



**Republic v Land Registrar- Kwale; Kamau (Ex parte Applicant) (Judicial Review Miscellaneous Application E004 of 2025) [2026] KEELC 235 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 235 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KWALE**

**JUDICIAL REVIEW MISCELLANEOUS APPLICATION E004 OF 2025**

**LL NAIKUNI, J**

**JANUARY 26, 2026**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW  
ORDERS BY ROBERT KAMAU FOR LEAVE TO APPLY FOR  
JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF: ARTICLES 40 AND 47 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF: ORDER 53 RULES 1 & 2 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF: SECTIONS 8 & 9 OF THE LAW REFORMS ACT**

**AND**

**IN THE MATTER OF: SECTIONS 68, 79(2) & (3)(A), 86 &  
87 OF THE LAND REGISTRATION ACT NO.3 OF 2012**

**AND**

**IN THE MATTER OF: SECTION 13(5) OF THE ENVIRONMENT AND LAND COURT ACT**

**AND**

**IN THE MATTER OF: SECTION 4 OF THE FAIR  
ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAND REGISTRAR- KWALE ..... RESPONDENT**

**AND**



## JUDGMENT

### I. Preliminaries.

1. This is a Judgement pertaining to a Judicial Review claim instituted by the Ex - Parte Applicant herein – Robert Kamau against Land Registrar - Kwale, the Respondent herein. The suit was premised pursuant to the provision of Sections 1A, 1B,3, 3A, Order 53 Rules 1 (1), (2),(3) and (4) of the *Civil Procedure Act*, Cap. 21 and Rules, Sections 8 (2) and 9 of the Law Reforms Act. Cap. 26 of the Laws of Kenya, Sections 68, 79 (2), (3)(A), 86 & 87 of the *Land Registration Act*, No. 3 of 2012; Section 13 (5) of the *Environment and Land Court Act*, No. 19 of 2011 and Section 4 of the Fair Administrative Actions Act of 2015 and all enabling Provisions of the Law.
2. Unfortunately, despite all efforts made, the Respondent - the Respondent – the Land Registrar – Kwale, never participated any further in this matter thereafter. Ideally, therefore, the suit stands unopposed but the Honourable Court will proceed to deal with the matter on its own merit.

### II. The Ex – Parte Applicant’s Case

- a. The ex – parte applicant sought the following Orders in the substantive application: -
  - a. That pending the filing, hearing and determination of the Substantive Application, an Order of Certiorari do issue removing the Gazette notice No. 2583 dated 28<sup>th</sup> February 2025 for de-gazettement of tile deed of all that parcel of land registered as Kwale/Shimba Hills/1419 in the names of the Ex - Parte Applicant for the same being quashed.
  - b. That pending the filing, hearing and determination of the Substantive Application, an Order of Prohibition do issue directed to the Respondent from cancelling entries No.7, 8,9 & 10 on the land register/green card for all that parcel of land registered as Kwale/Shimba Hills/1419 in the names of the Ex - Parte Applicant.
  - c. That pending the filing, hearing and determination of the Substantive Application, an Order of Certiorari do issue quashing and cancelling any entries on the land register/green card or all that parcel of land registered as Kwale/Shimba Hills/1419 entered by the Respondent after the publication of the Gazette Notice No.2583 dated 28<sup>th</sup> February 2025 and to reinstate the entries on the said land register as they were prior to the publication of the said Gazette Notice
  - d. That the costs of this Application be borne by S. N. Mokaya, the County Land Registrar.
3. Through the 4 paragraphed statutory statement dated 27<sup>th</sup> March, 2025, which was in the following terms:-

#### A. Description of the parties

4. The Ex - Parte Applicant was Robert Kamau, the registered owner of all that parcel of land registered as Kwale/Shimba Hills/ 1419. The Respondent was the Land Registrar - Kwale County.
5. The application was premised on the grounds, testimonial facts and averments made out under the 13<sup>th</sup> Paragraphed Verifying Affidavit of Robert Kamau, the Ex - Parte Applicant sworn on 27<sup>th</sup> March, 2025, Statutory statement dated the 27<sup>th</sup> March, 2025 and on the grounds on the face of the Chamber



Summons Application dated 27<sup>th</sup> March, 2025 herein; the Applicant herein together with nine (9) exhibits marked as “RK 1 to RK 9” annexed thereon. He averred that:

