

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
JUDICIAL REVIEW CAUSE NO. E011 OF 2025

**IN THE MATTER OF AN APPLICATION BY PAUL L. KIPLAGAT,
RUEBEN KIPKOSGEI KIMITEI, MARGARET JEPKEMOI KISANG,
BOAZ ROTICH A. LAGAT AND JACOB KIPLAGAT KORIR & 76
OTHERS FOR JUDICIAL REVIEW ORDERS OF CERTIORARI,
MANDAMUS AND PROHIBITION**

AND

**IN THE MATTER OF ARTICLES 27, 40 AND 64 OF THE
CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE LAW REFORM ACT SECTION 8 & 9 AND 14,
CHAPTER 26 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF SECTIONS 8,9 & 14 OF THE COUNTY
GOVERNMENT ACT**

**PAUL L. KIPLAGAT1ST EX-PARTE
APPLICANT**

**REUBEN KIPKOSGEI KIMITEI2ND EX-PARTE
APPLICANT**

MARGARET JEPKEMOI KISANG3RD EX-PARTE APPLICANT

BOAZ ROTICH A. LAGAT4TH EXPARTE APPLICANT

**JACOB KIPLAGAT KORIR5TH EX-PARTE
APPLICANT**

(Suing for and on behalf of all Outspan Trading Centre Plot Nos.1-81 Owners)

VERSUS

THE COUNTY ASSEMBLY OF

UASIN GISHU COUNTYRESPONDENT

JUDGMENT

1. By a Notice of Motion dated 9th May 2025 expressed to be brought under **Sections 8 & 9 of the Law Reform Act, Cap. 26 and Order 53 of the Civil Procedure Rules**, the Applicants sought for the following orders:

- 1) **That the Honourable Court be pleased to grant an order of Certiorari to remove into this Court and quash the decision and/or resolution made on 25th April 2025 of the Respondent which converts Ex-parte Applicants' private properties to public land being Outspan Trading Centre Plots Nos. 1-81 acquired legally and for value in total disregard to the law.**

- 2) **That the Honourable Court be pleased to grant an order of Mandamus commanding the Respondent through the County Land Registrar, Uasin Gishu County to cancel any entries in the land register that has altered ownership on the suit properties and caused the same to reflect the proper names of the Ex-parte Applicants.**

- 3) **That this Honourable Court be pleased to grant an order of Prohibition prohibiting the Respondent through the County Land Registrar from altering the land register by removing the names of the Ex-parte Applicants as bona fide absolute proprietors.**

4) That costs of this application be provided for.

2. The application is supported by the grounds on the face of it and Affidavit sworn by **Paul L. Kiplagat**, the 1st Applicant of even date. The grounds inter alia are that the properties are private land registered in the names of the ex-parte applicants; that the applicants were never invited to be heard, no notice was served upon them and hence were condemned unheard and that the said applicants have already developed the plots
3. In the Affidavit, Paul L. Kiplagat stated that he swears the same on his own behalf and is also duly authorized by the rest of the applicants to swear the same on their behalf. He deposed that he is the registered owner of the parcel of land number Outspan Trading Centre Plot No.52 alongside his brother Peter Mburu Ng'ang'a. He annexed as PK1a)-b) copies of title deeds and official search. That their plot is one of the 81 plots affected by the decision of the County Assembly of Uasin Gishu intending to convert it to a public utility without any colour of right and without involving them. He added that his Co-applicants are also registered owners of other several plots ranging from Nos. 1-81, others with allocation letters, yet to collect their titles deeds. He annexed as PLK2a)-P) copies of title deed searches, allotment letters and list of members
4. He maintained that they followed the due process to obtain registration, having applied, approved, registered and paid the entire necessary fee and continue to date to pay rates to the County Government of Uasin Gishu. He annexed as PLK3 bundles of receipts. He added that with respect to the said

plots, apart from being issued with titles deeds some Applicants have developed theirs.

