

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT HOMA BAY
JUDICIAL LAND REVIEW NO. E007 OF 2025

**IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION
OF KENYA, 2010**

AND

**IN THE MATTER OF ARTICLE 10 OF THE CONSTITUTION
OF KENYA, 2010**

AND

**IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION
OF KENYA, 2010**

AND

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS
ACT, 2015**

AND

IN THE MATTER OF LAND ACT 2012

AND

IN THE MATTER OF LAND REGISTRATION ACT, 2012

AND

**IN THE MATTER OF APPLICATION FOR LEAVE TO
COMMENCE PROCEEDINGS IN THE NATURE OF JUDICIAL
TREVUEW**

AND

**IN THE MATTER OF SECTION 8 AND 9 OF THE LAW
REFORM ACT, CHAPTER 26 LAWS OF KENYA
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION
ACT, NO. 4 OF 2015**

AND

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES 2010**

BETWEEN

**CLARA AKINYI OTIENO.....1ST
APPLICANT**

**EUNICE ACHIENG OTIENO.....2ND
APPLICANT**

**JECINTER ODHIAMNO OGENO.....3RD
APPLICANT**

VERSUS

**THE CABINET SECRETARY-
STATE DEPARTMENT FOR LANDS & PHYSICAL
PLANNING.....1ST
RESPONDENT
THE LAND REGISTRAR HOMA BAY
COUNTY.....2ND
RESPONDENT**

AND

**CHRISTINE AKOTH OPIYO
(As the Administrator of the estate of
KENNEDY ONYANGO OTUOMA.....1ST INTERESTED
PARTY
MAURICE OCHIENG MIREGI.....2ND INTERESTED
PARTY**

JUDGEMENT

1. By way of Notice of Motion dated 4th November 2025 the Applicants filed a Judicial Review Application seeking the following orders;

1)An order of mandamus directed to and compelling the Land Registrar to reinstate and register the Title Deed (now Certificate of Title) of Land Rusinga/Waware/ 1100 in the names of the First Registered owners namely: (1) Daniel Otieno Otuoma, (2) Alphonse Okuku Otuoma, (3) Kennedy Onyango Otuoma.

2) An order of mandamus compelling the Land Registrar to deregister and cancel any subsequent Title Deed (Certificate of Title) of Land Rusinga/Waware/1100 which devolved after the First registration.

3) An order of prohibition prohibiting the Interested Parties and Respondent and/or any officer acting under their authority from transferring, charging, or otherwise dealing with the parcel of land known as Land Rusinga/Waware/ 1100 in a manner.

4) That costs of the Application be provided for.

2. The application was premised on the grounds on the face of it and the averments of the 1st Applicant in the affidavit in support of the same.
3. The deponent averred that the full names of the deceased as to whose estate the proceedings herein (*sic*) relate are Daniel Otieno Otuoma, Alphonse Okuku Otuoma, and Kennedy Onyango Otuoma being biological brothers. That the deceased Kennedy, Daniel and Alphonse died intestate domiciled in Rusinga, Kenya on 8th June 2005, 19th March 2004 and 30th August 2017 respectively. She annexed the

copies of death certificates of Daniel, Alphonse, and Kennedy as exhibit 02. She stated that the deceased were survived by their spouses and children and proceeded to list their beneficiaries. Further, that the deceased left land Rusinga/Waware/ 1100 registered in their name in Common, each with a third share. She annexed and marked as Exhibit 03 a copy of the Certified Land Green Card.

- 4.** The deponent averred that the Land registrar unilaterally, unprocedurally, irregularly and unlawfully cancelled the title deed Rusinga/Waware/1100, serial No. 0788511, dated 3rd March 2014 without following due process of the Law. She urged that the Title Deed of land Rusinga/Waware/1100 can only devolve to the beneficiaries, subject to Succession Law which process has never taken place.
- 5.** She urged that the 2nd respondent, Land Registrar, in collaboration with Kennedy Onyango Otuoma (now deceased) and Maurice Ochieng Miregi, used forged documents to irregularly and unlawfully transfer Land which land was already registered legally to the common co-owners including; Forged Letter of Administration under imaginary non-existent Succession Cause No. 76 of 2015

