



REPUBLIC OF KENYA



KENYA LAW

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Karanja v Land Registrar Kwale (Environment and Land Judicial Review Miscellaneous Application E001 of 2025) [2026] KEELC 156 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELC 156 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E001 OF 2025

LL NAIKUNI, J

JANUARY 22, 2026

BETWEEN

EUNICE WANJIRU KARANJA EX PARTE APPLICANT

AND

LAND REGISTRAR KWALE RESPONDENT

JUDGMENT

I. Preliminaries. __**

1. This is a Judgement pertaining to a Judicial Review suit instituted by the Ex - Parte applicant – Eunice Wanjiru Karanja against the Respondent herein. To begin with, the Ex - Parte Applicant filed a Chamber Summons application dated 7th October, 2024 under the provision of Order 53 Rule 1 (1), (2), (3) and (4) of the Civil Procedure Rules, 2010 and Section 8 (2) and 9 of the *Law Reform Act*, Cap. 26 and Section 26 of the *Land Registration Act*, No. 3 of 2012.
2. On 6th February 2025, the Ex - Parte Applicant informed the Honourable court through her advocate on record Mr. Mungai that the Substantive Notice of Motion has already been filed and the Honourable Court provided directions that the Substantive Notice of Motion be disposed off by way of written submissions after filing of Response from the Respondent.
3. The said substantive application was dated 7th October 2024 and which moved this court to be granted the Prerogative writ of Mandamus orders.
4. On 12th June 2025 this matter was mentioned before Court and the Ex – Parte Applicant informed court that they have just been served with the respondent’s replying affidavit that morning and requested they be expunged from the court record. The respondent beseeched the court to admit the submissions since she had received instructions the previous day and hence the reason for filing out of time. The court admitted the replying affidavit to be part of the court’s record in the interest of justice



out of time. The Ex - Parte Applicant was granted leave to file a supplementary affidavit and further submissions responding to the issues raised from the replies.

II. The Ex – Parte Applicant’s Case** ___

5. Through the substantive motion, the Ex - Parte Applicant sought for the following prayers:
 - a. An Order of Mandamus do issue compelling the Respondent to issue a replacement of title deed for all that parcel of land registered as Kwale/Diani S.S./2248.
 - b. An Order of Mandamus do issue compelling the Respondent to reconstruct the Land Register for all that parcel of land registered as Kwale/Diani S.S./2248.
 - c. An Order do issue compelling the Respondent to reconstruct the Land Register for all that parcel of land registered as Kwale/Diani S.S./2249.
 - d. The costs of this Application be in favor of the Applicant.
6. The application is premised on the grounds, the testimonial facts and averments made out under the 25 Paragraphed Verifying Affidavit of EUNICE WANJIRU KARANJA, the Ex - Parte Applicant herein together with several documents marked as “EWK - 1 - 14” annexed thereon. She averred that:-
 - a. She is an adult female of sound mind and disposition and is the registered proprietor of the parcels of land known as Kwale/Diani S.S./2248 and Kwale/Diani S.S./2249, situate in the Diani area within Kwale County. In this regard, she annexed copies of a Certificate of official search, certified copies of the land register and the title deed for Kwale/Diani S.S./2249, marked as “EWK - 1a, 1b and 1c.”
 - b. On or about September 2023, she discovered that the original title deed for Kwale/Diani S.S./2248 was missing.
 - c. She instructed her Advocate to visit the Land Registry to confirm the status of the land registers for the two parcels, following which she was informed that the land registers could not be traced in the registry binders and was advised to apply for reconstruction of the registers and replacement of the lost title deed.
 - d. She complied with the statutory requirements by publishing notices of the loss of the two land registers and the title deed for Kwale/Diani S.S./2248 in the local dailies of “The Daily Nation” and “The Standard” newspapers on 27th October 2023, and subsequently in the Kenya Gazette dated 24th November 2023, vide Gazette Notices Nos. 16090, 16089 and 16070. Copies of the said publications were annexed and marked as “EWK - 2a, 2b, 2c and 2d.”
 - e. Upon the lapse of the statutory sixty (60) days, and in the absence of any objection, she lodged applications for reconstruction of the two land registers and replacement of the lost title deed. Copies of the application forms and payment receipts were annexed and marked as “EWK - 3a, 3b, 3c and 3d” and “EWK - 4a and 4b.”
 - f. She executed all the requisite statutory forms and declarations and made the requisite payments. In support thereof, she annexed copies of Form LRA-12, statutory declarations, deeds of indemnity and affidavits in respect of both parcels, marked as “EWK - 4a-d,” “EWK - 5a-d,” and “EWK - 6a-d.”
 - g. Upon being satisfied that all requirements had been met, the Respondent forwarded correspondence to the Government Printer together with banker’s cheques amounting to



a sum of Kenya Shillings Three Thousand Four Eighty Hundred (Kshs. 3,480/-), copies of which were annexed and marked as “EWK - 7a-c,” “EWK - 8a - c,” and “EWK - 9a - c.”

