



Republic v County Land Registrar & 9 others; Mlambo & another (Suing as the defunct Chairman and Treasurer respectively of the Executive Committee of Kishamba 'B' Group Ranch) (Ex parte Applicant) (Environment and Planning Judicial Review E001 of 2025) [2026] KEELC 1827 (KLR) (Environment and Land) (25 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1827 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND PLANNING JUDICIAL REVIEW E001 OF 2025
EK WABWOTO, J
MARCH 25, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY LAND REGISTRAR & 9 OTHERS & 9
OTHERS RESPONDENT**

AND

**BENSON MWAKINA MLAMBO & FLORENCE MALANDI (SUING
AS THE DEFUNCT CHAIRMAN AND TREASURER RESPECTIVELY
OF THE EXECUTIVE COMMITTEE OF KISHAMBA 'B' GROUP
RANCH) EX PARTE APPLICANT**

***(IN THE MATTER OF:- AN APPLICATION BY BENSON MLAMBO MWAKINA FOR
LEAVE TO APPLY FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS
AND IN THE MATTER OF: CONSTITUTIONAL RIGHTS PURSUANT TO ARTICLES
21(1), 23(1), (f), 25(c), 27(1), 40(1), 40(2), 47(1), 50(1) & 165(6) OF CONSTITUTION
OF KENYA AND IN THE MATTER OF: SECTIONS 7(2), (3), (4) & (6), 8, 9, 10, 11, 15,
30(1), (2), (4) OF COMMUNITY LAND ACT, NO. 27 OF 2016 OF THE LAWS OF KENYA
AND IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES 2010)***



JUDGMENT

Background

1. By a Chamber Summons dated 27th November 2025 brought under Order 53 Rule 1 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*, the Exparte Applicants sought for leave to apply for the Judicial Review orders of certiorari, prohibition and mandamus as directed to the Respondents which leave was subsequently granted on 2nd December 2025.
2. Upon being granted leave, the Exparte Applicants filed the substantive motion dated 3rd December 2025 in which they sought the following reliefs:-
 - i. That an Order of Certiorari do issue to remove to the High Court and quash the decision of the Community Land Registrar – Taita Taveta County of 12th November, 2025 of issuing a Certificate of Registration for Kishamba ‘B’ Community.
 - ii. That an Order of Certiorari do issue quashing the Certificate of Registration of Kishamba ‘B’ Community issued on the 12th November 2025;
 - iii. That a peremptory Order of Prohibition do issue and directed at the Community Land Registrar – Taita Taveta County (2nd Respondent) and/or its servants, agents and/or subordinates, forbidding and prohibiting the 2nd Respondent from holding the meeting scheduled for 19th December 2025 at Mwambiti Stadium at 10:00a.m and any other subsequent meeting involving Kishamba B and parcel known as Sagalla/Kishamba ‘B’/1.
 - iv. That an Order of Mandamus directed at the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Respondents to discharge their statutory obligation as spelt out in the *Community Land Act* No. 27 of 2016 and the *Physical and Land Use Planning Act* Cap. No. 13 of 2019 and the Physical and Land Use Planning (Development Control Enforcement) Regulations 2021 AND all other relevant laws by holding the necessary public participation meetings and issuing the appropriate notices and/or advertisements as provided for under the law.
 - v. That the grant of leave herein do operate as a stay of any actions by the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Respondents in regard to the suit property until the determination of this Judicial Review proceedings or until further Orders are made by this Honourable Court.
 - vi. That costs of and incidental to the application be provided for.
 - vii. That such further or other relief as the Honourable Court may deem just and expedient to grant.
3. The application was opposed by the Respondents. The 1st, 2nd, 3rd, 5th, 6th, 7th and 9th Respondents filed a Replying Affidavit sworn by Joel Mwinzi, the County Land Registrar which affidavit was sworn on 19th January 2026 while the 4th, 5th and 8th Respondents filed a Replying Affidavit sworn by Jimmy Mtawa the County Chief Officer for Lands, Physical Planning, Mining and Urban Development of Taita Taveta County which affidavit was sworn on 3rd March 2026. The 10th Respondent, Kishamba B Community filed a Replying Affidavit sworn by George Mwandoto Soghe a Member of the Community Land Management Committee on 24th February 2026.



