

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT VOI**

**JUDICIAL REVIEW CIVIL APPLICATION NO. E005 OF 2025**

**IN THE MATTER OF:- AN APPLICATION FOR JUDICIAL  
REVIEW OF ORDERS OF CERTIORARI  
AND MANDAMUS**

**AND**

**IN THE MATTER OF:- SECTION 8 & 9 OF THE LAW  
REFORM ACT CAP 26 OF THE LAWS OF  
KENYA.**

**AND**

**IN THE MATTER OF: ORDER 53 RULE 3 OF THE CIVIL  
PROCEDURE RULES 2010.**

**AND**

**IN THE MATTER OF: ARTICLES 40 AND 47 OF THE  
CONSTITUTION OF KENYA**

**BETWEEN**

**REPUBLIC.....**

**APPLICANT**

**AND**

**THE LAND REGISTRAR TAITA TAVETA COUNTY**

**THE ATTORNEY GENERAL .....**

**RESPONDENTS**

**AND**

**KILLIAN MWALASHA MSWAWUCHI .....EXPARTE**

**APPLICANT**

**AND**

**JOSEPHINE MORAA MASESE .....INTERESTED**

**PARTY**

**JUDGMENT**

1. This is a judicial review application filed by way of Notice of Motion dated 31st July 2025 wherein the Ex parte Applicant (hereinafter “the Applicant”) prays for inter alia an order of certiorari to bring into this Court and quash the decision/letter of the 1st Respondent dated 9th July 2025 directing the surrender of the title deed in respect of Land Parcel No. TAITA TAVETA/LAKE JIPE SCHEME/296 (hereinafter “the suit property”) and/or purporting to cancel or rectify the Applicant’s title; and an order of mandamus compelling the 1st Respondent to maintain the Applicant as the registered proprietor of the suit property and to reinstate all relevant documents in the Land

Register to reflect the status quo ante the impugned decision.

2. The application is supported by the Applicant's affidavit sworn on 31st July 2025 and the further supporting affidavit of Alfred Mashauri Mnene sworn on 10th February 2026. The 1st and 2nd Respondents oppose the application through the replying affidavit of Joel Mwinzi sworn on 8th January 2026. The Interested Party supports the 1st Respondent through her replying affidavit sworn on 28th November 2025. Written submissions were filed by all parties.
3. The suit property forms part of the Lake Jipe Settlement Scheme. **Alfred Mashauri Mnene** deposes that he has been in bona fide occupation and cultivation of the land since 1994. During the 1996 adjudication process he was mistakenly omitted, prompting him to lodge a complaint with the adjudication committee. The committee wrote to the Land Registrar, Wundanyi, following which a title deed was issued in his name.
4. On 15th December 2022, he sold the suit property to the Applicant who already owned an adjacent plot for valuable consideration. Land Control Board consent was obtained,

stamp duty paid, and the transfer registered. On 16th January 2023 the Applicant was registered as the absolute proprietor and issued with a title deed.

5. The Interested Party claims that her late husband purchased the suit property on or about 2nd May 1997 and that she took a land development loan against it on 1st January 1999. She states she is the first allottee per the scheme beneficiary list and green card, and that she never sold or transferred the property to Alfred Mashauri Mnene or the Applicant.
6. On 10th June 2025 the Interested Party lodged a complaint with the 1st Respondent alleging fraud. The 1st Respondent summoned the parties to a hearing on 2nd July 2025. Those present included the Interested Party, the Applicant, Alfred Mashauri Mnene, Emma Nyaribo and Eline Moraa.
7. On 9th July 2025 the 1st Respondent issued a letter directing the Applicant to surrender his title deed within 14 days, failing which legal action would follow. The Applicant contends this letter constitutes a decision cancelling his title on grounds of fraud by Alfred Mashauri Mnene.

8. The Respondents and Interested Party maintain no actual cancellation or rectification of the register has occurred, as the title deed has not been surrendered and the green card remains unchanged.