- h. Despite the lapse of the gazetted period and several follow-ups, no response was received from the Respondent, prompting her Advocate to write a letter dated 24th June 2024, annexed and marked as “EWK - 8.”
 - i. The said letter elicited a response from the Respondent vide a letter dated 27th June 2024, which was annexed and marked as “EWK - 9.”
 - j. On the advice of her Advocates, that comments appearing on the application forms were backdated and were only availed after the enquiry letter had been written. Copies of the said application forms bearing the comments were annexed and marked as “EWK - 10 and 11.”
 - k. Notwithstanding her position that the requested documents had already been submitted, her Advocates nonetheless complied and lodged the additional documents at the registry vide a letter dated 17th July 2024, after payment of rebooking fees. The supporting documents were annexed and marked as “EWK -11a, 11b, 11c, 11d and 11e.”
 - l. On 1st August 2024, the re - booked documents were rejected with comments requiring her to appear together with the previous owner. A copy of the booking form bearing the said comments was annexed and marked as “EWK 12.”
 - m. This prompted her Advocate to write to the previous owner’s Advocate seeking clarification on whether any objection subsisted. The said correspondence dated 2nd August 2024 was annexed and marked as “EWK - 13.”
 - n. The previous owner’s Advocate responded, indicating that their client had no interest in the properties. A copy of the said response was annexed and marked as “EWK - 14.”
 - o. The said letter was forwarded to the Respondent on 10th August 2024, but no response had been forthcoming and the Respondent has continued to decline to reconstruct the registers or issue a replacement title deed.
 - p. The Respondent’s continued inaction was unreasonable, unjustified and in bad faith, and that the demand for her to appear with the previous owner—who is deceased—is impractical and incapable of compliance.
 - q. The duty to summon any previous owner lay with the Respondent and that no such summons was ever issued, and that she was notified to appear on 4th August 2024, a Sunday, on short notice.
 - r. She swore the affidavit in support of the application herein.
7. The Court has further considered the supplementary affidavit sworn by Eunice Wanjiru Karanja, a resident of Nairobi County, in response to the Respondent’s Replying Affidavit dated 11th June 2025, and acknowledges the averments made therein. She averred that:-
- i. She was an adult female of sound mind, well versed with the facts of the matter, and competent to swear the affidavit.
 - ii. She read and understood the Respondent’s Replying Affidavit and filed the supplementary affidavit in response thereto.



- iii. In response to paragraphs 6 and 7 of the Respondent's Replying Affidavit, the Applicant avers that she duly complied with the procedure prescribed under the Land Registration Act by advertising and gazetting the loss of the land registers and that no objection was raised by any person to the reconstruction and/or opening of the land registers.
- iv. Further that the law firm of Messers. Birir & Co. Advocates, by a letter dated 17th July 2024, confirmed that they no longer had any interest in the suit properties. The Applicant relied on the said letter, which had earlier been annexed and marked as "EWK - 14" to her Verifying Affidavit dated 7th October 2024.
- v. It was the said letter from Birir & Co. Advocates that the Respondent had relied upon as a basis for declining to proceed with the opening and/or reconstruction of the land registers.
- vi. She furnished the Respondent with all the records in her possession, including certified copies of previous land registers, to demonstrate her ownership of the suit parcels, a fact which she contends is not disputed by the Respondent in paragraph 4 of the Replying Affidavit.
- vii. According to the Applicant, notwithstanding the material evidence furnished, the Respondent declined to open and/or reconstruct the land registers, which the Applicant characterises as unreasonable and irrational.
- viii. the Respondent, as the custodian of land registration records, was in possession of the documents being demanded and that the loss or unavailability of the original registers occurred while the same were under the Respondent's custody.
- ix. Instead of addressing the omissions and negligence occasioned within the Registry, the Respondent imposed additional requirements, thereby subjecting her to further costs, repeated advertisements, re-applications and ultimately the filing of the present suit seeking orders of mandamus to compel the performance of statutory duties.
- x. the Respondent's conduct in declining to open and/or reconstruct the land registers amounts to bad faith and an abuse of power.
- xi. she swore the supplementary affidavit in support of the application herein.

III. The Replying Affidavit by the Respondent ___**

8. On 11th June 2025, the Office of the State the Attorney General filed Replying Affidavit sworn on the even date by M/s. SUSAN M. MWANZAWA, stated as follows that:-
 - a. She was the Kwale County Land Registrar and the Respondent herein, and that she is conversant with the matters the subject of these proceedings.
 - b. She read and understood the Notice of Motion, Statutory Statement and Verifying Affidavit sworn by the Applicant, all dated 7th October 2024, and that her Replying Affidavit was sworn in response thereto.
 - c. The dispute before the Court concerned the parcels of land known as Kwale/DianiS.S./2248 and Kwale/DianiS.S./2249, hereinafter referred to as the suit parcels.
 - d. With respect to Kwale/DianiS.S./2249, the Respondent avers that the green card on record indicates that it was opened on 29th September 2010. The first entry reflects Joyce Mumbua Mutisya as the registered proprietor, with a title issued on the same date. The third entry, dated 25th March 2013, reflects Eunice Wanjiru Karanja as proprietor, while the fourth entry



indicates title deed serial number 0617154. The fifth entry is a restriction dated 16th February 2018, registered on 8th May 2018, lodged by Joyce Mumbua Mutisya, forbidding any further dealings without her consent. A copy of the said green card was annexed and marked as “SMM-1.”

