



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLJR NO. E001 OF 2025

JOYCE WAITHERA.....

APPLICANT

VERSUS

DEPUTY COMMISSIONER, DAGORETTI SUB-COUNTY.....1ST

RESPONDENT

CHIEF, RUTHIMITU LOCATION.....2ND

RESPONDENT

JUDGEMENT

1. The applicant seeks Judicial Review Orders of Certiorari, Prohibition and Mandamus against the Respondents arising from summons in respect of **LR Dagoretti/ Ruthimitu/**

T379 hereinafter referred to as the suit property. The orders sought are as follows;

- a) An order of Certiorari to quash summons issued by the Deputy County Commissioner and the Chief relating to the suit property;**
 - b) An order of Prohibition restraining the Respondents from issuing further summons or interfering with the suit property; and**
 - c) An order of Mandamus compelling the Respondents to oversee vacant possession by the Interested Parties.**
2. The applicant depones that the interested parties have since the year 2016 encroached on the suit property and made developments that have interrupted her peaceful occupation of the property. That the Respondents have been intimidating her and harassing her by issuing summons to her with the latest being on 30th October 2024.
3. The Applicant takes issue with the summons on the grounds that the summons are irrational and fly in the face of the

rules of natural justice; that the summons are ultra vires the scope of the Respondents and an over reach. That the Respondents have acted outside their jurisdiction.

4. The sole issue for determination is whether the court should grant the Judicial Review orders sought. Judicial Review is concerned not with the merits of a decision but with the legality of the decision-making process. The recognized grounds for judicial review are illegality, irrationality and procedural impropriety. The Court examines whether the decision maker acted within jurisdiction, observed the rules of natural justice, and complied with the law.
5. The Applicants contend that the Deputy County Commissioner and the Chief have persistently summoned them over matters touching on ownership and occupation of the suit property. Questions of title, occupation and proprietary interests in land fall within the jurisdiction of the Environment and Land Court and subordinate courts established under statute.

6. Administrative officers including Chiefs and Deputy County Commissioners exercise administrative and coordination functions in matters of public order and government administration. They are not vested with jurisdiction over competing proprietary interests in land.
7. Where the officers purport to determine or enforce private land rights outside statutory dispute resolution mechanisms, they act ultra vires and in excess of jurisdiction. Such action is amenable to quashing by an order of certiorari.
8. The Court is therefore satisfied that, to the extent that the impugned summons relate to determination or enforcement of proprietary rights, the same are unlawful and liable to be quashed.
9. On the question of the prohibition orders, an order of prohibition is issued to restrain a public body from continuing proceedings or actions undertaken without or in excess of jurisdiction. In the instant case where the Respondents continue to summon the Applicants over land ownership and possession disputes which are outside their

statutory mandate, prohibition properly lies to restrain further unlawful conduct.

10. However, prohibition cannot restrain lawful administrative action undertaken within statutory authority relating to maintenance of public order and security. The order will therefore be limited to restraining extra jurisdictional involvement in adjudication of land rights.

11. The Applicants seek an order compelling the Respondents to oversee vacant possession by the Interested Parties. An order for vacant possession can only be issued after a matter is heard and a court decree issued. It cannot be attained through administrative action. The prayer for mandamus thus fails.

12. In the result, the Court makes the following orders:

a. An order of Certiorari is hereby issued quashing the summons issued by the Deputy County Commissioner and the Chief relating to adjudication or enforcement of proprietary rights over the suit property.

b. An order of Prohibition is hereby issued restraining the Respondents from issuing further summons or undertaking adjudicative or enforcement action concerning ownership or possession of the suit property outside their statutory mandate.

c. The prayer for Mandamus compelling the Respondents to oversee vacant possession is declined.

d. No orders as to costs

Dated, Signed and Delivered virtually at Kajiado this 5th day of February 2026.

JUDY OMANGE

JUDGE.

IN THE PRESENCE OF:

Mr. Mirugi for the Plaintiff.

N/A for the Applicant.

Peter – Court Assistant.

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