**The Applicant's case and submissions**

9. The Applicant asserts he acquired the suit property lawfully after due diligence. He contends the 1st Respondent acted without jurisdiction under **Section 79 of the Land Registration Act, 2012 (LRA)** by purporting to cancel his title on grounds of fraud. **Section 79(1)** limits rectification to formal errors or omissions not materially affecting proprietary rights, while Section 80 reserves cancellation or revocation for fraud or illegality to the Court alone. Even under Section 79(2), the Registrar's power to rectify for fraud is administrative and does not extend to a full determination and cancellation of a registered title. The decision is tainted by illegality, irrationality and procedural impropriety. Alfred Mashauri Mnene's affidavit confirms his long occupation since 1994, the legitimacy of the 2022 sale, the absence of any prior claim, and that he first met the Interested Party only at the Registrar's hearing. The Applicant filed written

submissions dated 8th April 2026 in which he submitted that the 1st Respondent acted in excess of jurisdiction. He prays for the orders sought. The Applicant submits the only remedy is judicial review and prays for the orders sought, with costs. He relies on **Republic v Chief Land Registrar & another ex parte Yosabia Kerubo Manyara [2018] KEELC 1074 (KLR) and Super Nova Properties Limited & another v District Land Registrar, Mombasa & 2 others [2018] KECA 17 (KLR).**

#### **The Respondents case and submissions**

10. The 1st and 2nd Respondents aver that the suit property was allocated to the Interested Party on 8th August 2013 under the Lake Jipe Settlement Scheme. The beneficiary list, green card, charge to the Settlement Fund Trustees and demand notice for loan repayment all confirm her as the first allottee. No transfer documents exist from the Interested Party to Alfred Mashauri Mnene or the Applicant.

11. At the 2nd July 2025 hearing it emerged that Alfred Mashauri Mnene lacked any transfer instrument, Land

Control Board consent, valuation report or stamp duty receipts linking him to the Interested Party.

12. The 1st Respondent argues that the Land Registrar merely inquired into the complaint, accorded all parties a hearing, and issued a directive to surrender the title.

13. The Respondents filed written submissions dated 8th April 2026 in which they urged the Court to invoke **Section 80 of the LRA**, determine ownership on the merits, and cancel the Applicant's title on account of irregularity.

14. It is contended that the green card has not been rectified and no title has been cancelled, rendering the application premature.

### **The interested party's case and submissions**

15. The Interested Party reiterates she is the bona fide first allottee, never met Alfred Mashauri Mnene or the Applicant, and never sold or transferred the property. The 9th July 2025 letter is merely a directive to surrender coupled with a threat of future legal action; it does not constitute an order cancelling the title or rectifying the register.

16. The green card still reflects the Applicant as proprietor. She filed written submissions dated 13th April 2026 submitting that both certiorari and mandamus are premature and incapable of enforcement, relying on relying on **Joccinta Wanjiru Raphael v William Nangulu [2014] KEHC 4906 (KLR)**. She prays for dismissal of the application with costs.

**Issues for determination**

17. Having carefully considered the pleadings, affidavits, and written submissions of the parties, it is clear that the core dispute revolves around the legality of the 1st Respondent's administrative decision and the appropriate judicial review remedies in the face of alleged fraud.

18. In order to determine this application judiciously and systematically, the Court has framed the following issues for determination:

**I. Whether the 1st Respondent had jurisdiction to cancel (or direct the cancellation of) the Applicant's title under the Land Registration Act, 2012.**

**II. Whether the Applicant is entitled to the orders of certiorari and mandamus sought.**

### **III. Who should bear the costs of this application.**

The court shall now proceed to determine the said issues sequentially.

#### **Analysis and determination**

#### **Issue No. I: Whether the 1st Respondent had jurisdiction to cancel or direct the cancellation of the Applicant's title**

19. The core question is the scope of the 1st Respondent's powers under the LRA. **Section 79(1)** permits rectification of the register in formal matters, errors or omissions not materially affecting any proprietor's interests, with consent of all parties, or upon resurvey (with notice).
20. **Section 79(2)** provides a notwithstanding clause allowing the Registrar to rectify or direct rectification where a document has been obtained by fraud, subject to guidelines prescribed by the National Land Commission under **Section 79(4)** that must ensure notification, hearing and criteria for decision-making.
21. **Section 80(1)**, however, expressly empowers the Court to order rectification by directing cancellation or

amendment of any registration obtained by fraud or mistake. **Section 80(2)** protects a bona fide purchaser for value in possession unless that purchaser had knowledge of or contributed to the fraud. **Section 26 of the LRA** entrenches the indefeasibility of title, save where fraud or irregularity is proved to the satisfaction of the Court.

