



Republic v National Land Commission & 12 others; M/S Molerise Innovative Services Limited (Ex parte Applicant) (Environment and Land Judicial Review Case 4 of 2018) [2026] KEELC 1744 (KLR) (23 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 4 OF 2018
EM WASHE, J
MARCH 23, 2026**

IN THE MATTER OF: AN APPLICATION BY MOLERISE INNOVATIVE SERVICES FOR JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI-AND-

IN THE MATTER OF: REVIEW OF GRANTS AND DISPOSITION ON L.R. NO. ELDORET MUNICIPALITY BLOCK 14/2191 PART OF ELDORET MUNICIPALITY BLOCK 14/11 (PREVIOUSLY L.R. NO. 10324)-

AND-

IN THE MATTER OF: THE DECISION/DETERMINATION OF THE NATIONAL LAND COMMISSION DATED 15.03.2018

-AND-

IN THE MATTER OF: ARTICLES 47,50,201(D), 227(I) AND 232(I) (B) OF THE CONSTITUTION OF KENYA

-AND-

IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2012

-AND-

IN THE MATTER OF: THE LAND REGISTRATION ACT NO. 3 OF 2012

AND

IN THE MATTER OF: THE COUNTY GOVERNMENT ACT, 2012 AND IN THE MATTER OF: THE LAW REFORM ACT, CAP 26 AND ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010 CAP 21 LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND



NATIONAL LAND COMMISSION	1 ST RESPONDENT
CHIEF LAND REGISTRAR	2 ND RESPONDENT
LAND REGISTRAR, UASIN GISHU COUNTY	3 RD RESPONDENT
COUNTY GOVERNMENT OF UASIN GISHU	4 TH RESPONDENT
MARIUS WAHOME GITONGA	5 TH RESPONDENT
MARY NYAWERA NGARE	6 TH RESPONDENT
OLIVER LANGAT PTALLAH	7 TH RESPONDENT
LILIAN CHEPKOECH LAGAT	8 TH RESPONDENT
GEOFFREY NDUNG’U MURILA	9 TH RESPONDENT
CAROLINE CHEBET KIGEN	10 TH RESPONDENT
DANIEL KIPRONO	11 TH RESPONDENT
EUNICE WANGARE GITAU	12 TH RESPONDENT
PHILLIP KIPKEMOI YEGO	13 TH RESPONDENT

AND

M/S MOLERISE INNOVATIVE SERVICES LIMITED EX PARTE APPLICANT

JUDGMENT

1. The Ex-parte Applicant herein known as Molerise Innovative Services Limited did file an Amended Notice of Motion dated 03.04.2025 (hereinafter referred to as “the present JR”) against the 1st to 13th Respondents herein seeking the following Orders; -
 - i. That this Application be certified urgent for hearing on a priority basis.
 - ii. That this Honourable Court be pleased to issue Judicial Review Orders of Certiorari to bring into this Honourable Court and quash; -
 - a. The entire proceedings and determination of the National Land Commission, the 1st respondent herein, as set out in the hearing Report on Review of Grants and Disposition of Public Land over L.R. No. Eldoret Municipality Block 14/2191 dated 15.03.2018.
 - b. The National Land Commission’s determination to regularize the purported titles (12 in number) held by the Interested Parties and its further directive to the Chief land Registrar to issue proper and correct titles to the Interested Parties as listed at page 3, 4 and 5 of the determination dated 15.03.2018.
 - iii. That the costs of this Application be provided for.
2. The grounds in support of the prayers sought hereinabove are contained in the body of the present JR together with the Further Statutory Statement and the Verifying Affidavit therein and can be summarized as follows; -