- e. The Land Registry received two applications dated 8th November 2023 seeking reconstruction of the land registers for the suit parcels. Copies of the said applications were annexed and marked as “SMM – 2 (a)” and “SMM – 2 (b).”
- f. Following the said applications, Kenya Gazette Notices were issued in respect of the intended reconstruction of the land registers. Copies of the Gazette Notices were annexed and marked as “SMM – 3.”
- g. That on or about 19th September 2024, the Registry received a letter dated 17th July 2024 from the Law firm of Messrs. Birir & Company Advocates, indicating that the original owner of the suit parcels was no longer claiming any interest therein and that a previous letter addressed to the Registry stood revoked. A copy of the said letter was annexed and marked as “SMM – 3.”
- h. Although the parcel file indicates that the title of Joyce Mumbua Mutisya was cancelled upon transfer to the Applicant, the Registry does not have in its custody the transfer instruments or completion documents evidencing the said transfer. Copies of the cancelled titles were annexed and marked as “SMM – 4(a)” and “SMM – 4(b).”
- i. The absence of the transfer documents, completion documents and the sale agreement formed the basis upon which the Registry declined to proceed with the reconstruction of the land registers in favour of the Applicant.
- j. The documents annexed to her Replying Affidavit constitute all the documents currently contained in the parcel files relating to the suit parcels.
- k. The contents of her affidavit were true to the best of her knowledge, save where stated to be based on information and belief, the sources of which were disclosed.

IV. Submissions** ___

9. On 12th June, 2025 the parties were granted time to file their written submissions and the Honourable Court reserved the Judgment. Pursuant t that, both parties filed their written submissions and the Honourable Court will analyze them below.

A. The Written Submission by the Ex – Parte Applicant** ___

10. The Ex – Parte Applicant filed written submissions dated 28th March 2025, through which she urged the Court to allow the Judicial Review Application as prayed.
11. Mr. Mungai Kamau Advocate commenced by outlining the background of the matter and submitted that the proceedings were initiated by way of a Chamber Summon application dated 7th October 2024, through which the Applicant sought leave to commence Judicial Review proceedings.
12. The Learned Counsel opined that leave was duly granted, whereupon the Applicant filed the substantive Notice of Motion, supported by a Statutory Statement and Verifying Affidavit, all dated 7th October 2024.
13. It was further submitted that despite being granted time by the Court on 6th February 2025 to respond, the Respondent failed to file any replying affidavit or submissions, rendering the Application



unopposed. For its determination, the Counsel submitted under the following issues. Firstly, whether the Applicant followed the laid down procedure for replacement of title and reconstruction of the Land Register. The Learned Counsel submitted that the Ex – Parte Applicant was the registered proprietor of land parcels known as Kwale/Diani S.S/2248 and 2249. He held that in or about September 2023, the Applicant discovered that she had misplaced the original title deed for Kwale/Diani S.S/2248, prompting her to instruct her Advocate to conduct due diligence at the Kwale Land Registry. In so doing, it was discovered that not only was the title deed missing, but the land registers for both parcels could not be traced at the Registry, necessitating an application for replacement of title and reconstruction of the land registers.

14. The Learned Counsel asserted that the Ex – Parte Applicant strictly complied with the procedure prescribed under the provision of Section 33 of the *Land Registration Act*, 2012, and Regulation 28 of the Land Registration (General) Regulations, 2017. The Counsel reproduced the provisions of Section 33 and Regulation 28 and submitted that the law places the obligation on a registered proprietor to apply, and on the Land Registrar to investigate, gazette, and reconstruct lost or destroyed land registers upon satisfaction of the statutory conditions.
15. The Court was informed that the Applicant published notices of loss of the land registers and title deed in the Kenya Gazette and in two newspapers of nationwide circulation, namely “the Nation” and “The Standard” newspapers, and that no objection was raised by any person within the statutory sixty (60) days.
16. The Learned Counsel further asserted that the Applicant lodged all requisite application forms, statutory declarations, indemnities, affidavits, and paid the prescribed fees, as evidenced by annexures marked “EWK - 4(a) – (d)” in the Verifying Affidavit. Upon being satisfied, the Respondent forwarded the notices to the Government Printer for gazette, thereby acknowledging compliance with the statutory requirements.
17. The Learned Counsel posed that despite the lapse of the sixty (60) day period without objection, the Respondent failed to reconstruct the land registers or issue a replacement title, prompting repeated physical and written follow-ups by the Applicant’s Advocate.
18. Learned Counsel referred the Honourable Court to various correspondences annexed and marked as “EWK - 8, 9, 10, 11, 12, 13 and 14”, which demonstrated sustained attempts to engage the Respondent without success.
19. The Counsel further submitted that when the Applicant re-lodged the documents and paid rebooking fees, the Respondent imposed new and unreasonable conditions, including requiring the appearance of the previous owner. It was stated that the Applicant’s Advocate wrote to the previous owner’s Advocates, who confirmed through a letter dated 17th July 2024 that their client had no interest in the suit properties, a fact which was communicated to the Respondent.
20. It was the contention by the Learned Counsel that notwithstanding the clarification, the Respondent persisted in declining to act, a position which was unfair, biased, unreasonable, and actuated by bad faith. To this effect, the Learned Counsel relied on the decision in the case of:- “Republic – Versus - County Land Registrar, Makeni Ex - Parte Philes Mwikali Kioko [2021] eKLR”, for the proposition that Sections 33(1)–(3) of the Act apply only to registered proprietors and not previous owners, and that requiring the appearance of a deceased or former proprietor was impractical and unlawful.
21. It was therefore submitted that the Applicant fully complied with the law and was entitled to the reconstruction of the land registers and issuance of a replacement title.