allegedly petitioned by Kennedy Onyango Otuoma in Homa bay High Court dated 9th January 2016; Forged Certificate of Confirmation of Grant dated 18th August 2016 and forged; Succession Cause No. 76 of 2015 in Homabay High Court; Forged Kenya Gazette dated 18th May, 2015, Vol.CXVII-No. 28, Gazette Notice No. 1781 and Homa Bay High Court, Succession Cause No. 76 of 2015. She also listed the forged completion and transfer documents to wit; Forged Stamp Duty Bank Deposit slip dated 14th February 2017, at Kenya Commercial Bank Account 1108976298, by Omolo Owuor as the tax payer; Forged Payment Slip of Kenya Revenue Authority, dated 8th February 2017, with alleged Omolo Owuor KRA PIN No. A007601879C as the transferee and Kevin Ochieng Omuga, KRA PIN No. A008647579V as the Transferor.

- 6.** She deponed that on 11th September 2025, the High Court of Kenya at Homa Bay denied the existence Succession Cause No.76 of 2015 purportedly petitioned by Kennedy Onyango Otuoma. In contrast, the succession Cause 76 of 2015 was registered in respect of Ayub Ogalo where the petitioner is Danish Otieno and the same was dismissed by Hon Justice

Kiarie. W. Kiarie for want of prosecution. She annexed and marked as Exhibit 06 are copy of Judiciary Letter, Homa Bay High Court, illustrating Forgery.

- 7.** The deponent averred that the 2nd Respondent acted fraudulently and in collusion with Kennedy Onyango Otuoma and Maurice Ochieng Miregi and the Interested Party to deprive the Applicants of their proprietary rights over the parcel of land Rusinga/Waware/1100.
- 8.** The deponent averred that the imaginary Petitioner in Succession Cause 76 of 2015, Mr. Kennedy Onyango Otuoma died on 30th August 2017, his body kept in Kirindo Mortuary for 3 weeks. At this period, Mr. Maurice Ochieng Miregi in collusion with Land registrar, illegally transferred the land into his own name on 4th September 2017. That on 30th August 2017, Maurice Ochieng Miregi in collusion with Land Registrar, forged KCB bank Document of a stranger, Jenifer Achola Okello and used the forgery to transfer the land Rusinga/Waware/1100 into Maurice name.
- 9.** The deponent averred that the Land registrar has further acted ultra vires to transfer ownership of Rusinga/Waware/1100 without Succession Process. Further,

that the order of Mandamus upon the Land Registrar to Register the Title Deed in the names of original owners as per the first Registration in the green Card is the remedy to cure the illegal activities by the Registrar. She prayed the court allow the prayers sought.

2nd Respondents' Replying Affidavit

10. The 2nd Respondent filed an affidavit dated 18th November 2025 sworn by Mr. Bosire Edward, the Land Registrar Homa Bay. He deponed that on 3rd March 2014, the Land Rusinga/Waware/1100 was originally commonly registered in names of Dan Otieno Otuoma, Alphonse Okuku Otuoma and Kennedy Onyango Otuoma with each proprietor holding a third share, as recorded in the title deed, and the green card of the same parcel of land. On 14th February 2017, the land Rusinga/Waware/1100 unlawfully devolved to Kennedy Onyango Otuoma, under forged Succession Cause Number 76 of 2015, in Homa Bay High Court, forged letters of Administration of Homa Bay High Court and forged Kenya Gazette all as contained in the annexures of Supporting affidavit by the Applicants. There was no Succession which took place. The estate is still viable for Succession process

with its Title Deed (Certificate of Title) reinstated to the First Registered owners.

11. He stated that he did not oppose the said application noting that the documents in the parcel file and the annexures in the Supporting affidavit vividly indicates that the land was initially registered to three common proprietors who are now all deceased. Further, that the estate would only devolve by way of law of succession, which process has not taken place before any court of law, thus resting and preserving the estate in the names of the original first registered owners prior as in the green card. Any other subsequent registrations remain unlawful unless proved otherwise, which proof is not available within Land records of parcel Rusinga/Waware/1100. He urged the court to allow the application.