- i. The Ex-parte Applicant is dissatisfied and aggrieved by the determination of the 1st Respondent pronounced 15.03.2018.
 - ii. The Ex-parte Applicant was the lawful and recognized allottee of the property known as Eldoret Municipality Block 14/2191 (hereinafter referred to as “the suit property”)
 - iii. The Ex-parte Applicant did comply with the terms and conditions provided in the Letter of Allotment relating to the suit property.
 - iv. The Ex-parte Applicant did state that the determination by the 1st Respondent pronounced on the 15.03.2018 cancelling its Letter of Allotment was unlawful, unprocedural and bad in law.
 - v. The Ex-parte Applicant did plead that the 1st Respondent herein did lack the jurisdiction to review the legality of the Letter of Allotment issued in its favour on its own motion on the 15.03.2018.
 - vi. According to the Ex-parte Applicant, the powers of the 1st Respondent to review the dispositions issued to the public on its own motion did lapse on the 02.05.2017.
 - vii. In addition to the above, the Ex-parte Applicant did plead that the 1st Respondent failed to appreciate and consider the fact that the ownership of the suit property was already being litigated in the proceedings known as Eldoret Environment & Land Court Case No. 235 Of 2015 and Eldoret Case No. 369 of 2015 which were before the Superior Courts for determination.
 - viii. In essence therefore, the proceedings and determination of the 1st Respondent pronounced on the 15.03.2018 was purely biased, lacked jurisdiction, flawed in procedure and should therefore be quashed as sought in the present JR.
 - ix. Lastly, the Ex-parte Applicant did plead that the actions by the 1st Respondent to determine the ownership of the suit property was ultra-vires as it usurped the jurisdiction of the Environment and Court as established under Article 162 (2) (b) of *the Constitution* and Section 13 of the Environment & Land Court Act.
3. The present JR was indeed served on all the Respondents herein.
 4. The 1st Respondent upon service of the present JR did oppose the same through Grounds of Opposition dated 15.10.2018.
 5. In the Grounds of Opposition dated 15.10.2018, the 1st Respondent sought to rely on the following grounds to oppose the present JR; -
 - i. The present JR was fatally defective for non-compliance with the provisions of Order 53 of the Civil Procedure Rules, 2010.
 - ii. The present JR did not meet the laid down threshold for Judicial Review jurisdiction and is otherwise an abuse of the court process.
 - iii. The dispute contained in the present JR was about the ownership of the suit property which can only be adjudicated by a Court of Law either in its original jurisdiction or appellate jurisdiction.
 - iv. In conclusion, the 1st Respondent did plead that the determination pronounced on the 15.03.2018 having been made pursuant to the provisions of Article 68 (C) (V) of *the Constitution*, 2010 and Section 14 of the *National Land Commission Act*, then any remedies



thereafter would be pursuant to Article 162 of *the Constitution*, 2010 as read with Section 13 of the *Environment and Land Court Act*.

6. The 2nd and 3rd Respondents also did file their Grounds of Opposition dated 17.07.2025 in answer to the present JR.
7. The grounds pleaded by the 2nd and 3rd Respondents in their Grounds of Opposition were as follows; -
 - i. The 2nd and 3rd Respondents did plead that the Ex-parte Applicant had not outlined the procedure which the 1st Respondent had failed to comply with prior to the pronouncement of the determination dated 15.03.2018.
 - ii. In addition to the foregoing, the 2nd and 3rd Respondents did plead that the issue raised by the Ex-parte Applicant in the present JR did relate to the ownership of the suit property between the Ex-parte Applicant and the 5th to 13th Respondents herein.
 - iii. As such, the dispute raised in the present JR by the Ex-parte Applicant was outside the ambit of Judicial Review proceedings and cannot be ascertained through this proceeding.
 - iv. The 2nd and 3rd Respondents did state that the Ex-parte Applicant herein was granted a fair hearing before the 1st Respondent having been allowed to file a Memorandum in response to the Complaints received therein.
 - v. Consequently, the Ex-parte Applicants response and views were indeed considered during the preparation of the 1st Respondents determination pronounced on the 15.03.2018.
 - vi. The 2nd and 3rd Respondents did reiterate that the 1st Respondent had the relevant jurisdiction to hear and determine any complaints that were raised regarding public property within the Republic.
 - vii. According to the 2nd and 3rd Respondents, the Ex-parte Applicant never raised any objection regarding the 1st Respondents jurisdiction and therefore had duly submitted to the Jurisdiction of the 1st Respondent willingly.
 - viii. As regards the proceedings before the 1st Respondent being Sub Judge, the 2nd and 3rd Respondents did plead that the Ex-parte Applicant did not disclose the existence of any proceedings or tender any evidence to the 1st Respondent during its participation in the proceeding before the 1st Respondent.
 - ix. The 2nd and 3rd Respondents did admit that any issues of fraud, collusion and/or acquisition of ownership documents through acts of corruption were to be heard and determined in a Court of law because the 1st Respondent did not have the appropriate Jurisdiction.
 - x. In conclusion, the 2nd and 3rd Respondents were of the view that the Ex-parte Applicant had the right to file an Appeal against the determination pronounced on the 15.03.2018 by the 1st Respondent but not file the present JR.
8. The 4th Respondent in the present JR did not file any response thereof to the present JR.
9. The 5th and 6th Respondents did file a joint Replying Affidavit dated 23.04.2025 in response to the present JR.
10. The 5th and 6th Respondents did plead the following facts in opposition of the present JR; -