The Exparte Applicants' case

4. The application for Judicial Review was based upon the grounds set out in the Notice of Motion dated 3rd December 2025; the Statutory Statement and the accompanying Verifying Affidavit. It was the Exparte Applicant's case that this Court gave directions in Voi ELCLC No. 4 OF 2024 John Kivue & Others =Versus Kishamba 'B' Group Ranch & 6 Others on 25th September 2025 to the effect of the establishment of the Community Land for Sagalla/Kishamba 'B'1 from the Group Representatives Act (now repealed). The judgment has been appealed from as many members of the group who did not agree with its outcome.
5. It was contended that the 1st and 2nd Respondent's without any colour of right and in violation of the provisions of the [Community Land Act](#) have unilaterally issued a certificate of registration for an entity known as Kishamba 'B' Community. An advert has been placed for a meeting for 19th December 2025. The same being null and void.
6. It was further contended that the 7th Respondent in collaboration with the 2nd Respondent is undertaking actions surrounding the subject property and the group ranch which pose a great danger for the land to be acquired by land grabbers and other non members.
7. It was further the Exparte Applicant's contention that immediately after the judgment was executed, one George Mwandoto Soghe proceeded to illegally write to the 2nd Respondent using Kishamba B Group Ranch letterhead calling for a meeting. No meetings have been held and no Community Land Management Committee members have been elected.
8. According to the Exparte Applicants, the 1st Respondent has no powers whatsoever on its own to issue a certificate of registration for a community that has not been selected by all its members. The members of Kishamba 'B' Group Ranch stand to suffer colossal financial loss and loss of their ancestral home by having their collective property invaded by non members and thus the actions of the 1st and 2nd Respondents ought to be declared illegal, null and void and the decision of the Respondents in issuing the Certificate of Registration for Kishamba 'B' Community be quashed.
9. Learned Counsel Mr. Olendi also made oral submissions in support of the Exparte Applicant's case, he added that no due diligence was conducted prior to the said registration and urged the court to grant the reliefs sought.

The case of the 1st, 2nd, 3rd, 5th, 6th, 7th and 9th Respondents

10. It was stated that the application is a clear violation of Section 7 of the [Civil Procedure Act](#). It is an attempt to get interim orders forestalling the SGM and AGM of the members of Kishamba B Ranch as directed in the implementation of the judgment of the court in Voi ELCLC No. 4 of 2024.
11. It was further stated that the genuine members of Kishamba B Community are the owners of the suit parcel. The judgment of the Court issued several consequential orders. From the said judgment the Applicants were found to have no merit in representation of the Kishamba Group Ranch and as such this application is defective. The Applicants have not come to court with clean hands.
12. Written submissions dated 4th March 2026 were also field in support of the application. Counsel submitted on two issues being res judicata and whether the Applicants have proven the said illegalities by the Community Land Registrar.
13. It was argued that several consequential orders were issued in Voi ELCLC No. 4 of 2024 and hence therefore the Applicants are seeking to have a second bite of the cherry on issues that had already been



determined and thus delay the administration of justice. The said judgment has not been reviewed nor set aside.

14. On whether the Applicants have proven the said illegalities by the Community Land Registrar, it was argued that the actions of the Land Registrar were necessitated by the 90 days' timeline provided by the Court in its judgment. The list of members was provided including the name of George Soghe was is Member No. 1697. Consequently, meetings have already taken place and an attempt to stop the election has already been overtaken by events and further litigation must therefore come to an end.
15. Learned State Counsel Mr. Penda also made oral submissions and urged the Court to dismiss the application with costs.