2nd Interested Party's Replying Affidavit

12. Maurice Miregi swore an affidavit dated 11th November 2025. He deponed that he was the registered owner of the suit property land reference number Rusinga/Waware/1100 having purchased the same from one Mr. Kennedy Onyango

Otuoma. On 16th January 2017, Mr. Kennedy Onyango Otuoma made a material presentation that him together with one Mr. Justus Odira Akeyo who were introduced to him by a friend as the Personal Representatives and Administrators of the Estate of Henry Otuoma Okudni (deceased) as per the Certificate of Grant issued in Homa Bay High Court Succession Cause Number 128 of 2015. He annexed a copy of the Certificate of Grant. He stated that he did his due diligence and established that indeed as per the said Certificate of Grant dated 23rd November 2015, property land reference number Rusinga/Waware/110 was one of the assets of the deceased and upon which he executed a sale agreement with Mr. Kennedy Onyango Otuoma.

- 13.** He stated that he paid a deposit of the purchase price being Kshs.n180, 000.00 at the time of the execution of the agreement and the balance of Kshs. 400, 000.00 at the time of transfer of interest of land in his favour. It was a term of the agreement that Mr. Kennedy Onyango Otuoma and the Co-administrator were under contractual obligation to take all necessary steps to ensure completion of the agreement. Pursuant to the agreement, Mr. Kennedy Onyango Otuoma

and the Co-administrator fulfilled their contractual obligation and facilitated the process of transfer of interest in land and they gave him a certificate of title for the land reference number Rusinga/Waware/1100 on 4th September 2017 and upon which he cleared the balance of the purchased price being Kshs.400, 000.00.

14. He stated that he was never involved in any transaction(s) that led to the transfer of the land reference number Rusinga/Waware 1100 from the previous owner(s) to Mr. Kennedy Onyango Otuoma. Further, that Mr. Kennedy Onyango Otuoma and the Co-administrator showed him a valid Certificate of Grant duly signed by Justice D.S Majanja as he then was and on reliance on the same he proceeded to purchase the suit property land reference number Rusinga/Waware/1100. He denied being a party to any forgery of any completion documents used to transfer the interest in land in respect the suit property.

15. He urged that the Ex Parte Applicant needs to institute a substantive suit through Plaint as opposed to a Judicial Review where he is cited as a proper party so that the issues raised can be canvassed on merits. Further, that his

certificate of title cannot be cancelled on the basis that the state has agreed to concede that irregularities were done/made in the process leading to the transfer process without investigation done by the investigative urgencies to establish whether or not those irregularities were done and by who. He deponed that the current Notice of Motion is incompetent and the Ex Parte Applicant is looking for an escape route to have the certificate of title cancelled without following the due legal process where fraud must be proved by those who are alleging. He urged the court to dismiss the application.

Applicants' Submissions

- 16.** On whether the succession cause 76 of 2015 or succession cause 128 of 2015 in Homabay high court was used to transfer land Rusinga/Waware/1100, counsel urged that it was not in dispute, from the Parcel File that the land was transferred via a forged Succession Cause No.76 of 2015, the Estate of Dan Otieno Otuoma, Alphonse Okuku Otuoma & Kennedy Onyango Otuoma. However, Succession Cause 128 of 2015 was in the name of a different Estate which is the estate of Henry Otuoma Okundi. The Lands Registered to

Henry Otuoma Okudni were only Rusinga/Waware/738 and Rusinga/Waware/772.

17. He urged that from the Green Card, the suit land has never been registered to Henry Otuoma Okundi thus it would not be succeeded under the same estate of Henry Otuoma Okundi. He urged that if an act or process that led to a title was void from the beginning (e.g., done without proper jurisdiction or through a null process), then the resulting title is considered incurably bad. There is no need for a court order to set it aside; it is a nullity in law.

18. On whether judicial review can address both merit of the case and administrative actions of public office holder acting ultra vires, Counsel urged that the Constitution of Kenya, 2010 has fundamentally changed the landscape by entrenching the right to fair administrative action in Article 23 and 47 and enacting the Fair Administrative Action Act, 2015, which allows review of merits of Public Officer acting outside his administrative limits. He submitted that Judicial review is not only limited to examining the legality, irrationality, and procedural impropriety of the decision-making process, but also it is a legal tool to review the

merits or the soundness of the administrative action of Public office holder.