- i. According to the 5th and 6th Respondents, the present JR was frivolous, vexatious, fatally defective and did lack legal substance hence an abuse of the Court process.
 - ii. The 5th and 6th Respondents did plead that the Letter of Allotment issued in favour of the Ex-parte Applicant over the suit property had been procured through deceit, fraud, forgery and misrepresentation.
 - iii. The 5th and 6th Respondents did state that the suit property had been lawfully sub-divided into various sub-divisions namely LR.NO.Eldoret Municipality Block 14/2230- 2240.
 - iv. It is on the basis of this lawful sub-division that the 5th and 6th Defendants were allotted and registered are the lawful owners of LR.NO.Eldoret Municipality Block 14/2230,2231 AND 2232.
 - v. The 5th and 6th Respondents therefore did support the 1st Respondents determination pronounced on the 15.03.2018 cancelling the Ex-parte Applicant's Letter of Allotment and directing the Chief Land Registrar to issue titles to the beneficiaries of the sub-divisions known as Eldoret Municipality Block 14/2230- 2240.
 - vi. The 5th and 6th Respondents did plead that there were other proceedings namely Eldoret Elc Case No. 235 Of 2015, Eldoret Elc Case No. 369 Of 2012, Eldoret ELC No. 25 Of 2022 And Judicial Review Misc. Application No. 17 Of 2018 which were still on going and therefore the present JR was an abuse of the Court process.
 - vii. The 5th and 6th Respondents did further aver that the 1st Respondent had the mandate under *the Constitution*, 2010 to manage, make recommendations and investigate land injustices within the entire Republic.
 - viii. Based on this power, the 1st Respondent had the mandate to undertake Reviews of any disposition of public land and make recommendations as contained in the determination pronounced on the 15.03.2018.
 - ix. In conclusion, the 5th and 6th Respondents did state that the 1st Respondents determination made on 15.03.2018 was lawful and had followed proper procedure hence binding.
11. The 7th Respondent upon service of the present JR did file a Replying Affidavit dated 23.07.2025 in opposition of the same.
12. In the Replying Affidavit filed by the 7th Respondent, the present JR was opposed on the following grounds; -
- i. The 1st Respondent did have the jurisdiction to undertake a review of any disposition of public land pursuant to Article 67(2) (e) of *the Constitution*, 2010 as read with Section 14 of the *National Land Commission Act*.
 - ii. The 7th Respondent did state that a Complaint against the Ex-parte of Applicant was filed by the 4th Respondent herein.
 - iii. The Complaint against the Ex-parte Applicant by the 4th Respondent did relate to the disposition of public land through the Letters of Allotments issued in his favour.
 - iv. It is on the basis of this Complaint by the 4th Respondent that the 1st Respondent did review the Ex-parte Applicant's Letters of Allotment and upon following due process including giving a



fair hearing to the Ex-parte Applicant, the determination pronounced on the 15.03.2018 was made.

