or *the Constitution* of Kenya 2010 Sections 4 and 7 of the Fair Administration Action Act 2014 in that no reason have been issued to the ex parte applicant for the acts or omissions thus violating the principles of fair hearing and specifically there right to be heard which actions are illegal, injudicious unfair and an abuse of power on the respondents' part.

3. The application is opposed. Josephine Rama, Land Registrar, swore the affidavit dated 2nd December 2024. Her response is that Kilifi/Jimba/148 was subdivided into two parcels: number Kilifi/Jimba/471 which was transferred to one John Murege while parcel number Kilifi/Jimba/470 remained in the name of Pakiwa Investment Company Limited and its title, which was issued on 15th July 1982, was charged in favour of Nationwide Finance Company Limited and has not yet been discharged; that both green cards for plot number Kilifi/Jimba/470 and Kilifi/Jimba/471 were canceled and plot number Kilifi/Jimba/148 is now registered under the Government of Kenya, and she has attached a green card to that effect.
4. Michael Kinyua, Sub-County Surveyor Malindi and Magarini sub-counties swore his replying affidavit dated 6th February 2025. The deponent states that amendment of the RIM for plot number Kilifi/Jimba/148 was done on 16th March 1982 resulting into plot number Kilifi/Jimba/470 and Kilifi/Jimba/471; that according to the *Land Registration Act* of 2012, the power to alter boundaries and to prepare new editions of the RIM is vested in the Land Registrar.

Analysis And Determination.

5. The issue that arises for determination in the present case is whether judicial review orders should be issued as prayed. It is meet to examine the conditions in law under which judicial review orders of mandamus can be issued by a court before coming to the fact of the present case.



6. In Kenya National Examination Council v Republic; Njoroge & 9 others (Ex parte) [1997] KECA 58 (KLR) the court delivered itself as follows regarding the scope of orders 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.”

7. The issue that arises is therefore whether there is (a) a public duty (b) imposed by statute upon the respondents (c) which the respondents have failed to perform and (d) such performance is detrimental to the applicant who has a legal right to expect the duty to be performed.
8. The evidence of the ex parte applicant is that the Director of Land Adjudication and Settlement requested of the Sub County Land Adjudication and Settlement Officer as follows in the letter dated 12th February 2020:

“The Sub County Land Adjudication and Settlement Officer,

PO Box 335,

Malindi

Re: Land For Squatter Settlement Jimba

Please refer to the attached plan.

Carry out a comprehensive ground status report and provide a report. Interaction with the County Surveyor provide the station of the survey plan of the area to determine the next cause of action.

Robert Nyakeruma

For: Director of Land Adjudication and Settlement



CC: County Surveyor Malindi.”

9. The evidence of the ex parte applicant is that a ground report was prepared in respect of the suit land, and that he is named in that report as one of the occupiers of the suit land. That letter was answered by the Sub-County Land Adjudication and Settlement Officer Malindi/Magarini sub-counties by his letter dated 25th February 2023 in which he indicated that for the office to proceed with the instructions given, there needs to be a mutation for the suit land. He also gave particulars of the persons who are in occupation of the land on the ground and the kind of development that each has raised on the land.
10. Another letter dated 8th July 2021 forwarding the Ground Report also gave additional details as follows:
 - a. There is no known boundary of plot number 148 and 1091 on the ground;
 - b. The Sub County Land adjudication and Settlement Officer did not have records for plot number 1091 in its office;
 - c. Plot number 148 was initially allocated to Julius Muumbi who has never been seen on the ground, although one Joseph Mwatsuma Mwarabu claims that the said plot was allocated to him and that he has subdivided it into several portions which he has sold to the people listed in the ground report.
11. There is a handwritten letter from the Chief, Jimba Sub-Location claiming that one Emmanuel Charo got that land in 1989 and that he is living on the suit land. That letter is dated 19th October 2020 and it is addressed to the Chairman, National Land Commission.
12. Another letter dated 21st October 2020 to the Chairman of the National Land Commission states that the plot was developed by only three people: Emmanuel Charo Tinga, Omar Salim Abubakar, and Joseph Mwarabu, who have all agreed on how to share it. That letter is signed by somebody going by the name Julius Shikku and who refers to himself as the Secretary, Watamu Land Committee. The role of that committee in this matters or in land matters generally has not been explained in any manner in this suit.
13. In a letter dated 14th February 2024, the office of the Director of Land Adjudication and Settlement wrote to the County Land and Education granting him authority to raise a mutation for Plot Number 148 Jimba Settlement Scheme.
14. In a letter dated 15th July 2024 Billow Mohamed Principal Land Registrar write to the Director of Land Adjudication and Settlement regarding Kilifi /Jimba/148, stating that the plot was subdivided into two parcels in October 1981, that one of the parcels was transferred to a third party while one remained in the name of Pekiwa Investment Company Limited; that parcel number Kilifi /Jimba/470 (one of the subdivisions) was charged in favor of Nationwide Finance Company Limited and has not been discharged. However, both Green Cards for the resultant subdivisions number Kilifi /Jimba/ 470 and Kilifi /Jimba/ 471 have been cancelled, and the reason for cancellation cannot be ascertained as there is no clear documentation to indicate the same.
15. Attached to the affidavit in support of the motion is a mutation form subdividing the suit (parcel 148) land into 9 portions, some of which do not have their acreage indicated in the grid under Section 1 of the form. The mutation form appears to be signed by the District Land Adjudication and Settlement Officer. Also attached to the affidavit is a letter dated 11th June 2024 from the Sub-County Surveyor, forwarding the mutation form to the Sub County Land Adjudication Officer.