22. On the second issue, Learned Counsel submitted that the Respondent's actions violated Article 47 of the *Constitution* and Sections 4, 7, 9 and 11 of the *Fair Administrative Action Act*, which guarantee lawful, reasonable, and procedurally fair administrative action. The Learned Counsel submitted that the Respondent's continued inaction and refusal to perform a statutory duty amounted to an abuse of power and unreasonable administrative conduct. Learned Counsel relied on the principles governing the grant of an order of "Mandamus", as set out in the case of:- "Kenya National Examinations Council – Versus - Republic Ex - Parte Geoffrey Gathenji Njoroge & Others", where the Court held that mandamus compels the performance of a public duty imposed by statute. The Learned Counsel further relied on the case:- "R – Versus - Dudsheath, Ex - Parte Meredith [1950] 2 All ER 741", to submit that Mandamus issues where a public duty exists and there was no alternative, convenient, or effective remedy.
23. It was submitted that under the provision Section 33 (5) and Section 14 of the *Land Registration Act*, No. 3 of 2012 the Respondent had a statutory obligation to reconstruct lost registers and could not lawfully abdicate that duty through unreasonable demands.
24. It was the view of the Learned Counsel that the Respondent, being the custodian of land records, ought to account for their loss rather than impose the burden on the Applicant. He further submitted that requiring parties to appear on a non-working day demonstrated mala fides and administrative mischief.
25. In support, reliance was placed in the case of:- "Republic – Versus -District Land Registrar Kajiado & Another Ex - Parte Casca Traders Limited [2018] eKLR", where the Court held that uncontroverted affidavit evidence entitled an applicant to relief.
26. In conclusion, the Learned Counsel held that the Respondent failed to perform a clear statutory duty without justification, and that the Applicant had demonstrated illegality, unreasonableness, and abuse of power. He urged the Court to grant the Judicial Review orders sought, including an order of mandamus, in the interests of justice.

B. The Written Submission by the Respondent** ___

27. The Respondent, through Ms. Kagoi Senior State Counsel, filed written submissions in opposition to the Notice of Motion application dated 7th October 2024. In the said submissions, the Respondent set out the factual and legal basis upon which the application for orders of mandamus ought to be declined.
28. M/s. Kagoi Advocate commenced by identifying the subject matter of the dispute as parcels of land known as Kwale/Diani S.S./2248 and Kwale/Diani S.S./2249 (hereinafter "the suit parcels"), and submitted that the Respondent's actions were guided strictly by the law governing land registration and reconstruction of land registers.
29. It was submitted that from the records available at the Kwale Lands Registry, the green card for Kwale/Diani S.S./2249 was opened on 29th September 2010, with the initial registration in the name of Joyce Mumbua Mutisya, who was issued with a title deed on the same date. Subsequent entries indicate a transfer to Eunice Wanjiru Karanja on 25th March 2013, followed by the issuance of a title deed serial number 0617154.
30. The Counsel further submitted that the parcel file reflects the existence of a restriction registered on 16th February 2018 at the instance of Joyce Mumbua Mutisya, forbidding any further dealings without her consent, a fact which, according to the Respondent, necessitated heightened scrutiny before any reconstruction could be undertaken.



31. The Respondent acknowledged receipt of applications dated 8th November 2023 seeking reconstruction of the land registers in respect of the suit parcels. Following the said applications, Gazette Notices were issued in compliance with the provisions of the *Land Registration Act*.
32. However, it was the Respondent's submission that despite the gazettelement, the parcel file did not contain transfer instruments, sale agreements, or completion documents evidencing how the Applicant acquired the suit parcels from the previous owner. The Counsel argued that these documents were critical in enabling the Registrar to lawfully and conclusively reconstruct the land register.
33. The Respondent further submitted that although a letter dated 17th July 2024 from Messrs. Birir & Company Advocates was received, indicating that the previous owner no longer claimed any interest in the suit parcels, such a letter could not cure the absence of foundational conveyancing documents required under the *Land Registration Act*, No. 3 of 2012.
34. It was contended that the Respondent, as custodian of the land register, bears a statutory duty to ensure the integrity, accuracy and legality of reconstructed registers, and that such reconstruction cannot be undertaken merely on the basis of gazettelement and absence of objection, without documentary proof of transfer.
35. On whether the orders of mandamus should issue. The Learned Counsel submitted that mandamus does not issue as a matter of course, but only to compel the performance of a clear statutory duty where no discretion exists. In the present case, it was argued that the provision of Section 33 (5) of the *Land Registration Act*, No. 3 of 2012 grants the Registrar discretionary power, exercisable only after satisfactory enquiries.
36. The Learned Counsel averred that the Applicant had not demonstrated that the Respondent acted unlawfully, irrationally, or in abuse of power, but rather that the Respondent exercised statutory caution in declining to reconstruct the land registers in the absence of essential documents.
37. Therefore, the Respondent urged the Court to find that the Applicant had not met the threshold for the grant of judicial review orders, and that compelling the Registrar to reconstruct the land registers without requisite documentation would amount to directing the Respondent to act illegally.
38. In conclusion, the Respondent prayed that the Notice of Motion application dated 7th October 2024 be dismissed with costs, on the ground that the Respondent acted within the law, in good faith, and in furtherance of her statutory mandate.