- v. The 7th Respondent did insist that at the time of the 1st Respondent reviewing the Ex-parte Applicant's Letters of Allotment, it had the powers and jurisdiction to undertake the said exercise.
 - vi. In essence, the 7th Respondent did plead that the Ex-parte Applicant was attempting to Appeal against the determination of the 1st Respondent pronounced on the 15.03.2018 through the back door in the present JR.
 - vii. In conclusion, the 7th Respondent sought the dismissal of the present JR with costs.
13. The 8th, 9th, 10, 11th and 12th Respondents did not file any response to the present JR despite proper service.
 14. Lastly, the 13th Respondent did file a Replying Affidavit dated 18.07.2025 in response to the present JR.
 15. In the Replying Affidavit dated 18.07.2025, the 13th Respondent did oppose the present JR on the following grounds; -
 - i. First and foremost, the 13th Respondent did state that the 1st Respondent had the relevant jurisdictions and powers under Article 67 (2) (b) of *the Constitution*, 2010 as read with Section 14 of the National Land Commission to review all grants and dispositions relating to public land.
 - ii. According to the 13th Respondent, the determination by the 1st Respondent made on the 15.03.2018 was pursuant to a Complaint lodged against the Ex-parte Applicant by the 4th Respondent.
 - iii. The 13th Respondent did insist that the Complaint lodged by the 4th Respondent was done within the period of 5 years which the 1st Respondent had the powers to review all grants and disposition relating to public land.
 - iv. The 13th Respondent did confirm that the Ex-parte Applicant was given a fair hearing before the 1st Respondent while undertaking the hearing of the Complaint filed the 4th Respondent as provided by statute.
 - v. In essence, the 13th Respondent did deny the allegation by the Ex-parte Applicant that the powers of the 1st Respondent to review any disposition and/or grant relating to public land had lapsed at the time of hearing the 4th Respondent's Complaint.
 - vi. The 13th Respondent did aver that the Letters of Allotment held by the Ex-parte Applicant were of questionable character due to multiple alterations and inconsistent Survey References hence the cancellation by the 1st Respondent in its determination pronounced on the 15.03.2018.
 16. All the responses filed by the Respondents herein were duly served on the Ex-parte Applicant.
 17. The Ex-parte Applicant then did file a Further Affidavit dated 14.11.2025.
 18. In the Further Affidavit dated 14.11.2025, the Ex-parte Applicant did reiterate the following facts; -
 - i. Based on the Statutory Statement, the Verifying Affidavit and the annexures therein, the grounds upon which the present JR was premised had been proved.



- ii. In addition to the above, the Ex-parte Applicant did reiterate that it was the lawful allottee of the suit property based on the Letters of Allotment issued by the Commissioner of Lands.
19. The Court did direct that the present JR would be canvassed by way of written submissions.
20. In compliance, the Ex-parte Applicant did file its final submissions on the 14.11.2025 while the 1st Respondent did file its submissions on the 20.01.2026.
21. In addition, the 5th and 6th Respondents did file their submissions dated 06.11.2025, the 7th Respondent did file his submissions dated 30.11.2025 and lastly, the 13th Respondent did file his submissions on the 11.12.2025.
22. The Court in this matter has been called to exercise its power provided under Judicial Review proceedings.
23. In the case of *Municipal Council Of Mombasa-versus- Republic (ex-parte Umoja Consultants Limited)* Nairobi Civil Appeal No.185 of 2007 (2002) eKLR, the Court did state the following; -
- “The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at.
- Did those who make the decision have the power i.e the jurisdiction to make it.
- Were the persons affected by the decision heard before it was made.
- In making the decision, did the decision maker consider relevant matters or did they take into account irrelevant matters.
- These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider.
- Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether there was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.
24. Based on the above finding, there are 4 crucial elements that a Court in determining a matter brought under Judicial Review must be constantly alive to.
25. These 4 elements can generally be identified as follows: -
- a. Whether there was jurisdiction
 - b. Whether the decision was arrived at procedurally
 - c. Whether those affected had an opportunity to be heard
 - d. Whether the decision maker did rely on relevant or irrelevant matters.
26. Based on the guidance provided in the authority hereinabove, this Court will now proceed to identify the issues for determination as follows: -
- Issue No.1- Was There A Complaint Filed Against The Letter Of Allotment Issued To The Ex-parte Applicant Herein?
- Issue No.2- Was There Any Resolution By The 1st Respondent To Review The Ex-parte Applicant's Disposition And If Yes, Was The Procedure Followed?



Issue No.3- Was The Ex-parte Applicant Given A Fair Hearing By The 1st Respondent Before The Determination Pronounced On The 15.03.2018?

Issue No.4- Did The 1st Respondent Take Into Consideration The Relevant Issues In Making Its Determination Pronounced On The 15.03.2018?

Issue No.5- Is The Present Jr Merited Or Not?

Issue No.6- Who Bears The Costs Of The Present Jr?

27. The Court having duly identified the above-mentioned issues for determination, the same will now be discussed herein.

Issue No.1- Was There A Complaint Filed Against The Letter Of Allotment Issued To The Ex-parte Applicant Herein?