19. Counsel cited the holding in **Dande & 3 others v Inspector General, National Police Service & 5 others (2023) KESC 40 (KLR)** where the Supreme Court declared that judicial review proceedings brought under the provisions of the Constitution must involve a review of merits. Additionally, he cited **Judicial Service Commission & another v Lucy Muthoni Njora (2021) eKLR and the case of Trusted Society of Human Rights Alliance v Attorney General & 2 others (2012) eKLR.**

20. Counsel urged that the circumstances under which judicial Review orders can be issued were set out in the Ugandan case of **Pastoli vs Kabole District Local Government Canal & others (2008) 2 EA 300.** Further, that an order of mandamus is issued to compel a public body to perform a public duty which is imposed on a person or body of persons by statute, and where that person has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. He cited **Halsbury's Law of England 4th Edition. Vol. 7 p111 para 89** and urged

that revocation as a legal remedy is not available for non-existent forged Succession Cause 76 of 2015, therefore order of mandamus is the available remedy in Law to rectify the mistake by the Land Registrar on land Rusinga/Waware/1100.

21. Therefore, transferring the title deed of the suit property, the 1st Respondent acted in excess of her jurisdiction. Further, the owners were never informed of the transfer of their land, and thus the action of the Respondent was in contravention of the rules of natural justice. He cited the case of **Catherine Chepkemai Mukenyang vs Evanson Pkemei Lomadunyi & another (2002) eKLR** which quoted Halsbury's Laws of England, 5th Edition 2010 Vol G1 at para G39, on the rights to be heard.

22. Counsel posited that an order of mandamus can be used to compel the Registrar of Lands to reinstate a title deed that was cancelled illegally or without due process. This remedy is typically sought through judicial review proceedings in the Environment and Land Court (ELC) when a public body, such as the Land Registrar, acts in excess of its jurisdiction or violates the rules of natural justice. He additionally cited the

case of **Mary Ruguru Njoroge Vs John Samuel Gachuma Mbugua & 4 Others [2014] eKLR** in this regard.

23. Counsel urged that **Article 40(6)** of the Constitution of Kenya and further, stated that the common law doctrine of indefeasibility of title is now subject to Article 40(6) of the Constitution of Kenya. A title to land can be challenged and nullified if it is proven to have been acquired through illegal means, such as fraud, misrepresentation, or an unlawful allocation process. However, an unlawful Title Deed which devolved from owner without the participation of the owner can only be reinstated through Court order. He urged that Rusinga/Waware/1100, from the Land Registry Parcel file, has been proved beyond balance of probability that it was transferred irregularly through forged Succession Cause 76 of 2015; that they pray for Court orders for reinstatement into the names of original registered owners.

24. Counsel submitted that the current ownership question by the Interested Party is a nullity as from the parcel file records, Maurice Ochieng Miregi, the current registered person, used details of strangers, other than himself to transfer land to himself, giving rise to unlawful ownership. He

urged the Court to issue the order of Mandamus to reinstate the Title Deed Rusinga/Waware/1100 to the First Registered owners.

25. “Learned counsel for the Ex Parte Applicant submitted that the judicial review before the court was to deal with irregularities, fraud, forgeries and improprieties running between July 2008 and July 2017. They were committed in the Land Registry. They happened before the 2nd interested party came on to the land. Only 11 September 2025, the High Court of Kenya at Homabay confirmed through a letter that Succession Cause No. 76 of 2015 by which the transfer of the title deed from the original owners to one Kennedy Otuoma was made was a forgery as the learned judge did not sit on the day it was purportedly issued. Also, on 19th September 2025, the Government Printers confirmed that the Kenya Gazette dated 18th May 2025 too was a fraudulent.

26. Counsel submitted it and in the circumstances the title passed to the 2nd Interested Party through the alleged Succession process was impeachable because the estate of the deceased had never undergone succession

proceedings. Further, that the judicial review application before court was for an order of mandamus to reinstate the titles to the original owners. He relied on the case of Republic versus Kisumu County Land Registrar and another [2024] eKLR where an order of mandamus was issued. He urged that the second interested party could not direct the expert applicant the manner in which to approach the court.