V. Analysis & Determination

39. I have carefully assessment the Judicial review application brought to this Honourable Court by the Ex – Parte Applicant, the relevant provisions of the *Constitution* of Kenya, 2010 and the statutes.
40. For the Honourable Court to reach an informed, reasonable, fair and Equitable decision, it has crystalized the subject matter into four (4) salient issues for analysis. These are as follows:-
 - a. What is the scope, nature and meaning of the concept of Judicial Review.
 - b. Whether the Judicial review suit instituted by the Ex – Parte Applicant meets the threshold of such a suit and has merit whatsoever?
 - c. Whether the parties are entitled to the prerogative reliefs sought.
 - d. Who will bear the costs of the suit.



Issue No. a). What is the scope, nature and meaning of the concept of Judicial Review.

41. Under this Sub – title, the Honourable Court will undertake to comprehensively deliberate on the concept of the Judicial Review being the main substratum of this matter herein. In our legal parlance and jurisprudence, Judicial Review is founded under the provisions of Order 53 Rules 1 to 7 of the Civil Procedures Rules 2010 where the Prerogative orders of “Mandamus”, “Prohibition” and “Certiorari” are issued.
42. Primarily, the provisions of Sections 8 and 9 of the Law Reform Act Cap 26 of the Laws of Kenya where the Provisions of Order 53 of the Civil Procedure Rules 2010 was borrowed from the case of: “Farmers Bus Services – Versus - Transport Licensing Appeals Tribunal (1975) E.A. 523”. And upon the promulgation of the Constitution of Kenya in 2010 Article 47 of the Constitution of Kenya introduced the Provisions of Fair Administration of justice and later on the legislation of “the Fair Administration of Action Act of 2012” which is the statutory framework governing judicial review and the Administrative law in Kenya currently.
43. The legal efficacy and scope of the statutory order of Mandamus, Prohibition and Certiorari are remedies granted by High Court to persons inferred by the exercise of administrative of judicial powers. These prerogative orders are only available against public bodies. Their origins lie in the expansion of common law in England and the jurisdiction of the Court of King Bench to acquire Superintendence over the observance of law by officials. These orders are predicated upon the fact that without law, society cannot function with fundamental values such as social order, social justice and personal freedom. Today public authorities determine an overwhelming extent how much of these values are enjoyed. Their decision affect vast numbers of people collectively and individually “Ipso Facto” unlawfully decision, must be available to Judicial Scrutiny hence judicial Review. The social need for how and the protection of legality is violated when a public official exceeds his/her authority or does not use his/her power in the prescribed manner.
44. The prerogative writs of “Certiorari” derives from the Latin word “Certiorari” which means to be certified, informed, appraised or shown. Both in its embryonic days and today, the order, initially and prerogative writ was inferior courts and required the proceedings of that to be transferred to the High Court and examined for validity. It meant the decision would be quashed. From the Provisions of Order 53 of the Civil Procedure Rules the Applicant ought to move court within a period of six (6) months from the time the order, decree, judgment, conviction or other proceeding was made. The Order of “Prohibition” issues where there are assumption of unlawful jurisdiction or excess of jurisdiction. It’s an order from the High Court directed to an inferior tribunal or body as in this case the Kadhi’s Court. Its functions is to prohibit and/or forbids encroachment into jurisdiction and further to prevent the implementation of orders issued when there is lack of jurisdiction. The order of “Mandamus” is derived from the Latin word “Mandare” meaning to command. It is issued in cases where there is a duty of a public or a quasi-public nature or a duty imposed by statute, it compels the fulfillment of a duty where there is a lethargy on the part of a body or officer concerned.
45. In a nutshell Judicial Review is the means by which High Court judges scrutinize public law functions intervening as a matter of discretion to quash, prevent, require and/or classify not because they disagree with the judgment but so as to right a recognizable public law wrong. This public law wrong could be unlawfulness, Wednesbury unreasonableness or irrationality, unfair hearing, ultra vires bad faith, unfairness, made or arrived at out of excess powers (ultra vires) biasness, capriciousness or unJudicially.
46. In an application for Judicial review the Applicant must be a person with a sufficient interest – (Locus Standi) and who commences proceedings promptly. To support this legal concept on judicial review,



I have made indepth references to several literature review and court decisions – “Pharmaceutical manufacturers Association of South Africa in re- ex parte president of Republic of South Africa - 2000 S.A. 674 CC at 33 Republic – Versus - Speaker of the Senate and Another Ex-parte Afrison Export Import Limited 2018 eKLR Republic –Versus- Stanley Mambo Amuti (2018) eKLR.”; the Kenya National Examination Council – Versus - Republic (Ex - Parte - Geoffrey Gathenji & Another Nairobi Civil Appeal No. 266 of 1996.

47. In the instant case, the Ex-Parte Applicant has only sought the writ prerogative Orders – Mandamus.
48. The writ of “Mandamus” is a prerogative order issued in certain cases” to compel the performance of a duty. It issues from the Queen’s Bench Division of the English High Court where the injured party has a right to have anything done, and has no other specific means of compelling its performance, especially when the obligation arises out of the official status of the respondent. Thus it is used to compel public officers to perform duties imposed upon them by common law or by statute and is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual. Mandamus is neither a writ of course nor of right, but it will be granted if the duty is in the nature of a public duty and especially affects the rights of an individual, provided there is no more appropriate remedy. The person or authority to whom it is issued must be either under a statutory or legal duty to do or not to do something; the duty itself being of an imperative nature.
49. The principles that guide the Court when dealing with an application for Judicial Review – the prerogative writs of “Mandamus” was stated in the Court of Appeal case of “Commission on Administrative Justice – Versus -Kenya Vision 2030 Delivery Board & 2 others [2019] eKLR”. Wherein the court stated as follows:-

“As observed by the Judge and correctly so in our view, the principle that guides the High Court when dealing with the scope and efficacy of an order of mandamus was crystalized by the Court in Kenya National Examination Council – Versus - Republic Ex - Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR namely:

“The order of mandamus is of most extensive remedial nature and is in the form of 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 of 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 it may issue in cases where although there is an alternative remedy, yet the mode of redress is not convenient, beneficial and effectual.”