28. The first issue for determination is to establish the manner in which the proceedings against the Ex-parte Applicant herein were initiated before the 1st Respondent.
29. According to the Ex-parte Applicant's pleadings, there is no mention of how the proceeding before the 1st Respondent were initiated.
30. In the Grounds of Opposition filed by the 1st Respondent, it was also not pleaded how the proceedings against the Ex-parte Applicant were initiated.
31. What the 1st Respondent did plead is that it had powers under Article 68 (c) (v) of *the Constitution*, 2010 as read with Section 14 of the *National Land Commission Act* to pronounce the Determination dated 15.03.2018 and any subsequent remedies would then be canvassed through the provisions of Article 162 of *the Constitution*, 2010 and Section 12 of the Environment and *Land Act*.
32. The 2nd and 3rd Respondents through their Grounds of Opposition dated 15.10.2018 did not give any details of the Complaint filed against the Ex-parte Applicant that did result to the determination made on the 15.03.2018 by the 1st Respondent.
33. However, the 2nd and 3rd Respondent did acknowledge that the 1st Respondent had the jurisdiction and powers to investigate and make recommendations on any disposition and/or Grant that was touching on public land.
34. The 5th and 6th Respondents in their Replying Affidavit dated 23.04.2025 did not indicate the Complaint that was filed against the Ex-parte Applicant before the 1st Respondent over the suit property.
35. The 5th and 6th Respondents did state that they were the lawful registered owners of some of the subdivisions that had been created out of the suit property.
36. The 5th and 6th Respondents therefore did plead and submit that the 1st Respondent had the mandate and jurisdiction to investigate, review and/or make recommendations regarding any disposition or Grant related to public land.
37. According to the 5th and 6th Respondent, the determination made by the 1st Respondent on the 15.03.2018 against the Ex-parte Applicant was lawful and procedural.
38. The 7th Respondent in his Replying Affidavit dated 23.07.2025 did state that the Complaint filed against the Ex-parte Applicant had been raised by the 4th Respondent.



39. According to the 7th Respondent, the Complaint is what invoked the 1st Respondent's jurisdiction to review the Ex-parte Applicant's disposition over the suit property and made the recommendations contained in the determination pronounced on the 15.03.2018.
40. The 7th Respondent was of the view that the 1st Respondent did have the jurisdiction to hear and determine the 4th Respondent's Complaint against the Ex-parte Applicant as at the time when the same was determined on the 15.03.2018.
41. Lastly, the 13th Respondent did state that indeed the 1st Respondent was couched with the jurisdiction to review all Grants and disposition of public land.
42. As such, the 13th Respondent did plead that the Complaint which initiated the proceedings before the 1st Respondent against the Ex-parte Applicant had been initiated by the 4th Respondent.
43. The 13th Respondent did also insist that at the time the Complaint by the 4th Respondent was filed before the 1st Respondent against the Ex-parte Applicant, the five years' period within which the 1st Respondent had powers to review any Grant and/or disposition over public land was still in force.
44. The 13th Respondent did further plead that all the necessary procedures in hearing the Complaint against the Ex-parte Applicant were following including a fair hearing and therefore the determination pronounced on the 15.03.2018 by the 1st Respondent was procedural and lawful.
45. Based on the above scenario, it is clear according to the pleadings by the 7th and 13th Respondents that the Complaint which had initiated the proceedings before the 1st Respondent resulting to the determination pronounced on the 15.03.2018 was filed by the 4th Respondent.
46. However, the 4th Respondent herein in its Grounds of Opposition dated 15.10.2018 did not plead that there was any Complaint against the Ex-parte Applicant filed before the 1st Respondent.
47. The Determination pronounced on the 15.03.2018 by the 1st Respondent speaks of a different position.
48. According to the Background section contained in the determination pronounced on the 15.03.2018, the same reads as follows; -

“The Commission received a Complaint from Dr. Oliver Langat Ptallah and others that their houses on the above land were being demolished by the County Government that was claiming that the land is a public utility land.”
49. In this above caption, it is clear that the Complaint before the 1st Respondent was between the 7th Respondent and other house owners on the suit property and the 4th Respondent herein.
50. The 1st Respondent in the determination pronounced on the 15.03.2018 was not considering any Complaint filed by the 4th Respondent against the Ex-parte Applicant.
51. The dispute before the 1st Respondent was between the 7th Respondent together with the other house owners on the suit property against the 4th Respondent.
52. This position has been reaffirmed by the 1st Respondent's response to the present JR.
53. In the 1st Respondent's Grounds of Opposition dated 15.10.2018, there was no mention or referral of any Complaint filed against the Ex-parte Applicant over the suit property before the 1st Respondent.



