



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

JUDICIAL REVIEW MISCELLANEOUS NO. E001 OF 2024

BETWEEN

REPUBLIC APPLICANT

VERSUS

THE COUNTY GOVERNMENT OF NYANDARUA.....1ST RESPONDENT

COUNTY GOVERNMENT OF NYANDARUA,

COUNTY ASSEMBLY..... 2ND RESPONDENT

AND

RIFT VALLEY WATER SERVICES BOARD.....INTERESTED PARTY

AND

NYAKANJA WATER & SANITATION COMPANY LIMITED (FORMERLY

NYAKANJA WATER PROVIDER SOCIETY) EX PARTE APPLICANT

RULING

1. The applicant herein moved the court through a Notice of Motion dated the 8th day of October 2024. It was brought under sections 1A, 1B, & 98 of the Civil Procedure Act, Order 51 Rule 3 of the Civil Procedure Rules. The applicant is seeking the following orders:

- a) This honourable court does issue an order directing the Deputy Registrar of this honourable court to execute all documents necessary to transfer the property known as Title Number Nyandarua/Ol Joro Orok Salient/2555 currently registered in the names of Amos Wamithi Mwangi (ID 10823778). Daniel Macharia Kimundu (ID 6353499) and Felicity Wangeci (ID 7094972) (Trustees of Nyakarianga/Kanguo Water project) on behalf of Felicity Wangeci to the *ex parte* applicant.

- b) This honourable court to issue an order compelling the County Chief Land Registrar at Nyandarua to register the transfer of property known as Title Number Nyandarua/Ol Joro Orok Salient/2555 in the name of the *ex parte* applicant and to issue a title deed accordingly.
 - c) Costs of this Application.
 - d) This honourable court be pleased to make such further or other orders as it may deem fit and to grant.
2. The application was premised on the following grounds:
- a) The *ex parte* applicant filed this instant petition for judicial review against the Respondents herein in Nakuru. The matter was subsequently transferred to the Naivasha High Court because it involved Nyandarua County, which was then within the court's jurisdiction.
 - b) On 14th February 2024, Justice R. Mwongo delivered a judgment in favour of the *ex parte* Applicant, granting the orders sought, and the decree extracted was served upon all the parties.
 - c) Subsequent to the judgment, certain individuals claiming to be members of the now-defunct Nyakanja Water Services Provider Society filed an application against the *ex parte* Applicant. This application led to the issuance of a stay of execution of the judgment dated 14th February 2024, thereby halting the court-set compliance timeline.
 - d) The aforesaid application has since been withdrawn, and the *ex parte* applicant has undertaken the requisite measures to comply with the Court's directions as stipulated in the judgment.
 - e) Despite these efforts, Ms Felicity Wangeci, an official and co-proprietor of a certain asset belonging to the now-deregistered Society, has willfully refused and neglected. and/or ignored to execute the necessary transfer documents to vest ownership of the property in the name of the Water Company, as ordered by the Court.
 - f) The refusal by the Trustee continues to impede the fulfilment of the court's judgment within the prescribed timeframe, thereby frustrating the *ex parte* applicant's efforts to comply and undermining the authority of this honourable court
 - g) This is despite being well aware of the Court's directions and several demands being issued to her.

- h) The court has the jurisdiction to compel compliance with its orders to ensure justice is served and its authority upheld.
 - i) The matter involves community assets and services, critical to the community, which continue to be affected by the non-compliance.
 - j) The prolonged delay jeopardizes the efficient operation of the ex parte applicant and undermines the public interest in ensuring the effective provision of water and sanitation services.
 - k) In light of the foregoing, it is only just and fair that the prayers sought in the application be allowed.
3. The respondent opposed the application on the following grounds:
- a) The title of the said application does not indicate in what capacity I am being introduced into these proceedings, as the parties involved have been
 - b) clearly identified and described both in the title and body of the application.
 - c) The case herein involves several parties, and of interest is one entity described as Nyakanja Water Sanitation Company Limited, formerly known as Nyakanja Water Services Provider Society.
 - d) The ex parte applicant is seeking to enforce the judgment dated 14th February, 2024, in favour of the ex parte applicant and whose terms are clearly spelt out in the decree.
 - e) The entity known as Nyakarianga/Kanguo Water Project is a public group comprised of many members and was not a party to the proceedings herein.
 - f) One of the trustees in the aforesaid title deed, Daniel Macharia Kimundu, is also deceased.
 - g) Members of Nyakarianga/Kanguo Water Project have not made any resolution to have the parcel of land, which we hold as trustees, transferred to the entity known as Nyakanja Water & Sanitation Company Limited.
 - h) The instant application is thus totally misplaced and a complete misinterpretation of the judgment entered herein, as it only relates to the parcel of land held in the names of Nyakanja Water Services Provider Society and not the entity known as Nyakarianga/Kanguo Water Project.
 - i) I therefore pray for the application to be dismissed with costs to me.
4. The ex parte applicant's approach is incorrect. In order to enforce a court judgment against a party, the party must have been involved in the proceedings. In determining who is a

necessary party to a suit, Devlin, J., in **Amon v Raphael Tuck & Sons Ltd (1956) 1 All E. R. 273** and cited with approval in the case of **Pizza Harvest Limited v Felix Midigo (2013) eKLR**, in which it was held at p. 286-287 that:

What makes a person a necessary party? It is not, of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately ...the Court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

[Emphasis added]

5. Felicity Wangeci should have been named as a party in the proceedings that resulted in the judgment the applicant wants to enforce. The court might have conclusively decided whether she owned the property as a trustee of the Nyakarianga/Kanguo Water project. It is unreasonable to try to enforce a judgment against someone who was not part of the case. This would be a breach of the principle of natural justice that no party should be condemned unheard. In **Mbaki & Others V. Macharia & Another (2005) 2 EA 206**, at page 210, the Court of Appeal stated as follows:

The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

6. This application is, therefore, lacking merit and is accordingly dismissed with costs.

Delivered and signed at Nyandarua, this 19th day of March 2026

KIARIE WAWERU KIARIE

JUDGE