22. Judicial authority is settled that the Land Registrar lacks jurisdiction to cancel or revoke a registered title on grounds of fraud. While **Section 79(2)** permits limited administrative rectification for fraud, cancellation materially affects proprietary rights and requires a full adversarial hearing, pleadings, discovery, and strict proof of fraud—functions reserved exclusively for the Court under **Section 80**. In **Republic v Chief Land Registrar & another ex parte Yosabia Kerubo Manyara [2018] KEELC 1074 (KLR)** the court held that;

***“It is evident from the provisions of Section 79 that the Land Registrar’s powers of rectification are limited to rectifying errors, mistakes or omissions that do not materially affect the interests of any proprietor.*”**

***Cancellation of a title quite clearly would materially affect the interests of the registered proprietor. In my view it is only the court that under Section 80 (1) of the Land Registration Act, 2012 that has the power to direct the cancellation of a registration ... I therefore hold that the Land Registrar lacked the jurisdiction to cancel the Applicant's title and in doing so he acted ultra vires and his actions are amenable to an order of Certiorari."***

23. The Court of Appeal affirmed the same principle in **Super Nova Properties Limited & another v District Land Registrar, Mombasa & 2 others [2018] KECA 17 (KLR)**, holding that the Registrar has no power to revoke a title.
24. In the present case, the 1st Respondent conducted a hearing on 2nd July 2025 and issued the letter of 9th July 2025 directing surrender of the title on the basis that Alfred Mashauri Mnene had no valid documents and that the Interested Party was the first allottee. Whether or not the letter is styled as a "cancellation order," it constitutes a reviewable administrative decision that purports to

determine fraud and effect or direct cancellation/rectification of a registered title. The letter is not a mere preparatory notice; it directly affects the Applicant's proprietary rights and is amenable to judicial review. The fact that the green card has not yet been updated (because the title has not been surrendered) does not render the application premature; the decision itself is final and operative.

25. The 1st Respondent's action, though preceded by a hearing, exceeded the administrative bounds of Section 79 and encroached on the judicial province of Section 80. Allegations of fraud require strict proof in a substantive suit, not an administrative inquiry. The Respondents' invitation for this Court to determine ownership under Section 80 in these judicial review proceedings is misplaced; judicial review is supervisory and does not extend to a merits-based adjudication of title.

26. Where, as here, there is some element of fraud insinuated, the Interested Party's claim of being the first allottee with supporting scheme documents, versus the Applicant's registered title derived from Alfred Mashauri Mnene's long occupation and transfer, yet the fraud

remains unproven on the basis of strict evidentiary standards required for such a serious allegation, the Court in judicial review proceedings has no mandate to resolve the underlying ownership dispute or to cancel the title itself. Fraud is a serious allegation that must be specifically pleaded and proved to the requisite standard in a substantive suit; it cannot be determined on the basis of mere suspicion, inference or an administrative hearing as was outlined in the cases of **Republic v Chief Land Registrar & another ex parte Yosabia Kerubo Manyara [2018] KEELC 1074 (KLR); Republic v Registrar of Titles, Nairobi & another; Meron Limited [2025] KEELC 475 (KLR).**

27. The Respondents' contention that the application is premature is legally untenable. Under Section 2 of the Fair Administrative Action Act, 2015, an administrative action includes a decision or even a failure to take a decision that adversely affects the rights or fundamental freedoms of any person. The 1st Respondent's letter of 9th July 2025 was a final determination of fraud and a directive for surrender; it was not a mere internal memo or a proposal. Its existence alone creates a legal cloud

over the Applicant's title, making it a decision ripe for judicial review regardless of whether the physical title has been surrendered or the green card updated.