- a. The Affiant was the registered owner of all that parcel of land registered as Kwale/Shimba Hills/1419 situated in the Shimba Hills Area within Kwale County. (Annexed and marked as “RK 1 and 2” a copy of the title deed and Certificate of official search).
- b. The on or around 5<sup>th</sup> March, 2025, the Affiant became aware of a Gazette Notice No. 2583 dated 28<sup>th</sup> February 2025 for De-Gazettement of title deed of all that parcel of land registered as Kwale/Shimba Hills/1419 in the Affiant’s names after he had visited the suit property and the Area Chief informed the Affiant of such a notice. (Annexed and marked as “RK 3” the said Gazette Notice).
- c. The Affiant instructed his advocate herein to write a letter to the Respondent objecting to the de – gazettement of his title deed and requested to be furnished with the notices that had been sent to her as referred to in the said Gazette Notice but the Respondent refused my application for objection and informed me to seek Court redress. (Annexed and marked as “RK - 4” a copy of the letter dated 18<sup>th</sup> March 2025 with the handwritten comments by the Respondent).
- d. Prior to acquiring registration of the suit property, the original green card for the said property had been misplaced, but the previous owner, i.e., Said Hamisi Ndundu, had applied for replacement by advertising in the local dailies and the Kenya Gazette.(Annexed and marked as “RK - 5, 6 and 7” copies of the Gazette Notice, the advertisement in the Daily Nation and Standard Newspaper).
- e. After the lapse of 60 days after the publication of the Gazette Notice, the transfer forms from the previous owner to the Affiant were lodged and a new green card opened vide Gazette Notice but while restoring the transfer, the misplaced card was retrieved in the parcel file and therefore the entries of the Affiant names were done on the 2<sup>nd</sup> page of the misplaced green card as opposed to the green card that was opened vide gazettement. (Annexed and marked as “RK - 8 and 9” copies of continuation of page 2 of the green card that had been misplaced and the card opened vide Gazette Notice).
- f. The Respondent was under a legal obligation to serve the Affiant with a 90 days’ notice before making any decision affecting his proprietary interest in the suit property and the reasons indicated in the said Gazette Notice were without any basis.
- g. The Respondent as a Public Officer is meant to act within the law and he has no powers to De-Gazette a title deed whose effect is nullifying a title deed.
- h. The refusal by the Respondent to serve the Affiant with the said statutory notices was in bad faith, unreasonable and a gross abuse of his powers and also his refusal to furnish the Affiant with the said copies statutory notices (if any) was in bad faith, unreasonable and a gross abuse of his powers and that any decision made in total disregard of the law and due process is an illegality, null and void ab initio.
- i. Based on the foregoing, he had been advised by his advocate on record that the said Gazette Notice No. 2583 dated 28<sup>th</sup> February 2025 for De-Gazettement of title deed of all that parcel of land registered as Kwale/Shimba Hills/1419 in the Affiant’s names was illegal, null and void and any action taken by the Respondent as a result of an illegal notice was of no legal effect.



- j. The actions of the Respondent were unreasonable, in bad faith and without any justification and were meant to deprive him of his property without due process and that it was only a Court of law that can cancel the Affiant's title and that the Respondent did not have those powers.
- k. The Affidavit was sworn in support of the application herein.

### III. Analysis & Determination

6. 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. Despite of all the directions made by Court, the Respondent declined to file any responses leaving the Court to make a determination of the matter on its own merit.
7. 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 Applicant is entitled to the prerogative reliefs sought.
  - d. Who will bear the costs of the Application for Judicial Review.

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

8. 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. Judicial review in Kenya is not concerned with the merits of a decision but with the decision-making process. The Court must interrogate whether the impugned administrative action was lawful, reasonable, and procedurally fair.
9. 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.
10. 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.
11. 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. 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.