54. In essence, the allegation by the 7th and 13th Respondents that the 4th Respondent had filed a Complaint against the Ex-parte Applicant which was the basis of the determination pronounced on the 15.03.2018 is erroneous and not factual.
55. The correct position is that the Complaint that was being considered by the 1st Respondent was between the 7th Respondents together with the other house owners against the 4th Respondent.
56. In conclusion therefore, this Court is of the considered view and finding that the determination pronounced on the 15.03.2018 by the 1st Respondent was not in relation to any Complaint filed against the Ex-parte Applicant's disposition over the suit property.

Issue No.2- Was There Any Resolution By The 1st Respondent To Review The Ex-parte Applicant's Disposition And Is Yes, Was The Procedure Followed?

57. The second issue for determination is the applicable law or procedure that the 1st Respondent applied in arriving at the determination pronounced on the 15.03.2018 against the Ex-parte Applicant herein.
58. As stated in Issue No.1, it is clear that the determination by the 1st Respondent was not premised on any Complaint filed against the Ex-parte Applicant by the 4th Respondent herein.
59. All the Respondents did plead and submit that the 1st Respondent had powers to review all dispositions or Grants relating to public land based on the provisions of Article 68 (c) (v) of *the Constitution*, 2010 as read with Section 14 of the *National Land Commission Act*.
60. In essence, the Respondents were of the view that the 1st Respondent did have the jurisdiction and mandate to review any or all the dispositions and/or Grants relating to public land on its own motion.
61. The Ex-parte Applicant on the other hand did acknowledge that indeed the 1st Respondent had the powers and jurisdiction to review any or all dispositions and/or grants relating to public land on its own motion.
62. However, the Ex-parte Applicant was of the considered view that this powers and jurisdiction to review any or all dispositions and/or grants relating to public land on its own motion did expire on the 02.05.2017.
63. Consequently therefore, any review of the dispositions and/or grants relating to public land beyond the 02.05.2017 was unprocedural and/or without jurisdiction hence the determination pronounced on the 15.03.2018 by the 1st Respondent annulity in law.
64. To begin with, this Court as stated earlier did find that there was no Complaint filed before the 1st Respondent against the Ex-parte Applicant by the 4th Respondent has pleaded by the 7th and 13th Respondents.
65. Having eliminated that manner of invoking the 1st Respondent's jurisdiction and mandate, the Court will now evaluate and confirm whether the 1st Respondent did initial any review of the Ex-parte Applicant's disposition on its own motion capable to resulting to the determination pronounced on the 15.03.2018.
66. The 1st Respondent in its Grounds of Opposition dated 15.10.2018 did not mention any Notice of Review to the effect that it did undertake any review of the Ex-parte Applicant's disposition over the suit property.



67. The importance of the Notice to Review served on the Ex-parte Applicant's is to disclose the actual date when the same was made and thereafter enable the Court confirm whether it was within the period granted in law to actually exercise those powers or not.
68. Be as it may, the powers by the 1st Respondent to review any or all Grants and/or disposition relating to public land for purposes of establishing their propriety or legality is provided under Section 14 (1) of the [National Land Commission Act](#), No. 5 of 2012 which reads as follows; -
- “Subject to Article 68 (c) (v) of [the Constitution](#), 2010, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a Complaint by the National Government or County Government, a community or an individual, review all the grants or disposition of public land to establish their propriety or legality.”
69. Based on this proviso, it is clear that the powers and/or jurisdiction to review all or any grant or disposition of public land by the 1st Respondent was to begin on 02.05.2012 and lapse on 02.05.2017.
70. In essence, the 1st Respondent's powers and jurisdiction to review any Grant and/or disposition of all public land did end on the 02.05.2017.
71. The Respondents in the present JR and in particular the 1st Respondent was under a duty pursuant to Section 107 of the [Evidence Act](#), Cap 80 to provide this Court with the actual date of when the Ex-parte Applicant was served with a Notice of Review of his disposition relating to the suit property.
72. By doing so, the Court would have pronounced itself on whether the exercise by the 1st Respondent was within the prescribed time of five years provided under Section 14 (1) of the [National Land Commission Act](#), No. 5 of 2012 or not.
73. The only document that has been tabled before this Court is the determination pronounced on the 15.03.2018.
74. Unfortunately, this determination by the 1st Respondent was outside the prescribed period of five years provided under Section 14 (1) of the [National Land Commission Act](#), No. 5 of 2012.
75. As such, the determination pronounced on the 15.03.2018 by the 1st Respondent was without jurisdiction and annulity ab initio.
76. In proceedings which are devoid of statutory jurisdiction, whatever procedure which is applied therein cannot cure the fatality of the entire exercise.