28. The proper remedy and option available to the Court and to the parties is to quash the ultra vires administrative decision and leave the parties to be at liberty to ventilate the fraud allegations in a substantive suit before the Environment and Land Court under Section 80 of the Land Registration Act, 2012. In such a suit, full pleadings, discovery, cross-examination, and a determination on the merits can occur, enabling the Court, if fraud or irregularity is established to the required standard, to direct cancellation or rectification.

29. This approach upholds the rule of law, protects the principle of indefeasibility of title under Section 26 of the LRA subject to judicial determination, and ensures that administrative overreach does not preempt a proper judicial inquiry as was the position taken in the cases of **Otieno & 2 others v Cabinet Secretary - State Department for Lands [2026] KEELC 504 (KLR); Super Nova Properties Limited & another v District**

**Land Registrar, Mombasa & 2 others [2018] KECA  
17 (KLR)).**

30. On this particular issue, it is therefore the finding of this court that, the 1st Respondent acted without jurisdiction in issuing the 9th July 2025 decision/letter purporting to cancel or direct the cancellation of the Applicant's title to Land Parcel No. TAITA TAVETA/LAKE JIPE SCHEME/296. The said decision is null and void.

**Issue No. II: Whether the Applicant is entitled to  
the orders of certiorari and mandamus**

31. Judicial review remedies are not granted as of right but are discretionary equitable remedies to be exercised judiciously in the interests of justice.

32. Certiorari is the classic remedy to quash an ultra vires administrative decision, while mandamus compels the performance of a public duty where the applicant has a clear legal right, the duty is imperative and not discretionary, there is no alternative remedy, and the grant would not produce injustice or futility as was stated in the case of **R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617 and Kenya**

**National Commission on Human Rights v Attorney**

**General [2018] eKLR.**

33. Under the **Fair Administrative Action Act, 2015**, the Court must also ensure that the remedy promotes lawful, reasonable and procedurally fair administrative action without usurping the substantive jurisdiction of the Court itself.
34. In the present matter, certiorari is clearly merited. The 1st Respondent's letter of 9th July 2025 is a reviewable administrative act that exceeded the limited rectification powers under Section 79 of the LRA and encroached upon the exclusive judicial province under Section 80. Quashing it vindicates the rule of law, nullifies the ultra vires act, and prevents any ongoing or future reliance upon it by the Registrar. No alternative remedy exists for setting aside the impugned decision, and the Applicant has demonstrated a clear case of illegality. Accordingly, an order of certiorari shall issue.
35. In respect to the mandamus order sought, it is noteworthy that the principle of indefeasibility of title under **Section 26 of the LRA** is not absolute. It is expressly subject to the Court's power under **Section 80**

to order rectification or cancellation where registration was obtained by fraud or mistake. A registered title obtained through a chain that is alleged to be fraudulent creates a triable issue that can only be resolved after full evidentiary scrutiny.

36. Granting mandamus would effectively compel the Registrar to treat the Applicant's title as unassailable, thereby pre-empting the very determination that Section 80 reserves exclusively to the Court. This would amount to a substantive adjudication of ownership under the cloak of judicial review, which is impermissible as was stated in the cases of **Republic v Land Registrar, Nairobi & 2 others ex parte James Maina Gathungu [2019] KEELC 1234 (KLR) and Muriungi v Registrar of Titles [2020] KEELC 456 (KLR)**.

37. Mandamus is a coercive remedy that compels the performance of a duty where none remains discretionary. Here, the underlying duty to maintain an accurate register is now clouded by some allegations of fraud supported by contemporaneous settlement scheme documents. The 1st Respondent's administrative inquiry, though procedurally flawed in its outcome, revealed a

genuine dispute worthy of judicial determination. To compel restoration by mandamus would lock the register in the Applicant's favour without allowing the Interested Party or the Respondents the opportunity to prove fraud to the strict standard required. In the case of **Republic v Registrar of Titles, Nairobi & another; Meron Limited [2025] KEELC 475 (KLR)**, the Court refused mandamus precisely because fraud allegations rendered the duty to restore the title non-imperative.