12. 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 unjudicial.
13. 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.
14. The Court of Appeal in “Kenya National Examination Council – Versus - Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR” stated:

“Judicial review is concerned not with the merits of a decision but with the decision-making process. The Court must ensure that the decision is lawful, reasonable, and procedurally fair.”
15. Similarly, in “Pastoli – Versus - Kabale District Local Government Council & Others [2008] 2 EA 300”, the Court held:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality, and procedural impropriety.”
16. Mandamus is a prerogative order issued in certain cases to compel the performance of a duty. It lies where an injured party has a right to have something done, but has no alternative means of compelling its performance, especially in scenarios where the obligation arises out of the official status of the respondent [c.f. “Shah – Versus - Attorney General (No.3) Kampala HMC no. 31 of 1969 (1970) EA 543”].
17. Differently put, an order of Mandamus is used to compel public officers to perform duties imposed upon them by common law or by statute [c.f. “Shah – Versus - Attorney General (Supra)”]. Given that traditional execution proceedings are not available against the Government, a holder of a valid decree against the government can only realize the fruits of their judgment by applying for an order of Mandamus compelling the relevant Accounting Officer to settle the decretal sum due from the government.
18. In the foregoing I find that the Judicial review suit instituted by the Ex – Parte Applicant meets the threshold of such a suit. Proceeding to examine its merit, to succeed in an application seeking an order



of Mandamus, the applicant must, in addition to proving the existence of a valid decree against the government, comply with the provisions of Section 21 of the [Government Proceedings Act](#) by:

“

“(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.”

19. Section 21 (3) of the [Government Proceedings Act](#) imposes a statutory duty on the Accounting Officer for the concerned government department to pay the sums contained in the Certificate of Order once said Order is duly served upon the Hon. Attorney General. From a holistic reading of the [Government Proceedings Act](#), it is evident that the statutory duty of the Accounting Officer under Section 21 (3) is not conditional upon budgetary allocation and/or parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues [See “R – Versus - Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex-parte Fredrick Manoah Egunza [2012] eKLR”].
20. The circumstances under which judicial review order of mandamus are issued were discussed in the case “Republic – Versus - Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996”, where the Court of Appeal cited with approval, Halsbury’s Law of England, 4<sup>th</sup> Edition. Vol. 7 p. 111 para 89 thus: -

“The order of mandamus is of most extensive remedial nature and is in 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 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.”

These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”



**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?**

21. Under this Sub – heading, the Honourable Court will be examining whether the suit is meritorious or not. The Instant entails the Applicant who claims to be the registered proprietor of parcel Kwale/Shimba Hills/1419 with all indefeasible rights, interest and title to the suit land vested in him by law. His proprietary rights under the provision of Article 40 (1) of *the Constitution* are directly affected. He therefore has sufficient interest to institute judicial review proceedings. The application was filed on 27th March 2025, less than a month after the Gazette Notice dated 28th February 2025. This satisfies the requirement of promptness under Order 53. The Applicant has demonstrated illegality (Registrar acting ultra vires in purporting to cancel a title deed), irrationality (failure to provide reasons or statutory notices), and procedural impropriety (failure to accord the Applicant a hearing as required under Section 4(3) of the *Fair Administrative Action Act*).
22. The impugned Gazette Notice No. 2583 dated 28<sup>th</sup> February 2025 purported to de-gazette and nullify the Applicant’s title deed over parcel Kwale/Shimba Hills/1419. The central question is whether the Land Registrar had the legal authority to issue such a notice. The provision of Sections 24, 25 and 26 (1) of the *Land Registration Act*, No. 3 of 2012 underscore the sanctity of the title deeds to land once its issued.

“24. Subject to this Act—

- a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
  - a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
  - b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.



- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”Section Section 26 ( 1 ) provides:

“The certificate of title issued by the Registrar upon registration... shall be taken by all courts as prima facie evidence that the person named therein is the absolute and indefeasible owner.”

23. The provision of Section 80 (1) of the [Land Registration Act](#) stipulates:

“Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

24. An order for the cancellation of a registered title is only issued by Court on grounds of it having been obtained by mistake, omission or fraud. These allegations must be proofed by the person asserting them based on the principles of “the burden of Proof” as founded under the provision of Sections 107, 108 and 109 of the Evidence At, Cap. 80 of the Laws of Kenya. Therefore, the whole of this process is purely a judicial function, not an administrative one. The provision of Section 4 (3) of the [Fair Administrative Action Act](#), 2015 requires that before any adverse administrative action is taken, the affected party must be given:

- a. Prior notice of the nature of the action.
- b. Reasons for the action.
- c. An opportunity to be heard

25. By and large, therefore, the Honourable Court observes that the Respondent failed to comply with these statutory requirements. The courts have consistently held that a Land Registrar cannot unilaterally cancel a title deed. In the case of:- “Republic – Versus - Land Registrar, Kilifi Ex - Parte Daniel Ricci [2013] eKLR”, the Court held that:-

“The Registrar has no power to cancel a title deed. That power is reserved for the Court under Section 80 of the [Land Registration Act](#).”