The case of the 4th, 5th and 8th Respondents

16. It was stated that pursuant to the Judgment delivered by this Court in Voi ELCLC No. 4 of 2024, the Exparte Applicant filed Mombasa Court of Appeal No. E208 of 2025 seeking inter alia stay of execution of the decree of the superior court pending the hearing and determination of the appeal.
17. It was also stated that pursuant to the delivery of the judgment by this court, the Respondents vide a Notice dated 12th November 2025 convened a meeting of all the members of Kishamba B Community for the purposes of electing Community Land Management Committee. A meeting was held on 19th December 2025 and the members of Kishamba B Group Ranch elected a Community Land Management Committee. A meeting was held on 16th January 2026 wherein members of Kishamba B Group Ranch resolved to convert the registered Community Land to private land.
18. It was contended that this application is an abuse of the Court process. It seeks on one hand to overturn the decree of the Court and on the other hand challenge the implementation of the judgment.
19. It was further contended that the Applicants having elected to file an appeal are barred from initiating this Judicial Review Application.
20. Learned Counsel Mr. Chebon submitted on their behalf and urged the Court to dismiss the application.

The case of the 10th Respondents

21. It was their case that the application is incompetent as the Exparte Applicants lacks legal capacity to sustain these proceedings after the commencement of the [Community Land Act](#) on 21st September 2016 by reason of Article 63 (4 – 5) of [the Constitution](#) and Section 47 of the [Community Land Act](#).
22. It was contended that the Judgment and decree of this Court in Voi ELCLC No. 4 of 2024 premising the application herein which is final and binding on the Exparte Applicants found them to be improperly in office without authority to deal or manage the Community land herein. The proceedings are in breach of Sections 39 – 41 of the [Community Land Act](#) which provide that the Applicant must exhaust all the hierarchical dispute resolution mechanisms. The Applicants have not demonstrated exhaustion to the same.
23. It was further contended that there is a pending application for stay at Mombasa COACA No. E208 of 2025 and further this Court had declined to grant them a stay. The Applicants are guilty of forum shopping and the instant application is an abuse of the Court.
24. It was stated that there is no breach or violation of the judgment of this court and that the application is unmerited.



25. Learned Counsel Mr. Litoro also submitted on behalf of the 10th Respondent and argued that this is the third attempt to stay the judgment of the Court delivered on 25th September 2025 in respect to Voi ELCLC No. 4 of 2024. He also added that the certificate of registration for Kishamba B was procedurally issued.
26. Learned Counsel Mr. Mburu appearing also for the 10th Respondent urged the Court to dismiss the application on the grounds that the application is mischievous and the Applicants are on a fishing expedition.

Analysis and Determination

27. The Court has considered the application for judicial review, the responses filed submissions made by the parties and is of the view that the following are the salient issues for consideration herein:-
 - i. Whether these proceedings are res judicata.
 - ii. Whether the Exparte Applicants have made a case for grant of the Orders sought.
28. I shall now proceed to address the said issues sequentially and in that order.
29. The doctrine of “res judicata” is provided for under section 7 of the *Civil Procedure Act* in that:

“No court shall, try, any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or issue in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
30. As stated, the elements that must be proved before a court may arrive at the conclusion that a matter is res judicata include the following:-
 - a. There is a former judgment or order which was final.
 - b. The judgment or order was on merit.
 - c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties.
 - d. There must be between the first and the second action identical parties, subject matter and cause of action.
31. The Respondents attacked the suit for being res judicata for the reasons that the issues raised had already been determined in the judgment of the Court in Voi ELCLC No. 4 of 2024. It was also the Respondents contention that the Applicant had sought to stay the said judgment but was unsuccessfully.
32. Having considered this application it is noteworthy that while some of the issues raised in the said application could have been determined in the previous suit, this application was triggered by events that arose post judgment or towards the implementation of the judgment of the court delivered on 25th September 2025. Judicial review, by its very nature, is concerned with the legality of subsequent administrative conduct, and where such conduct gives rise to a fresh grievance, it constitutes a distinct cause of action.