16. Also attached to the affidavit is a letter dated 13th June 2024 written by the Sub County Land Adjudication and Settlement Officer Malindi Magarini forwarding the mutation to the Director of Land Adjudication and Settlement.
17. Another letter dated 10th July 2024 has been attached, written by the Sub County Land Adjudication and Settlement Officer, to the Director of Land Adjudication and Settlement indicating that there are 10 persons on the ground and recommending them for documentation, presumably regarding title ownership.
18. Lastly, there is a letter dated 10th July 2024 to the Sub County Surveyor, Malindi Sub County Office from the Sub County Adjudication and Settlement Officer forwarding a signed mutation from the Director of Land Education and Settlement.
19. It is the above facts that have precipitated the present judicial review notice of motion. It must be remembered that as stated in Kenya National Examinations Council (Supra), that such non-performance as would entitle one to an order of mandamus must be one that is detrimental to an applicant who has a legal right to expect a public duty to be performed.
20. Is there a public duty imposed by statute upon the respondents to act in the manner that the applicant desires them to be compelled to?
21. The first limb of the expected order would compel the 1st respondent to cancel from the Survey Map Sheet Number 13 of the Kilifi Jimba registration section Plot Numbers Kilifi/Jimba/470 and Kilifi/Jimba/471 and rectify the map sheet to reflect the original plot number Kilifi/Jimba/148, just as has happened in the land register where the two plots have been cancelled to revert to the old number 148. That is supposedly the legal duty the 1st respondent has failed to perform.
22. The 1st respondent's answer to the application is that the amendment of the RIM for plot no 148 was done in 1982 leading to the creation of plots nos 470 and 471, and that according to the [Land Registration Act](#) 2012, the power to alter boundary lines and to prepare new editions of the RIM is vested in the Land Registrar. However, this court is of the view that this is not a land dispute in which the Land Registrar may alter boundary lines as suggested. This suit concerns the amalgamation of previous subdivisions and re-subdivision into more portions.
23. It must be noted that the ex parte applicant is not the author or presenter of the Mutation that he desires to be registered, and which can not be registered before the two subdivisions are expunged from the map and rectification done to revert the land back to the original plot 148.
24. The question that then arises is whether the present ex parte applicant is a person who has a legal right to expect the duty, if any is owed by the 1st respondent to him, to be performed.
25. What would the 1st respondent ordinarily be expected to do under the law in a situation where he has received a mutation from a landowner who holds registered title? The 1st respondent would issue the new parcels with numbers and forward the mutation to the 2nd and 3rd respondents to register those new numbers and issue title deeds therefor. In this case it is the field offices of the 1st respondent would be involved and not the headquarters office.
26. In examining whether there is such a duty, the court notes that in the present case, it is not the ex parte applicant, but the Director of Land Adjudication and Settlement, who has commissioned the preparation of a new mutation with the ostensible purpose of settlement of squatters thereon. It is his office that has forwarded the mutation to the 1st respondent for action.



27. Why is it that it is the Director of Land Adjudication and Settlement who has commenced the process? It is because the land involved is not registered in the name of the ex parte applicant. He has no automatic right to be registered as proprietor, but he can come to court under the law and *the Constitution* and seek to be registered under a certain law, if he qualifies for such registration. He has not done that and no orders exist crystallizing his rights to registration as proprietor of the suit land. Consequently, the ex parte applicant has not demonstrated any direct legal nexus that between him and the subdivisions as would entitle him to think that the 1st respondent owes him a public duty to cancel the said subdivisions; he would only be a potential beneficiary, as a squatter, of the gratuitous acts of all the respondents who would be working in concert to enable him get the land.
28. Though there is evidence of a letter said to be from the Director of Land Adjudication and Settlement dated 10/7/2024 forwarding the mutation duly executed by the Director of Land Adjudication and Settlement to the Sub County Surveyor, Malindi, the presence of the present litigation is clear proof that the Sub County Surveyor has not acted on that mutation. However, there is no public duty imposed by statute upon the 1st respondent to cancel any subdivisions at the instance of the ex parte applicant where the latter has not demonstrated that he is the registered owner of the concerned land. For that reason, this court is of the view that there is no statutory obligation owed on the part of the 1st respondent to the ex parte applicant.
29. For the same reasons and with respect to the rest of the respondents, I have given in the immediately preceding paragraphs, this court does not find any: (a) a public duty, (b) imposed by statute upon the 2nd and 3rd respondents, (c) which the 2nd and 3rd respondents have failed to perform, and (d) that such performance is detrimental to the applicant who has a legal right to expect the duty to be performed. Clearly the situation would have been different were the suit land registered in the name of the ex parte applicant.
30. The upshot of the foregoing is that the judicial review Notice of Motion dated 22/10/2024 lacks merit and it is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 17TH DAY OF DECEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