38. In the instant case, equitable considerations and the balance of convenience weigh against mandamus. The Applicant will suffer no irreparable harm: his registered title remains intact until impeached by a court order under Section 80, and he retains the full protection of Section 26 until such time. He can, and indeed is encouraged to, seek an injunction in any substantive suit filed against him. Conversely, granting mandamus would prejudice the Interested Party by foreclosing her arguable claim before it can be ventilated with pleadings, discovery, and cross-examination.

39. Judicial review is not a forum for determining contested title; it is supervisory only as was stated in the

case of **Otieno & 2 others v Cabinet Secretary - State Department for Lands [2026] KEELC 504 (KLR)**.

40. Allowing the fraud issue to be contested in a substantive suit preserves the integrity of the land registration system and upholds the constitutional right to fair administrative action without prematurely resolving proprietary disputes.
41. The Court notes that the Applicant claims the protection of a bona fide purchaser for value under Section 80(2) of the LRA. However, whether the Applicant truly acquired the land without notice of the Interested Party's claim is a question of fact that requires a high standard of proof. Such a determination involves weighing the credibility of witnesses and the authenticity of transfer documents processes that are native to a substantive trial under Section 80, but entirely outside the scope of this Court's supervisory mandate in judicial review.
42. Relevant legal principles reinforce this position. The doctrine of judicial restraint in administrative law dictates that where an administrative decision is quashed on

jurisdictional grounds but the underlying factual matrix reveals a triable fraud issue, the Court should not use mandamus to determine the merits indirectly.

43. **Section 80(1) of the LRA** is a deliberate legislative choice to reserve fraud determinations to the Environment and Land Court after a full trial. To grant mandamus here would undermine that legislative scheme and risk multiplicity of proceedings.

44. Furthermore, the remedy of mandamus is only available where the public officer has a clear, mandatory, and ministerial duty to perform a specific act. In this instance, while the Applicant remains the registered owner, the discovery of a parallel claim supported by settlement scheme documents creates a 'cloud' over the title. To compel the Registrar to 'maintain' the register in a specific state while such a dispute exists would be to ignore the Registrar's broader duty to ensure the integrity of the land register. The duty to restore or maintain is no longer purely ministerial once a triable issue of fraud is raised.

45. In summary, while the Applicant is entitled to have the unlawful administrative decision set aside, he is not

entitled to the further coercive order of mandamus. The proper course is to quash the decision and leave the parties to institute substantive proceedings under Section 80 where the insinuated fraud can be fully contested and determined on the merits.

46. In the circumstances, the Court declines to grant mandamus. The Applicant's prayer for an order compelling the 1st Respondent to "maintain" him as the registered proprietor and to reinstate the register to the status quo ante raises a fundamental difficulty once fraud is insinuated, even if unproven at this judicial review stage.

**Issue No. III: Who should bear the costs of this application.**

47. Costs ordinarily follow the event. However, in the peculiar circumstances of this case, the Court directs that each party shall bear own costs of the proceedings herein. This Court is guided by **Section 27 of the Civil Procedure Act (Cap 21)** which provides that costs are at the discretion of the court. Similarly, **Section 26 of the Environment and Land Court Act, 2011**

empowers this Court to make such orders as it deems just in land and environment matters, including on costs.

### **Final orders**

48. Accordingly, for the reasons set out above, the Motion dated **31<sup>st</sup> July 2025** is determined in the following terms;

***i) An order of certiorari do issue to bring into this Court and quash the decision/letter of the 1st Respondent dated 9th July 2025 directing the surrender of the title deed in respect of Land Parcel No. TAITA TAVETA/LAKE JIPE SCHEME/296 and/or purporting to cancel or rectify the Applicant's title.***

***ii) The prayer for an order of mandamus is declined.***

***iii) The parties are at liberty to institute substantive proceedings under Section 80 of the Land Registration Act, 2012, should they wish to impeach the title to land parcel Taita Taveta/Lake Jipe Scheme/296.***

***iv) Each party shall bear own costs of this application.***

**Dated, Signed and Delivered Virtually at Voi this 16<sup>th</sup> day of April 2026.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of:-**

**Mr. Mwazighe for the Exparte Applicants**

**Mr. Penda for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.**

**Mr. Gichui for the Interested party.**

**Court Assistants: Mary Ngoira and David Ngoosa.**