33. The Supreme Court in the case of John Florence Maritime Services Ltd & Another =Versus= Cabinet Secretary Transport & Infrastructure & 3 Others (Petition 17 of 2015) (2021) KESC 39 (KLR) (Civ) (6 August 2021) (Judgment) clarified that res judicata does not apply where subsequent events give rise to a fresh cause of action.
34. Accordingly, the Court finds that the plea of res judicata is inapplicable, and the proceedings are properly before this Court.
35. On the second issue as to whether the Exparte Applicants have made a case for the grant of the judicial review orders sought, it is noteworthy that the Exparte Applicants have sought for an order of certiorari to quash the Certificate of Registration of Kishamba 'B' Community issued on the 12th day of November 2025, an order of prohibition prohibiting the meeting that was scheduled for 19th December 2025 and an Order of Mandamus directed at the Respondents to discharge their statutory obligation as spelt out in the [Community Land Act](#); [Physical and Land Use Planning Act](#) and other relevant statutes.
36. Judicial review is defined by the Black's Law Dictionary 9th Edition as a court's power to review the actions of other branches or levels of government or inferior tribunals on their factual and legal findings.
37. The purpose of judicial review is to ensure that public bodies do not exceed their mandate and carry out their duties in a manner not detrimental to members of the public. In Republic vs Chesang M/S RM & others exparte Paul Karanja Kamange & others (2017) eKLR, the court observed that judicial review is meant to uplift the quality of public decision-making process by ensuring the citizen get civilized governance by upholding the values of fairness, reasonableness and objectivity, in the conduct of the management of public affairs and to curb arbitrariness or abuse of power. In SDA Church (E.A) Ltd vs P.S Ministry of Nairobi Metropolitan Development & another (2014) eKLR, the court held that judicial review stems from the doctrine of ultra vires and rules of natural justice and how gown like the biblical mustard seed to branches of illegality, irrationality, impropriety and has become the most potent enforcer of [the constitution](#) and rule of law
38. The legal landscape of judicial review in Kenya has been fundamentally reshaped by the Supreme Court. The landmark decision of Communication Commission of Kenya & 5 Others =Versus= Royal Media Services Limited & 5 Others (2014) eKLR and Edwin Harold Dande & 3 Others =Versus= British American Investments Co. (K) Ltd & Another (2023) eKLR, the Court elevated judicial review from a mere common law discretionary remedy to constitutional right and the court is permitted to engage in a merit review.
39. Certiorari remains the primary tool for nullifying illegal administrative acts. The Supreme Court in the Dande Case (2023) affirmed that Certiorari will be granted where an administrative body acts without jurisdiction or in a manner that is procedurally unfair.
40. In the landmark case of Republic –vs- Kenya National Examination Council Ex-parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR where the Court of Appeal stated inter alia:

“That an order of certiorari can only quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction or where the rules of natural justice are not adhered to or any other reasonable cause. It is trite law that the remedy of judicial review is not concerned with the merits of the case, but the decision – making process. In order for an applicant to succeed in an application for judicial review,



he must satisfy the court that a public officer has acted procedurally, that his decision was unreasonable and that the impugned decision was illegal...”

41. In the instant case, the Applicants argues that the have sought to have the decision of the Community Land Registrar Taita Taveta of 12th November 2025 of issuing a Certificate of Registration for Kishamba ‘B’ Community quashed for the reasons that the same was done unilaterally and contrary to the law and further that the Community Land Registrar overstepped its mandate by assigning a name to the Community which is a prerogative of the Community Land Management Committee under Section 7(6) of the *Community Land Act* No. 27 of 2016.
42. From the evidence that was availed to this court, it is evident that the Judgment delivered by this court in Voi ELCLC No. 4 of 2024 directed the Respondents to undertake and comply with all statutory obligations set out in *Community Land Act* to register, adjudicate, demarcate, survey, division and allocation of portions to the members of Kishamba B Group Ranch within 90 days. In compliance with this order, the 1st Respondent received an application dated 12th November 2025 for the recognition and registration of an interest in community land which was through form CLA. The application was annexure ‘BN3’ of the 1st Respondent’s affidavit. The same was accompanied by *the Constitution* of Kishamba B Community and a list of its registered members with their personal identification particulars. There was no objection on the choice of the name from the members of Kishamba B Community and no evidence of any objection has been demonstrated.
43. No credible evidence was tendered demonstrating procedural impropriety or illegality. The Applicants’ contention that the Registrar acted unilaterally is not substantiated by evidence demonstrating exclusion, lack of participation, or statutory breach. The Applicants have failed to demonstrate any procedural defect or jurisdictional error.
44. In view of the foregoing, the said registration having been done in compliance of the judgment of this court delivered on 25th September 2025 and further there being no evidence specifically demonstrating that the 1st Respondent acted contrary to the law, it is the finding of this court that the order of certiorari cannot issue in the manner sought as the threshold for the grant of certiorari has not been met.
45. In respect to prohibition order sought, it is noteworthy that prohibition is a prospective remedy. In *Kenya National Examinations Council v Republic [1997] (Supra)* the Court of Appeal held inter alia as follows:

“Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings.....an order of prohibition.....cannot quash what has already been done... Only an order of certiorari can quash a decision already made.”



46. In the instant case evidence was adduced to the effect that the meeting was held on 19th December 2025 and the said meeting was convened in compliance to the Judgment of the Court delivered on 25th September 2025. There was no evidence adduced demonstrating that the same was held contrary to the law or convened by unauthorised persons and as such the same have been overtaken by events an order for prohibition cannot be issued. To grant the prohibitory orders sought without likewise quashing the same would similarly not be efficacious. As was held by the Court of Appeal in Republic vs. University of Nairobi Civil Application No. Nai. 73 of 2001 [2002] 2 EA 572, it was stated that the judicial order of prohibition must be pre-emptive in nature, that is, it must be directed at preventing what has not been done. The prayer for prohibition has therefore been overtaken by events and cannot issue to undo what has already transpired.
47. As regards to the mandamus order sought, it is noteworthy that the principles that guide the Court when dealing with an application for judicial review remedy of mandamus was stated in the Court of Appeal case of Commission on Administrative Justice vs Kenya Vision 2030 Delivery Board & 2 others [2019] eKLR. Wherein the court stated as follows:
- “As observed by the Judge and correctly so in our view, the principle that guides the High Court when dealing with the scope and efficacy of an order of mandamus was crystalized by the Court in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others (supra) namely:
- The order of mandamus is of most extensive remedial nature and is in the form of 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 of 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 it may issue in cases where although there is an alternative remedy, yet the mode of redress is not convenient, beneficial and effectual.”
48. Similarly, in the case of R vs Dudsheath, ex parte, Meredith [1950] 2 ALL E.R. 741 where it was stated as follows:
- “It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it.”
49. The Exparte Applicants argues that they seek an order for mandamus directing the Respondents to discharge their statutory obligation as spelt out in the *Community Land Act* No. 27 of 2016 and other statutes. The Respondents on the other hand have argued that the Exparte Applicants have come to court with unclean hands since they cannot purport to seek for a mandamus orders against the Respondents while at the same time they have severally sought to stay the judgment of the court which had in essence directed the Respondents to undertake their statutory mandate and further that they have filed an appeal against the same.
50. From the evidence availed to this court, it emerged that the Applicants have filed an appeal being Mombasa COACA No. E204 of 2025 seeking to stay the execution of the said judgment while seeking an order of mandamus before this court. In the circumstances it is the finding of this court that the said application is not made in good faith. The Exparte Applicant cannot approbate and reprobate at the same time. A litigant cannot, in one breath, challenge a judgment and in another seek its



enforcement. Furthermore, the Applicants have not demonstrated with specificity the statutory duties allegedly breached or how such breach directly prejudiced them. No basis has been laid for grant of the mandamus orders sought and the same is not for granting.

Conclusion

51. For the reasons set out above, it is the finding of this court that the Applicants have not made a case for the grant of the judicial review remedies sought. The Applicants have failed to establish any of the recognized grounds for judicial review. The impugned actions were undertaken in compliance with a lawful court order and within the framework of the applicable statutory regime.
52. Accordingly, the application dated 3rd December 2025 is hereby dismissed with an order that each party to bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 25TH DAY OF MARCH 2026.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Olendi for the Exparte Applicants

Mr. Chebon for the 4th, 5th and 8th Respondents.

Mr. Litoro appearing with Mr. Mburu for the 10th Respondents.

N/A for the other Respondents.

Court Assistants: Mary Ngoira and David Ngoosa.