50. This position was reiterated in the English case of “R – Versus - Dudsheath, Ex - Parte, Meredith [1950] 2 ALL E.R. 741” where it was stated as follows: -

“It is important to remember that “Mandamus” is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it.”

51. 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.

52. It is trite law that “Mandamus” is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in “Apotex Inc. – Versus - Canada Attorney General”), and, was also discussed in “Dragan – Versus - Canada (Minister of Citizenship and Immigration)”. The eight (8) factors that must be present for the Prerogative writ of “Mandamus” to issue are: -
- a. There must be a public legal duty to act;
 - b. The duty must be owed to the Applicants;
 - c. There must be a clear right to the performance of that duty, meaning that;
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been;
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand;
 - iii. An express refusal, or an implied refusal through unreasonable delay;
 - iv. No other adequate remedy is available to the Applicants;
 - v. The order sought must be of some practical value or effect;
 - vi. There is no equitable bar to the relief sought;
 - vii. On a balance of convenience, mandamus should lie.

Issue No. b). Whether the Judicial review suit instituted by the Ex – Parte Applicant meets the threshold of such a suit and has merit whatsoever?

53. Under this Sub – heading, the Honourable Court will deliberate on the merits of the Judicial review case instituted by the Ex – Parte Applicant under the already set out provisions of the Law. But before that, the Court will extrapolate on the brief facts of the case for ease of reference.

Brief facts ___**

54. From the pleadings on record, particularly the Verifying Affidavit sworn by the Ex - Parte Applicant on 7th October 2024 and the Supplementary Affidavit sworn on 12th June 2025, it is not in dispute that the Applicant is the registered proprietor of the parcels of land known as Kwale/Diani S.S./2248 and Kwale/Diani S.S./2249.
55. It is further uncontested that: The original land registers for both parcels were lost while under the custody of the Kwale Land Registry; and The original title deed for Kwale/Diani S.S./2248 was also lost.
56. Upon discovery of the loss, the Applicant complied fully with the statutory procedure prescribed under Section 33 of the *Land Registration Act*, No. 3 of 2012, and Regulation 28 of the Land Registration (General) Regulations, 2017, by: Publishing notices of loss in two newspapers of nationwide circulation; Gazetting the loss in the Kenya Gazette; Waiting for the lapse of the statutory sixty (60) days; Paying all requisite statutory fees; and Executing all prescribed declarations, indemnities, and affidavits.



57. The gazette Notice is annexed in “SMM – 3” which was published on 24th November 2023 by S.N Mokaya. The said gazette notice read as follows:-

“ Gazette Notice No. 16089

The *Land Registration Act*

(No. 3 of 2012)

Reconstruction Of A Green Card

Whereas Eunice Wanjiru Karanja, is registered as proprietor in absolute ownership interest of all that piece of land situate in the district of Kwale, registered under title No.Kwale/DianiS.S./2249, and whereas sufficient evidence has been adduced to show that the green card has been lost, notice is given that after the expiration of sixty (60) days from the date hereof, I shall reconstruct the green card, provided that no objection has been received within that period.

Dated the 24th November, 2023.

S. N. Mokaya,

MR/6203211 Land Registrar, Kwale District.”

58. No objection was lodged by any person within the gazetted period. The Respondent does not dispute this fact. The Applicant thereafter lodged formal applications for reconstruction of the land registers and issuance of a replacement title deed. Despite prolonged follow-ups and compliance with additional demands, the Respondent failed and/or declined to act, citing the absence of transfer instruments and completion documents from the parcel file.

59. It was from this point that the Ex Parte Applicant was compelled to institute this suit and sought for the reliefs already set out herein above. As indicated the Respondent never controverted the claims made out by the Ex – Parte Applicant from the filed pleadings and hence the suit. That is adequate on the brief facts of the case.

60. The Applicant’s grievance, therefore, is not a contest over ownership, but a complaint against administrative inaction and refusal by a public officer to perform a statutory duty.

61. Now turning to the issues of analysis under this Sub – titles.

First and foremost, it is important to appreciate the meaning of Judicial Review. The concept is based on the fact that administrative excesses must be checked through Judicial intervention. Administrative law relates to decision of offices or organs of Central Government or Public Authorities which may affect the rights or liberties of the citizens and which are enforceable in or organized by the courts of law. Therefore, judicial review is an integral component of administration law.

62. The Applicant sought leave of Court as required under Order 53 Rule 1, which leave was duly granted. Thereafter, the substantive Notice of Motion was filed within time, supported by a Statutory Statement and Verifying Affidavit. The procedural requirements were therefore fully complied with.