2nd Interested Parties' Submissions

- 27.** Learned counsel for the 2nd Interested Party filed submissions dated 9th December 2025 on behalf of the respondents which were succinct and brief. Counsel urged that lawful ownership of land cannot be cancelled by administrative action creating unlawful title deed. He urged that the only lawful title deed is the one in the names of the first registered owner in 2008.
- 28.** Orally, on his part, learned counsel for the 2nd Interested Party submitted that the Notice of Motion before the court was incompetent because the Ex Parte Applicant sought to cancel the title to the suit land on the ground of fraud. He argued that that could only be done under Section 24 of the

Land Registration Act under which a case or suit would be instituted for fraud and in which fraud must be particularized. Similarly, the supporting affidavit alleged collusion on the part of the second interested party but that was a scapegoat because applicant knew the seller was deceased. Therefore, the Ex Parte Applicant by the present proceedings was going around the hurdle of proving fraud which he failed to disclose. He also challenged the actions of the land registrar by arguing that he failed to annex documents to support his argument. He termed it strange for the Land Registrar to easily accept the errors in their office. He submitted that judicial proceedings impugn illegality and impropriety of a statutory body and not cancellation of title.

Analysis and Determination

- 1.** Having carefully considered the application, the law and the submissions of the parties, this court is of the view that the following issues arise for determination, and proceeds to determine them sequentially immediately.

- i) Whether the court can issue the orders for mandamus in the circumstances**

2. The import of the pleadings herein is that the Applicants seek, in a nutshell, a cancellation of title of the parcel known as Rusinga/Waware/1100 which they contend was fraudulently registered in the names of Kennedy Onyango Otuoma and Maurice Ochieng Miregi in collusion with the 3rd Respondent.
3. The manner in which the applicants herein seek to have the title cancelled is through judicial review rather than the more conventional practice of filing a suit by way of plaint. The Respondents essentially support the Judicial Review application. Only the Interested Parties oppose it.
4. Section 26 of the Land Registration Act allows for the impeachment of title through a challenge in court. The courts have time and again discussed the issue of Judicial Review, laying down the tests for orders sought in the process.
5. In **Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR**, Hon. Mativo, J. (as he then was) held: -

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. vs. Canada (Attorney General), and, was also discussed in Dragan vs. Canada (Minister of Citizenship and Immigration). The eight factors that must be present for the writ to issue are:-

(i) There must be a public legal duty to act;

(ii) The duty must be owed to the Applicants;

(iii) 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, unless there was outright refusal; and

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.

6. In Republic v Kenya National Examinations Council ex parte Gathengi & 8 Others Civil Appeal No 234 of 1996

the Court of Appeal cited, with approval, Halsbury's Law of England, 4th Edn. Vol. 7 p. 111 para 89 thus:

“The order of mandamus is of 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."

7. The first port of call is to establish whether the land Registrar has a public duty to cancel the title deed for the land known as Rusinga/Waware/1100. Section 79 of the Land Registration Act provides, inter alia, that the Registrar may rectify the register or instrument presented for registration *in formal matters* (emphasis added) and in the case of errors or mistakes and for purposes of updating the register. Sub-sections 2, 3A and 4 of the said Section read:

(2) No alteration affecting the title of a proprietor may be made pursuant to sub-section (i) without the proprietor's consent unless;

a) The proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or

b) It would for any other reason be unjust for the alteration not to be made.

provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

(3A) A person aggrieved by the decision of the Registrar under this section may apply to the court for any necessary orders.

(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under this Section and without prejudice to the generality of the foregoing, the regulations may provide for:-

- a) The process of investigation including notification of affected parties.**
- b) Hearing of the matters raised; and**
- c) The criteria to be followed in coming up with the decision**

8. Additionally, Rule 92 (2) and (3) as pointed out at paragraph 12 hereinabove, stipulates that;

a) The Registrar shall issue a notice of intention to rectify the register under 79(2) of the Act, in Form LRA 91 set out in the Sixth schedule.

b) An order by a Registrar issued under section 79 of the Act shall be in Form LRA 92 set out in the Sixth Schedule.

9. It follows that the power of the Land Registrar is administrative and limited only to correcting typographical errors or non-material discrepancies. When it comes to rectification and cancellation of titles, such action requires the intervention of the court. Section 80 of the Land Registration Act provides as follows;

“(1) Subject to subsection (2), the court may order the 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.”