26. Further the ELC Court in the case of:- “Republic – Versus - Chief Land Registrar & Another Ex - Parte Yosabina Wanjiku Karanja [2018] eKLR” opined itself that the Registrar’s role is administrative. He cannot arrogate to himself judicial powers to cancel titles without due process. This Court further highlights that the provision of Article 40(1) of [the Constitution](#) guarantees the right to property and Article 47(1) guarantees the right to fair administrative action. By purporting to cancel the Applicant’s title without notice or hearing, the Respondent violated both constitutional provisions.

27. The Honourable Court holds that the Gazette Notice was illegal, null and void ab initio because:

- a. The Land Registrar acted ultra vires, lacking jurisdiction to cancel a registered title.
- b. The action violated statutory provisions under the [Land Registration Act](#) and [Fair Administrative Action Act](#).
- c. The action infringed the Applicant’s constitutional rights under Articles 40 and 47 of [the Constitution](#).



28. Accordingly, the Gazette Notice cannot stand in law and must be quashed by an order of Certiorari.
29. Procedural impropriety on the other hand is a foundational ground for judicial review, arising when a public authority fails to adhere to the rules of natural justice or statutory procedures in making a decision. It encompasses both violation of express statutory requirements, and failure to act fairly, including denial of notice, reasons, or a hearing. As Lord Diplock stated in the seminal case of “Council of Civil Service Unions – Versus - Minister for the Civil Service [1985] AC 374 (GCHQ case)”:
 

“Procedural impropriety covers failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person affected by the decision.”
30. Legally speaking, all Land Registrars are bound by the provision of both the [Land Registration Act, 2012](#) and the [Fair Administrative Action Act](#). Their decisions must comply with procedural safeguards, especially when affecting registered proprietors. The provision of Section 79(2) & (3)(a) of the [Land Registration Act](#) requires the Registrar to notify affected parties before making changes to the register. The provision of Section 80 of the [Land Registration Act](#) exclusively reserves the power to cancel a title to the courts, not the Registrar.
31. In the present case, the Respondent failed to serve the Ex – Parte Applicant with a statutory 90-day notice; provide reasons for the intended cancellation; offer the Applicant an opportunity to be heard. This conduct violates both statutory and constitutional safeguards and amounts to procedural impropriety. The impugned Gazette Notice was issued in breach of the rules of natural justice and is therefore unlawful.
32. For the foregoing reasons, therefore, this Honourable Court finds that the judicial review claim meets the threshold requirements. The Applicant has established sufficient interest (locus standi), prompt filing of proceedings and has shown grounds of illegality, irrationality, and procedural impropriety. Accordingly, the suit is properly before this Court and has merit for consideration on its substance.

**Issue No. c). Whether the Applicant is entitled to the prerogative reliefs sought.**

33. Under this Sub – heading, having clearly set out the principles on Judicial review above, the Honourable Court now wishes to apply them onto the instant case. In so doing, the Court has considered the Applicant’s application, the Statutory Statement, the Verifying Affidavit, the exhibits annexed to the verifying affidavit on record. The Applicant seeks prerogative orders of Certiorari and Prohibition under the judicial review jurisdiction of this Court. These remedies are discretionary and are granted only where the Applicant demonstrates that the impugned administrative action was unlawful, irrational, or procedurally unfair.
34. Certiorari is a remedy used to quash decisions made without jurisdiction, in excess of jurisdiction, or in breach of the rules of natural justice. In the case of: - “Republic – Versus - Kenya National Examination Council Ex - Parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR”, the Court of Appeal held:
 

“Certiorari issues to quash a decision already made if such decision is without jurisdiction, or in excess of jurisdiction, or where the rules of natural justice are not complied with, or where such decision is unreasonable.”
35. In the present case, the Land Registrar issued Gazette Notice No. 2583 dated 28<sup>th</sup> February 2025, purporting to de-gazette the Applicant’s title deed. However Section 80 of the [Land Registration Act](#) vests the power to cancel a title in the courts, not the Registrar. The Registrar acted ultra vires, rendering the Gazette Notice unlawful. The Applicant was not served with notice or given



an opportunity to be heard, violating Article 47 of *the Constitution* and Section 4(3) of the *Fair Administrative Action Act*. Accordingly, the Applicant is entitled to an order of Certiorari to quash the Gazette Notice.