63. Substantively, the Applicant's grievance is not directed at a disputed proprietary interest, but at the failure by a public officer to perform a statutory duty expressly imposed by law. The dispute therefore falls squarely within the realm of Judicial Review.
64. The provision of Section 33(1) of the *Land Registration Act*, No. 3 of 2012 provides:

“If a land register is lost or destroyed, the Registrar shall cause the register to be reconstructed in such manner as may be prescribed.”
65. Further, the provision of Section 33 (5) obligates the Land Registrar, upon being satisfied after due inquiry, to reconstruct the register and give notice thereof. The language used is mandatory, subject only to the Registrar being satisfied that statutory requirements have been met.
66. From the evidence placed before Court, the Applicant demonstrated that: She is the registered proprietor of the suit parcels; The land registers and one title deed were lost while under the custody of the Registry; She complied with all statutory requirements, including newspaper publications, gazettelement, lapse of the statutory period, payment of fees, and execution of indemnities; No objection was raised by any person within the prescribed time.
67. The Respondent did not dispute these facts. Instead, the Respondent's position was anchored on the absence of transfer instruments and completion documents within the parcel file.
68. This Court finds that the loss or absence of documents from the parcel file, which is under the custody and control of the Respondent, cannot be visited upon the Applicant. To do so would amount to sanctioning administrative inefficiency and negligence at the expense of a citizen's constitutional rights.
69. Moreover, the Respondent acknowledged that the Applicant is reflected as the registered proprietor in the green card. That fact alone creates a rebuttable presumption of ownership under Section 26(1) of the *Land Registration Act*, which presumption was not displaced.
70. From the foregoing inferences, this Court is persuaded that the Applicant has demonstrated a prima facie case of illegality, unreasonableness, and procedural unfairness, thus meeting the threshold for Judicial Review.

Issue No. c). Whether the parties are entitled to the prerogative reliefs sought.

71. Having disposed of the preliminary issue touching on whether the Judicial Review proceedings herein meet the requisite legal threshold, this Honourable Court now turns to the substantive question as to whether the Ex-Parte Applicant has placed before the Court sufficient material and evidence to warrant the grant of the orders of Mandamus sought.
72. The gravamen of the Applicant's case is that the Respondent, a public officer exercising statutory authority under the *Land Registration Act*, No. 3 of 2012, has failed, neglected, and/or refused to perform a clear statutory duty, notwithstanding full compliance by the Applicant with the law.
73. At the outset, it is not in dispute that the Ex-Parte Applicant is the registered proprietor of the parcels of land known as Kwale/Diani S.S./2248 and Kwale/Diani S.S./2249. This fact is conceded by the Respondent in paragraph 4 of the Replying Affidavit and is further borne out by the green card annexed as SMM-1.
74. Secondly, it is equally uncontested that the original land registers for both parcels were lost, and that the original title deed for Kwale/Diani S.S./2248 was also lost, while under the custody of the Kwale Land Registry.



75. Upon discovery of the said loss, the Ex-Parte Applicant invoked the procedure set out under Section 33 of the [Land Registration Act](#) and Regulation 28 of the Land Registration (General) Regulations, 2017, and complied with all statutory prerequisites, including gazettement, newspaper publication, execution of statutory declarations and indemnities, payment of fees, and observance of the sixty (60) day objection period.
76. The Gazette Notice dated 24th November 2023, reproduced at paragraph 59 of this Judgment, is particularly instructive. It expressly acknowledges that:the Applicant is the registered proprietor;sufficient evidence had been adduced to demonstrate loss of the green card; andreconstruction would proceed upon lapse of sixty (60) days in the absence of objection.
77. No objection was lodged within the gazetted period. The Respondent does not dispute this fact.
78. In the circumstances, the statutory conditions precedent contemplated under Section 33(1) and (5) of the [Land Registration Act](#) were fully satisfied.
79. The Respondent’s sole justification for declining to reconstruct the registers and issue a replacement title deed was the alleged absence of transfer instruments, completion documents, and sale agreements evidencing the Applicant’s acquisition of the suit parcels.
80. This Court finds that justification legally untenable for several reasons.
81. First, the Respondent has admitted that the Applicant is reflected as the registered proprietor in the green card. Under Section 26(1) of the [Land Registration Act](#), such registration confers prima facie indefeasible ownership, unless impeached on grounds of fraud or illegality—none of which have been pleaded, alleged, or demonstrated in these proceedings.
82. Secondly, the documents whose absence is complained of were admittedly lost while the parcel files were under the custody and control of the Respondent. The Respondent, as custodian of land records, cannot lawfully shift the burden of institutional negligence to a citizen who has complied with the law.
83. To do so would amount to sanctioning administrative inefficiency and record-keeping failure, contrary to the constitutional values enshrined under Articles 10, 47, and 232 of the [Constitution](#) of Kenya, 2010.
84. Thirdly, Section 33 of the [Land Registration Act](#) does not condition reconstruction of a lost register upon production of historical conveyancing instruments where ownership is not in dispute and where gazettement has yielded no objection. The discretion vested in the Registrar under Section 33(5) relates to the conduct of inquiry, not to an indefinite refusal to act.
85. If the Respondent required clarification from any previous owner, the law provided a clear mechanism under Section 14 of the [Land Registration Act](#) to issue summons. No such summons was ever issued.
86. Instead, the Respondent demanded that the Applicant appear together with a previous owner who is deceased, and on one occasion directed attendance on a Sunday, a non-working day. This conduct, in the view of the Court, is irrational, impracticable, and procedurally unfair.
87. This Court aligns itself with the holding in the case of:- “Republic – Versus - District Land Registrar, Kajiado & Another Ex - Parte Casca Traders Limited [2018] eKLR”, that once statutory conditions are met, a Registrar cannot frustrate a proprietor through administrative inertia or unreasonable demands.
88. The Respondent, as a State officer, is bound by the provision of Articles 73 and 232 of the [Constitution](#), which demand accountability, responsiveness, and high standards of professional ethics in public service. The conduct exhibited herein falls short of those constitutional imperatives.