5. He deposed that on 4th April 2025, they wrote to the County Assembly Clerk, Uasin Gishu County, to stop a motion presented by some County Assembly members to convert their plots to public plots without their knowledge and consent. He annexed as PLK4 copies of their letters. He deposed that they later learnt of the resolution of the said County Assembly having passed the said motion on 25th March 2025 affecting their plots hence this motion. He annexed as PLKa)-c) copies of the motion, report and Hansard proceedings of the Assembly
6. The 1st Applicant deposed that the RIM map used by County Assembly for Pioneer/Ngeria Block 1(EATEC) 1226 is a blank one contrary to what is on the ground and that the true position is that plot 1226 has been divided as per the maps annexed obtained from the survey office, Nairobi and certified on 9th April 2024 and that these are the principal documents that were used to obtain the various title deeds given to their members. He reiterated that some of their members have allotment letters and continue to pay rates to the County Government of Uasin Gishu.
7. He deposed that Outspan Trading Centre Plots 1-81 resulted from Pioneer/Ngeria Block 1(EATEC) 1226 as indicated by RIM map though wrongly described as plot 1126 for reasons that the adjacent plots are 1227 and 1225. He averred that the County Assembly of Uasin Gishu should have moved to the Environment and Land Court to challenge the same because it is only a court of law that can cancel the title deeds already issued. He

contended that the Respondent therefore acted ultra vires having allocated to themselves power belonging to a different arm of government.

8. The 1st Applicant urged that a change of user is necessary to change their title deeds into leasehold to correct the error. He maintained once someone has been allocated land, having properly followed all due process, he or she is entitled to the full protection of the law and urged that in the circumstances, there is need to quash the Respondent decision in order to protect their properties.
9. He deposed that he and his Co-applicants stand to suffer irreparable damage, harm and loss unless the orders sought are granted and that the Respondent will suffer no prejudice at all if the Application is allowed. The Application is also supported by the Affidavit of **Ezekiel Wanga Masake** sworn on 10th June 2025 and since the matters deposed therein echo the ones deposed by the 1st Applicant, there is no need to reproduce the same.
10. By dint of the fact that the Respondent though served chose not to participate in the proceedings, the Application stands as unopposed.

Submissions

11. The Application was canvassed by way of written submissions. The Applicants through their Counsel Christopher Mitei of Arap Mitei & Co. Advocates filed submission dated 30th July 2025 whereas Ezekiel Wanga Masake also filed submissions dated 14th October 2025 through his Counsel Ms. Muthanwa & Co. Advocates.

12.Counsel for the ex-parte Applicants gave a brief background of the proceedings that took place in the County Assembly of Uasin Gishu that led to the adoption of the Report whose resolutions is the subject matter of these proceedings. He submitted that the Respondent never acted within the laws, exceeded its mandate and breached the provisions of the law or tenets of natural justice. Counsel urged that in the instant case the Applicants have shown and demonstrated how the decision or act complained of is tainted with illegality, irrationality and procedural impropriety and submitted that the subject properties are private land registered in the names of the Applicants who were never invited to be heard hence were condemned unheard. Counsel added that the Applicants have already developed their plots and further that no notice was ever served on the Applicants.

13.Counsel submitted that the law expressly requires the Applicants to demonstrate and prove that there was such gross and unreasonableness (*sic*) in the decision taken or act done that no reasonable authority addressing itself to the facts and the law before it would have made such a decision and that the decision complained of is clearly a defiance of logic and acceptable moral standard. Counsel urged that the same has been demonstrated in the present case whereas the Applicants were never invited to be heard on matters concerning their actual and registered pieces of land. Counsel maintained that it clearly evident that there was no rigorous observance of the rules of natural justice and procedural fairness in making of the decision that is subject to the complaint.

14.Counsel further submitted that the Applicants express losses that they will have to suffer if such order of Certiorari, Mandamus and Prohibition are not

granted. Counsel observed that they state that the properties are private and registered in their names and they were never invited to heard and that they were condemned unheard. He reiterated the contents of the Affidavit of Paul K. Kiplagat in this regard.

15. Counsel argued that in curtailing abuse of power by authorities, parliament did not intend that powers it grants to authorities should be exercised on the basis of irrelevant considerations or for improper purposes or bad faith, unreasonable, unfairly or contrary to the legitimate expectations of the subject. Counsel urged that power so exercised is ultra vires, null and void for derogating from the ordained legislative purpose or intent. On the submission on ultra vires Counsel relied on the holding inter alia in **Civil Application No. 1769 of 2004, R v Ministry of Planning & Another Ex-Parte Professor Mwangi Kimenyi** and several other cases in that regard.

16. In regard to grounds for granting judicial review, Counsel submitted that the broad grounds on which the Court exercises its judicial review jurisdiction are now well established and settled and were reiterated in the in the Uganda case of **Pastoli v Kabale District Local Government Council and Others (2008) C2** and **an Application by Bukoba Gymkhana Club (1963) EA 479** which held that the for an application for judicial review to succeed, it must show that decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

17. Counsel urged that proof has been furnished before this Court in support of misconceived supposition (*sic*) that the concerned Uasin Gishu County Assembly acted illegally, irrationally or with procedural impropriety.