36. On the order for prohibition, it is a forward-looking remedy that restrains a public authority from continuing unlawful conduct. In “Republic – Versus - Kenya Revenue Authority ex parte Yaya Towers Ltd [2008] eKLR”, the Court held:

“Prohibition looks to the future. It is an order preventing a tribunal or body from continuing proceedings in excess of jurisdiction or contrary to law.”

37. The Honourable Court holds that the Ex – Parte Applicant has demonstrated that the Respondent intends to cancel Entries Nos. 7, 8, 9 & 10 on the land register relating to parcel Kwale/Shimba Hills/1419. Since the Land Registrar lacks jurisdiction to cancel registered titles, the Applicant is entitled to an order of Prohibition restraining further interference.

38. The Court observes that while prerogative orders are discretionary, the Court must exercise its discretion judicially. The Applicant has acted promptly in filing this application, the Applicant has demonstrated sufficient interest as the registered proprietor and has shown that the Respondent acted in bad faith and in breach of statutory and constitutional duties. There is no evidence of delay, abuse of process, or alternative remedy that would bar the grant of relief.

39. In conclusion, the Ex – Parte Applicant has satisfied the Court that the Gazette Notice was issued without jurisdiction, the Respondent acted unlawfully and unfairly and the Applicant’s rights under the provision of Articles 40 and 47 of *the Constitution* were violated. Accordingly, the Ex – Parte Applicant is entitled to the prerogative orders of Certiorari and Prohibition as prayed.

#### **ISSUE No. d). Who will bear the costs of the Application?**

40. It is now well established that the issue of costs is at the discretion of the Court. Costs meant 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.”

41. By the event, it means the result or outcome of the legal action. 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.”

42. Further, I am guided by the following passage from the Halsbury’s Laws of England; 4<sup>th</sup> 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”

43. 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.....”

44. The instant case by the Ex – Parte Applicant has been found to be meritorious. Thus, the Ex – Parte Applicant is entitled to costs of the suit to be born by the Respondent accordingly.

#### **IV. Conclusion & findings**

45. Ultimately, having caused the analysis of the framed issues, on Preponderance of Probabilities and the balance of convenience, the Honourable Court grants the following specific orders:-

- a. THAT Judgement be and is hereby partly entered in favour of the Ex – Parte Applicant under the following terms and conditions:-
  - i. The Honourable Court be pleased to issue a judicial review order in the nature of Certiorari, quashing Gazette Notice No. 2583 dated 28<sup>th</sup> February 2025, which purported to de-gazette the title deed for all that parcel of land known as Kwale/Shimba Hills/1419 registered in the name of the Ex – Parte Applicant.
  - ii. The Honourable Court be pleased to issue a judicial review order in the nature of Prohibition, restraining the Respondent from cancelling or altering entries Nos. 7, 8, 9 & 10 on the land register/green card relating to parcel Kwale/Shimba Hills/1419, or from making any further entries pursuant to the said Gazette Notice.
  - iii. The Honourable Court be pleased to direct the Respondent to reinstate the land register entries for parcel Kwale/Shimba Hills/1419 as they stood prior to the publication of Gazette Notice No. 2583 dated 28<sup>th</sup> February 2025.
- b. THAT the costs of the suit to be 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 26<sup>TH</sup> DAY OF JANUARY 2025.**

.....



**HON. MR. JUSTICE L.L. NAIKUNI**  
**ENVIRONMENT & LAND COURT**  
**AT**  
**KWALE**

Judgement delivered un the presence of:-

Mr. Daniel Disii, the Court Assistant.

M/s. Washalla Advocate holding brief for Mr. Mungai Kamau Advocate for the Ex – Parte Applicant.

M/s. Kiti Advocate for the Respondent.