Issue No.3- Was The Ex-parte Applicant Given A Fair Hearing By The 1st Respondent Before The Determination Pronounced On The 15.03.2018?

77. The third issue in the present JR is whether the Ex-parte Applicant was granted a fair hearing by the 1st Respondent before the determination pronounced on the 15.03.2018 was arrived at.
78. According to Ex-parte Applicant, the proceeding before the 1st Respondent was flawed and annulity for the reason that the period of five years provided under Section 14 (1) of the [National Land Commission Act](#), No. 5 of 2012 had lapsed.
79. The Ex-parte Applicant is of the view that whether there was a Complaint by any party or a Review by the 1st Respondent on its own motion, the lack of statutory jurisdiction beyond the 03.05.2017 did render any hearing on the legality or propriety of public land dispositions and/or grants annulity.



80. The 7th and 13th Respondents were of a different view on the ground that the Ex-parte Applicant did participate in the proceeding before the 1st Respondent without any objection and hence had admitted to its jurisdiction permitting it to review his disposition over the suit property.
81. The determination pronounced on the 15.03.2018 does indeed confirm that the Ex-parte Applicant did attend a hearing before the 1st Respondent during the Complaint filed by the 7th Respondent and the other house owners against the 4th Respondent.
82. However, the determination pronounced on the 15.03.2018 does show the Ex-parte Applicant attending as an Interested party who had a conflicting interest with the 7th Respondent and the other house owners over the suit property.
83. The determination pronounced on the 15.03.2018 did does not indicate that the Ex-parte Applicant was attending a hearing on the review of his disposition over the suit property.
84. If the Ex-parte Applicant was attending the hearing of any review of his disposition over the suit property, then there are various procedures that were to be followed prior to the said hearing for this Court to appreciate that he was given a fair hearing.
85. To begin with, the 1st Respondent must comply with the provisions of Section 14 (3) of the [National Land Commission Act](#), No. 5 of 2012 which provides as follows; -
- “In the exercise of the powers under Sub-Section (1), the commission shall give every person who appears to the commission to have an interest in the grant or disposition concerned, a notice of such a review and an opportunity to appear before it and to inspect any relevant document.”
86. The significant aspect of this proviso is that the 1st Respondent is required to issue a Notice of Review to any party or every party who appears to have an interest on the property whose grant and/or disposition is under review.
87. This being an express provision of the law, the 1st Respondent was under an obligation to provide the Notice of Review issued to the Ex-parte Applicant informing it of their intention to undertake a hearing of its disposition and or Grant over the suit property.
88. Unfortunately, the 1st Respondent or any other Respondent did not present any Notice of Review served on the Ex-parte Applicant relating to the suit property prior to the hearing undertaken by the 1st Respondent.
89. In the absence of this crucial document provided under Section 14 (3) of the [National Land Commission Act](#), No. 5 of 2012, the hearing undertaken by the 1st Respondent cannot be said to be a fair hearing even if the attendance of the Ex-parte Applicant was recorded.
90. In addition to the above, this Court has already made a finding that the 1st Respondent’s jurisdiction under Section 14 (1) in the [National Land Commission Act](#), No. 5 of 2012 had since lapsed by effluxion of time.
91. In essence, the 1st Respondent did not have the jurisdiction to hear and determine issues of propriety or legality of any disposition and/or grants relating to public land after the five-year period granted under Section 14 (1) of the [National Land Commission Act](#), No. 5 o 2012.
92. The question then that needs to be answered is whether the attendance of the Ex-parte Applicant as indicated in the proceedings contained in the determination pronounced on the 15.03.2018 did confer



the 1st Respondent with the necessary jurisdiction to determine the legality and/or propriety of its disposition over the suit property?