Counsel maintained that the Application presently before this Court meets the threshold for grant of judicial review orders since it seeks to challenge the decision making process and in this regard, he relied on **Republic vs. Judicial Service Commission Ex-parte Pareno [2004] KLR 2203** and the Court of Appeal decision in **Municipal Council of Mombasa v Republic a& Umoja Consultants Ltd Civil Appeal No. 185 of 2001**.

18. Counsel also relied on **Republic vs. Kenya Revenue Authority Ex-parte Yaya Towers Limited [2008] eKLR** on the purpose of the remedy of judicial review and urged that in keeping with this valuable jurisprudence, this Court ought to grant a judicial review remedy in the present case, considering that the concerned County Assembly of Uasin Gishu never did all that could be expected of it to fulfil public duty and that any such remedy is necessary as it would cause administrative chaos and public inconvenience.

19. In conclusion, Counsel urged that the Applicants herein have demonstrated candidly as to what prejudice, damage or loss they have to suffer on account of the Respondent if the order of Certiorari, Mandamus and Prohibition are not granted. Counsel submitted that the orders sought only affect the cited plots; 1-81 and will not affect in any way the public utilities on the said plots. Counsel maintained that public utilities are identifiable and clearly earmarked on the ground.

20. In his submissions, Counsel for Ezekiel Wang'a Masake submitted that it is clear how Ezekiel Wang'a obtained the property. He followed due process. That the County Assembly resolution was therefore ultra-vires, irregular and illegal and an attempt use powers which the Assembly does not have

because of the following reasons; the affected parties were not called for public participation; the Assembly discussed a sizeable size of the population without their input; the county assembly passed a resolution without the input of the County Government; the Assembly exceeded its legislative mandate by passing a resolution that is against the constitutional right to own property; The Assembly is not suited to discuss and pass resolutions involving private land which is governed by the Land act; the resolution purporting to order the relevant government agencies to cancel privately owned title is illegal and improper.

21.Counsel further submitted that in the Constitution, Public Land is well defined under Article 62 whereas Private land is also well defined under Article 64. That from the title document held by Ezekiel Wanga Masake, he hols the land registered under a freehold tenure and he is the absolute prpprietor and land registered as such cannot be decided upon by the County Assembly of Uasin Gishu. That the procedings of the Assembly are therefore null and void.

22.Lastly Counsel cited **Section 24(a) and 25 of the Land Registration Act** and submitted that the said sections were reiterated in the case of **Nzioka & 5 Others v Kioko & Another [2024] KEELC 459 KLR.**

Determination

23.Having appreciated the pleadings on record, the only issue for determination is

Whether the Applicants have made out a case for the grant of the orders sought.

24. Article 47(1) of the Constitution provides that;

Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

25. Similarly, Section 4 (1) of the Fair Administrative Action Act provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

26. Section 9 of the Fair Administrative Action Act provides for the procedure for judicial review as follows: -

“(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

(2) The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been

exhausted, direct that Applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4)Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the Applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5)A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”

27.In order to succeed in this suit, against the Respondents, the Applicants have to prove that its case falls within the parameters that settled in the case of **Pastoli v Kabale District Local Government Council & Others, (2008) 2 EA 300**, that:

“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: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also, Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR).

Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the

subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph “E”.

Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876).”

28.In the case of **Republic v Attorney General & 4 others Exparte Diamond Hashim Lalji and Ahmed Hasham Lalji [2014] eKLR** the court stated that:

“Judicial review applications do not deal with the merits of the case but only with the process. In other words, judicial review

only determines whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. It follows that where an Applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such a matter and will leave the parties to resort to the normal forums where such matters ought to be resolved.

29. Section 7 of the Fair Administrative Action Act, 2015 provides for the institution of judicial review proceedings as follows: -

“(1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to–

(a) A court in accordance with section 8; or

(b) A tribunal in exercise of its jurisdiction conferred in that regard under any written law.