89. Further, the provision of Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act, No. 4 of 2015, entitle every person to administrative action that is lawful, reasonable, efficient, and procedurally fair. The Respondent's prolonged inaction, shifting requirements, and failure to give lawful reasons amount to a violation of these guarantees.
90. This Court is persuaded that the Ex - Parte Applicant has established:
- a. the existence of a public legal duty imposed upon the Respondent by statute;
 - b. that the duty is owed to the Applicant;
 - c. that the Applicant satisfied all conditions precedent;
 - d. that there was a clear demand and unreasonable delay amounting to refusal; and
 - e. that no alternative, convenient, or effective remedy exists.
91. Thus, I discern that the foregoing brings this matter squarely within the principles enunciated in the case of:- "Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & Others [1997] eKLR, and Commission on Administrative Justice – Versus - Kenya Vision 2030 Delivery Board & 2 Others [2019] eKLR".
92. In the premises, this Court finds that the Respondent is guilty of dereliction of statutory duty, and that the continued refusal to reconstruct the land registers and issue a replacement title deed is unlawful, unreasonable, and procedurally unfair. Accordingly, this Court finds that the Ex-Parte Applicant is entitled to the prerogative orders of Mandamus sought.
- ISSUE No. d). Who will bear the costs of the suit?
93. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of a legal action or proceedings in any litigation. The proviso of the provision of Section 27 (1) of the Civil Procedure Act, Cap. 21 provides as follows: -
- “Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers;
- Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.”
94. On this legal point, I seek refuge from the cases of:- “Republic – Versus - Rosemary Wairimu Munene, Ex - Parte Applicant – Versus - Ihururu Dairy Farmers Co - operative Society Ltd” this court held as follows: -
- “The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”



95. Further, I am guided by the following passage from the Halsbury's Laws of England; 4th Edition (Re-issue), {2010}, Vol.10. para 16

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice”

96. Still on the same subject Mr. Justice (Retired) Kuloba in ‘Judicial Hints on Civil Procedure, 2nd Edition, (Nairobi) Law Africa) 2011’, page 94 stated: -

“Costs are (awarded at) the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.....”

97. With respect to the instant application, the Honourable Court has found that the application by the Ex – Parte Applicant is meritorious. Thus the Ex – Parte Applicant is entitled to costs of the suit. The costs will borne by the Respondent accordingly.

VI. Conclusion & findings

98. Ultimately, having carefully and exhaustively analysed the framed issues hereinabove, this Honourable Court is satisfied, on a balance of probabilities and guided by the principles of legality, reasonableness, and procedural fairness, that the Ex-Parte Applicant has proved her case.

99. Therefore, the Court finds that the Respondent, being a public officer exercising statutory authority under the [Land Registration Act](#), No. 3 of 2012, failed and/or refused to perform a clear statutory duty imposed upon him under Section 33 of the said Act, notwithstanding full compliance by the Ex-Parte Applicant with all the prescribed legal requirements. For the avoidance of doubt, nothing in this Judgment shall be construed as determining or pronouncing upon the merits of ownership of the suit properties beyond the scope of administrative action complained of herein.

100. Consequently, the Honourable Court finds merit in the Notice of Motion dated 7th October 2024 and allows it in the following terms:

- a). That Judgment be and is hereby entered in favour of the Ex - Parte Applicant under the following terms and conditions:
 - i). An order of Mandamus be and is hereby issued compelling the Respondent, whether by himself, his officers, servants, or agents, to forthwith reconstruct the land registers in respect of Land Parcel Numbers Kwale/Diani S.S./2248 and Kwale/Diani S.S./2249, pursuant to Section 33 of the [Land Registration Act](#), No. 3 of 2012.
 - ii). An order of Mandamus be and is hereby issued compelling the Respondent to issue a replacement title deed in respect of Land Parcel Number Kwale/Diani S.S./2248 to the Ex-Parte Applicant, upon reconstruction of the land register and upon compliance with any lawful and reasonable administrative requirements.
 - iii). An order of Prohibition restraining the Respondent from continuing to withhold, delay, or decline the reconstruction of the said land registers and/or issuance of the



replacement title deed otherwise than in accordance with the law be and is hereby declined, the Court being satisfied that the orders of Mandamus granted herein are sufficient and efficacious in the circumstances.

- b). That the costs of this Judicial Review suit be and are hereby awarded to the Ex - Parte Applicant, to be borne by the Respondent.

It is so ordered accordingly

JUDGEMENT DELIVERED THROUGH MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 22ND DAY OF JANUARY, 2026.

.....

HON. JUSTICE L.L. NAIKUNI

ENVIRONMENT & LAND COURT AT KWALE

Judgement delivered un the presence of:-

- a. Mr. Daniel Disii, the Court Assistant.
b. Mr. Mungai Kamau Advocate for the Ex – Parte Applicant.
c. No appearance for the Respondent.