(2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or

caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

10. In my humble view, the logical interpretation of the provisions above is that Section 79 governs administrative corrections by the Registrar, while Section 80 vests the power to cancel or amend a title in the Court upon proof of fraud or mistake or as provided by law. Therefore, the registrar has no statutory mandate under section 79 to undertake a cancellation of title without the consent of a registered proprietor, or an order of the court under section 80. The nerve centre of any successful judicial review applications is that it point to the performance of a public duty by the public official and therefore it is legally bound to do. An order of mandamus can only be one directing the public official to do that which he/she ought to have done but has not.

11. It follows that there is no public duty that lay on the land registrar, in the present scenario, that the court can compel the Land Registrar to perform once the registration of the documents was made. He or she had the duty to examine the validity of the registration documents before registration,

exercised due diligence and honesty in finding their legality and then rejected them before registration or accepted them. If he rejected them he had the duty to inform the applicant in writing the reasons for rejection, and that was the point at which judicial review proceedings were applicable to him/her. Beyond there, his was to say, “the horse has bolted”, and he would wait for the consequences of his/her actions, including but not limited to being sued for fraud and negligence, among others.

12. The place of judicial review proceedings in regard to performance of public duties is clear. Such an order by the court for the official to perform the function or duty must conform with the legal authority of that official to carry out such a duty and he/she is found to have either failed to so act, or has acted but in excess of his/her powers or unreasonably. Regarding title to land, judicial review proceedings are not intended to determine the merits of ownership but to review the legality of the decision-making process.

13. In the instant matter, the Applicant’s complaint is substantive and not procedural. As it is based on alleged fraudulent

cancellation of title, the Applicants' best option is to file a suit under section 80 where evidence on fraud, if any, can be adduced and a definitive pronouncement can be made by the Court. The issues of determination of existence or otherwise of fraud fall outside the limited scope of judicial review and actions of land registrars. Therefore, they cannot be resolved through the present proceedings.

14. The power to alter or amend a register in a manner that affects ownership of land is expressly reserved for the Court under Section 80 of the Land Registration Act, 2012, and not for the Registrar acting administratively under Section 79 of the Act. The order of mandamus sought to compel the Land Registrar to cancel the title deed to the suit land would therefore amount to requiring the Registrar to perform an act that lies outside his statutory mandate. In the premises, the Notice of Motion dated 4th November 2025 is not merited.

15. The remaining issue outstanding now in this Judicial Review is the prayer for an order of prohibition against the Interested Parties and Respondent and/or any officer acting under their authority from transferring, charging, or otherwise dealing

with the parcel of land known as Land Rusinga/Waware/1100 in a manner (sic).

16. First, it is instructive as explained above in paragraphs 10, 11 and 12 above that judicial review orders in the nature provided for under Order 53 of the Civil Procedure Rules and even Article 23(3) of the Constitution aim at actions or inactions of public officials. They do not lie against private citizens or public officials whose actions are in their private life or nature. Thus, the prayer for such an order to issue against the Interested Parties is wholly misconceived.

17. Regarding the part of the prayer for an order against the Respondents, it is my humble view that in terms of Order 53 of the Civil Procedure Rules 2010, the alleged actions of the Respondents took place in the years 2015 to 2017. The orders of prohibition ought to have been sought within the six months of the occurrence actions alleged. It is over eight years since the actions were done. The prayer is thus not tenable in the circumstances. In any event, the prayer has been put together as with that which cannot be granted against a private citizen. It is thus declined.

18. The Judicial Review application is not merited and is dismissed.

ii) Who to bear costs

19. Section 27 of the Civil Procedure Act mandate this court to award costs depending on the circumstances of the case.

Herein, each party shall bear its own costs. The file is closed.

20. It is so ordered.

Judgment **dated, signed and delivered virtually via the Teams Platform this 3rd day of February 2026.**

HON. DR. IUR NYAGAKA

JUDGE

In the presence of,

Headmond Kobil Advocate for the Ex Parte Applicant

Advocate for the Respondents (absent)

Boaz Pius Advocate for the 2nd Interested Parties.

1st Interested Party (absent)