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if–

(a)The person who made the decision–

(i)Was not authorized to do so by the empowering provision;

(ii)Acted in excess of jurisdiction or power conferred under any written law;

(iii)Acted pursuant to delegated power in contravention of any law prohibiting such delegation;

(iv)Was biased or may reasonably be suspected of bias; or

(v)Denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;

(b)A mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

(c)The action or decision was procedurally unfair;

(d)The action or decision was materially influenced by an error of law;

(e)The administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the Applicant;

(f)The administrator failed to take into account relevant considerations;

(g)The administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;

(h)The administrative action or decision was made in bad faith;

(i)The administrative action or decision is not rationally connected to–

(i)The purpose for which it was taken;

(ii)The purpose of the empowering provision;

(iii)The information before the administrator; or

(iv)The reasons given for it by the administrator;

(j)There was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;

(k)The administrative action or decision is unreasonable;

(l)The administrative action or decision is not proportionate to the interests or rights affected;

(m)The administrative action or decision violates the legitimate expectations of the person to whom it relates;

(n)The administrative action or decision is unfair; or

(o)The administrative action or decision is taken or made in abuse of power.

30.The Supreme Court in the case of **Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment)** held that under **Article 50(2)** of the **Constitution** procedural fairness in the administration of justice involved the fair hearing rule that required a decision maker to inter alia afford a person an opportunity to be heard before making any decision affecting his/her interests.

31.The High Court in **Britam General Insurance Limited v Ukwale Agnes Ndungu [2019] eKLR** applied the dicta of the Supreme Court of India in **Sangram Singh v Election Tribunal Kotah 1955 AIR 425** that emphasized that the principle of natural justice requires that;

“Men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”

32.Justice Odunga (as he then was) explained in the case of **Republic v Commission on Administrative Justice & 2 others Ex parte Michael Kamau Mubea [2017] eKLR** the importance of an affected party being accorded an opportunity to be heard as follows:

“112.In my view, reference to hearing the other side must have been with respect to oral representation since I do not see how a decision affecting a person can be made without affording that person an opportunity to present his case either orally or by in writing in light of the provisions of Article 47 and 50 of the Constitution. However, the law is clear that where a tribunal decides to hear one party then it must hear all the parties.”

33.The consequence of breach of the rules of natural justice **Nancy Musili v Joyce Mbete Katisi [2018] eKLR** is the denial of the right to be heard that renders any decision made null and void ab initio.

34.**Section 11** of the **Fair Administrative Action Act** provides for orders in proceedings for judicial review as follows: -

“(1)In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order–

(a)Declaring the rights of the parties in respect of any matter to which the administrative action relates;

(b)Restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an Applicant;

(c) Directing the administrator to give reasons for the administrative action or decision taken by the administrator;

(d) Prohibiting the administrator from acting in a particular manner;

(e) Setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

(f) Compelling the performance by an administrator of a public duty owed in law and in respect of which the Applicant has a legally enforceable right;

(g) Prohibiting the administrator from acting in a particular manner;

(h) Setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;

(i) Granting a temporary interdict or other temporary relief; or

(j) For the award of costs or other pecuniary compensation in appropriate cases.”

35. In the present case, as the court has already herein observed, this Application is unopposed and in this regard, the complaints raised by the Applicants against the Respondents and the same have not been denied rebutted and or

controverted. Having considered the Application in light of the statute and case law as herein above summarized, I am satisfied that the Application has met the threshold of a judicial review and further that the Respondents were not at all accorded an opportunity to be heard which is a basic tenet of the rules of natural justice, that the Respondents acted ultra vires their mandate and therefore proceeded irregularly. In this regard, I find merit in their Application and the same is now hereby allowed as follows;

- i. That an order of Certiorari be and is now hereby issued quashing the decision and/or resolution of the County Assembly of Uasin Gishu made on 25th April 2025 which converts Ex-parte Applicants' private properties to public land being Outspan Trading Centre Plots Nos. 1-81 acquired legally and for value in total disregard to the law.**
- ii. That an order of Mandamus be and is now hereby issued commanding the County Assembly of Uasin Gishu through the County Land Registrar, Uasin Gishu County to cancel any entries in the Land Register that has altered ownership on the suit properties and caused the same to reflect the proper names of the Ex-parte Applicants.**
- iii. That an order of Prohibition be and is now hereby issued prohibiting the County Assembly of Uasin Gishu through the County Land Registrar, Uasin Gishu from altering the Land Register by removing the names of the Ex-parte Applicants as bona fide absolute proprietors.**

iv. Costs in the cause

Read dated and Signed at ELDORET on 26th February 2026

E. OMINDE

JUDGE