93. This question was answered by the Supreme Court of Kenya in the proceeding known as IN The Matter Of Advisory Opinions Under Article 163 Of *The Constitution* (constitutional Application No.2 OF 2011 at Paragraph 30 where the Court did find as follows; -

“a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavours to discern or interpret the intentions of Parliament, where the legislation is clear and there is no ambiguity.”

94. In other words, the Court was of the finding that Jurisdiction has to be founded on law and not conduct of the parties in a proceeding.
95. It is therefore this Court’s finding that even though the Ex-parte Applicant did attend and testify before the 1st Respondent, the lack of jurisdiction to undertake any review of disposition of any public land upon the expiry of Section 14 (1) of the *National Land Commission Act*, No. 5 of 2012 cannot validate the procedural impropriety.
96. In conclusion therefore, this Court is of the finding that the Ex-parte Applicant was never given a fair hearing before the 1st Respondent in the proceeding resulting to the determination pronounced on the 15.03.2018 and in addition thereof, the 1st Respondent did not have the statutory jurisdiction to conduct any hearings about the legality and propriety of dispositions and/or grants relating to public land after the period of five years provide under Section 14 (1) of the *National Land Commission Act*, No. 5 of 2012.

Issue No.4- Did The 1st Respondent Take Into Consideration The Relevant Issues In Making Its Determination Pronounced On The 15.03.2018?

97. The fourth issue is whether the 1st Respondent in making its determination pronounced on the 15.03.2018 did take into consideration the relevant issues regarding the dispute before it.
98. Based on the Courts findings in Issues No. 1, 2 and 3 hereinabove, it is clear that the 1st Respondent did not consider the issue of whether it did have jurisdiction under Section 14 (1) of the *National Land Commission Act*, No. 5 of 2012 or not.
99. Secondly, the 1st Respondent did not consider whether there was a valid Complaint filed by the 4th to 13th Respondents herein for purposes of initiating any proceedings to evaluate the legality or propriety of the Ex-parte Applicant’s disposition over the suit property.
100. Thirdly, the 1st Respondent did not consider where a Notice of Review under Section 14 (3) of the *National Land Commission Act*, No. 5 of 2012 had been duly served on the Ex-parte Applicant regarding the review of its disposition over the suit property.
101. In the Court’s view, this were crucial and relevant issues that the 1st Respondent was under a statutory obligation to ensure that they were considered prior to undertaking any hearing and/or determining the legality or propriety of the Ex-parte Applicant’s disposition.
102. Be as it may, the 1st Respondent in the determination pronounced on the 15.03.2018 did not make any consideration of the above crucial issues.
103. As such, this Court is of the considered view and finding that the 1st Respondent did not consider the most crucial issues prior to making its determination pronounced on the 15.03.2018.



Issue No.5- Is The Present Jr Merited or Not?

104. Based on the findings made in Issue No. 1, 2, 3 and 4 hereinabove, this Court is of the considered view and finding that the present JR is merited.

Issue No.6- Who Bears The Costs Of The Present JR?

105. The general rule on costs is that the same are awarded to the winning party.

106. In the present JR before Court, the Ex-parte Applicant is the winning party and is therefore awarded costs payable by the 1st to 13th Respondents jointly and severally.

Conclusion

107. In conclusion, the Court hereby makes the following Orders in determination of the present JR; -

- a. The Amended notice of motion dated 3Rd Of April 2025 is merited.
- b. An Order Of certiorari be and is hereby issued quashing The Proceedings Undertaken By The 1st Respondent as regards the Legality And/or Propriety Of The Ex-parte Applicant's Disposition Over The Property Known As Lr.no. Eldoret Municipality Block 14/2191 And/ or The Resultant Recommendations issued in the Determination Pronounced On The 15.03.2018.
- c. The Ex-parte Applicant Is Granted The Costs Payable By The 1st To 13th Respondents Jointly And Severally.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 23RD DAY OF MARCH,2026.

EMMANUEL.M. WASHE

JUDGE

IN THE PRESENCE OF:

Court Assistant: Brian

Counsel for the Ex-Parte Applicant: Mr. Njuguna

Counsel for the Respondents: Ms. Rotich for 7th respondent

Mr. Omboto for 5th Respondent

Mr. Omabwa holding brief for Mr. Kibanga for 13th Respondent

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