

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELCL JR NO. E005 OF 2025

REPUBLIC.....AP

PLICANT

VERSUS

COUNTY SURVEYOR EMBU.....1ST

RESPONDENT

LAND REGISTRAR KIRITIRI.....2ND

RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD

RESPONDENT

AND

PETER KARANJA MUIRURI.....1ST

INTERESTED PARTY

KAROGI MWANGI.....2ND INTERESTED

PARTY

AND

EDWARD CHARAGU WAITHAKA (suing as the Administrator of the Estate of Waithaka Murathe (Deceased)).....EX-PARTE

APPLICANT

RULING

The Ex-parte Applicant moved this Court vide a Chamber Summons Application under certificate of urgency dated 3rd October 2025 seeking leave to commence judicial review

proceedings for orders of certiorari, prohibition and mandamus against the Respondents and further that the grant of leave do operate as a stay. The application is premised on the grounds set out on its face and supported by the affidavit sworn by the Ex-parte Applicant on 3rd October 2025.

The Applicant contends that he is the administrator of the estate of the late Waithaka Murathe, the registered owner of land parcel number MBETI/KIAMURINGA/606. He avers that the Land Registrar Kiritiri, in conjunction with the County Surveyor, unlawfully interfered with the boundaries of the said parcel and reduced its acreage by approximately 1.6 acres while increasing the acreage of neighbouring parcel MBETI/KIAMURINGA/154, which was subsequently subdivided into parcels MBETI/KIAMURINGA/4563, 4564, 4565 and 4566. According to the Applicant, the Land Registrar exceeded her statutory mandate by altering cadastral boundaries, shifting a public road onto his land, and reallocating acreage without compensation or lawful authority.

The Applicant further deposes that following the Land Registrar's visit to the ground on 25th October 2022, the boundaries of the suit properties were altered to his detriment. He states that a licensed surveyor later confirmed that the size of parcel number MBETI/KIAMURINGA/606 had been reduced by approximately 1.6 acres. Dissatisfied with the actions of the Respondents, he filed

Siakago ELC No. 088 of 2023, which was determined on 19th September 2024 with the Court directing that the dispute be pursued through judicial review proceedings. The Applicant further states that he issued a notice of intention to sue the Attorney General and sought clarification from the Land Registrar but received no response. He contends that unless the orders sought are granted, the Interested Parties and Respondents will fence off the disputed portion thereby depriving the estate of its proprietary rights.

The application is opposed. The 3rd, 4th and 5th Respondents filed Grounds of Opposition contending, inter alia, that the application is misconceived, premature and an abuse of the court process; that the dispute concerns boundary determination which falls within the mandate of the Land Registrar under Section 18 of the Land Registration Act; that the Applicant has not exhausted statutory remedies; and that judicial review is concerned with the decision-making process rather than merits of technical boundary determinations. They further argued that no arguable case has been demonstrated to warrant the grant of leave.

The 1st and 2nd Respondents also filed Grounds of Opposition asserting that they are private individuals wrongly enjoined as Respondents; that orders of prohibition and mandamus cannot issue against private parties; that the application for certiorari is time barred under Order 53 Rule 2 of the Civil Procedure Rules;

and that the application offends Section 18 of the Land Registration Act.

The parties filed written submissions which I have carefully considered. The issue for determination at this stage is whether the Applicant has established sufficient grounds to warrant grant of leave to commence judicial review proceedings and whether such leave should operate as a stay.

The law governing grant of leave in judicial review proceedings is well settled. At this stage, the Court is not concerned with determining the merits of the case but rather whether the Applicant has established an arguable case worthy of further consideration. The threshold is that the application should not be frivolous, vexatious or an abuse of the court process.

The Respondents have raised a jurisdictional objection based on Section 18(2) of the Land Registration Act, arguing that the matter relates to a boundary dispute. It is true that Section 18(2) bars courts from entertaining boundary disputes unless the Land Registrar has first determined the same. However, the pleadings before this Court indicate that the Applicant is not merely disputing the physical placement of boundaries. He alleges that the Land Registrar reduced the acreage of his parcel and reallocated land to neighbouring parcels. Such allegations, if proved, go beyond mere boundary ascertainment and raise

questions regarding legality, procedural propriety and scope of statutory authority exercised by the Land Registrar. These are matters amenable to judicial review under Articles 47 and 165(6) and (7) of the Constitution.

The Respondents further argued that the Applicant failed to exhaust available administrative remedies. While the doctrine of exhaustion is recognized under Section 9 of the Fair Administrative Action Act, exceptions exist where the impugned decision is alleged to be ultra vires or where the available remedy is inadequate. In the present case, the Applicant challenges the very actions of the Land Registrar and Surveyor. At this stage, it cannot be said that the application is barred by the doctrine of exhaustion.

On limitation, the Respondents submitted that the application for certiorari is time barred under Order 53 Rule 2 of the Civil Procedure Rules. From the material before the Court, the exact date of the impugned decision is contested and the Applicant asserts that the matter involves a continuing administrative action. Whether the application is time barred is an arguable issue that can properly be determined at the substantive hearing. It would therefore be premature to dismiss the application at the leave stage on that ground alone.

The argument that judicial review orders cannot issue against private individuals is correct in principle. However, the substantive reliefs sought are primarily directed at the Land Registrar and County Surveyor who are public officers. The presence of private parties in the proceedings does not render the application incompetent at this stage.

Having considered the material before me, I am satisfied that the Applicant has demonstrated an arguable case that the Land Registrar and County Surveyor may have acted beyond their statutory mandate by allegedly altering acreage and boundaries of registered land. These allegations warrant further interrogation through substantive judicial review proceedings.

The Applicant has also sought that leave do operate as a stay. The purpose of a stay at this stage is to preserve the subject matter pending determination of the substantive motion. The Applicant alleges that the Interested Parties are in the process of fencing the disputed portion. If such action proceeds, it may render the proceedings nugatory. It is therefore appropriate to preserve the status quo.

In the result, I find that the Chamber Summons dated 3rd October 2025 is merited and I make the following orders:

1. Leave is hereby granted to the Ex-parte Applicant to institute judicial review proceedings seeking orders of Certiorari, Mandamus and Prohibition.
2. The grant of leave shall operate as a stay restraining the 1st and 2nd Respondents, their agents or any person acting under their authority from trespassing, interfering with or erecting a boundary fence between Land Parcel Numbers MBETI/KIAMURINGA/606, MBETI/KIAMURINGA/4566 and MBETI/KIAMURINGA/4564 pending the hearing and determination of the substantive motion.
3. The substantive Notice of Motion shall be filed and served within twenty-one (21) days from the date hereof.
4. Costs of the application shall be in the cause.

It is so ordered.

DATED, DELIVERED AND SIGNED AT EMBU THIS 15TH DAY OF APRIL, 2026

HON. E.C CHERONO
ELC JUDGE

In the presence of;

1. Mr. Irungu for the 1st and 2nd Respondents.
2. Mr. Kiongo for the 3rd Respondent
3. Diana Kemboi C/A