



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLJR EOO3 OF 2025

IN THE MATTER OF JUDICIAL REVIEW ORDERS
AND
IN THE MATTER OF CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF ADMINISTRATIVE ACTIONS ACT, 2015
BETWEEN

FREDRICK KIROKO MWANGI.....APPLICANT
VERSUS
VIRGINIAH WAMBUI MWANGI.....1ST RESPONDENT
THE LAND REGISTRAR MURANG'A2ND RESPONDENT

RULING

(1) This ruling is on the originating summons dated 14-8-2025. The summons seeks the following orders.

- 1. That the court do issue an order of certiorari against the 2nd Respondent quashing the proceedings of 15-8-2024 and the ruling dated 16-6-2025 in respect of L.R. No. Loc.20/Mirira 6786 and 6788.**
- 2. That the costs of the judicial review application be assessed by this Court.**
- 3. Any other order, further orders, and/or writs or directions the court may deem fit to grant.**
- 4. That the costs of this application be provided for.**

(2) The motion is premised on eleven grounds and an affidavit of the Applicant dated 14-8-2025 in which the following is stated. Firstly, the Applicant is the registered owner of L.R. No. 6788 while the 1st Respondent owns L.R. No. 6786. Secondly, there were allegations that the Applicant had encroached onto the 1st Respondents parcel of land. The Applicant therefore sought the assistance of the 2nd Respondent and on 15-8-2024, the 2nd Respondent visited the two parcels to resolve the boundary dispute. Thirdly, on 19-3-2025, there was a

determination by the 2nd Respondent which found that there was encroachment by the Applicant upon the 1st Respondent's land. Fourthly, dissatisfied with the verdict of the 2nd Respondent, the Applicant seeks the quashing of the verdict for several reasons. They include the following. One, the 2nd Respondent overlooked the fact that there were clear measurements from the approved mutation form that ought to have corresponded with the ground and that the Applicant's land measures 0.4 Ha. on the mutation, title and ground. Two, the verdict of the 2nd Respondent did not consider all the circumstances regarding the two parcels. The circumstances ignored in respect to the Applicants land include his property being singled out on unsubstantiated allegations of land encroachment, allegations that the land on the ground is bigger than it is on the mutation form, the registered land differing with what is on the ground and failure to indicate the actual measurements on the ground. Fifthly, the Applicant's advocates wrote to the 2nd Respondent requesting for review of the ruling and a resurvey but the 2nd Respondent did not comply making the filing of this summons necessary.

(3) In opposing the summons, the 1st Respondent filed a replying affidavit dated 30-10-2025 in which she states as follows. One, the Applicant's claim is misconceived, scandalous, vexatious and an abuse of the Court process for seeking to go against official maps and the records held by the 2nd Respondent who has the authority to issue title deeds. Two, the exercise by the 2nd Respondent confirmed the encroachment that the 1st Respondent had complained of. Finally, the Applicant has resulted to threatening the 1st Respondent if she enters the disputed portion of the land.

(4) On its part, the 2nd Respondent has filed grounds of opposition dated 4-2-2026 in the following terms.

- (a) **That the Applicant has not sought and obtained leave of this court before seeking orders of certiorari as per Order 53 rule 1 (1) of the Civil Procedure Rules. Two, the application for the orders of certiorari has been made by way of originating summons instead of a notice of motion contrary to the provisions of Order 53 rule 3(1) of the Civil Procedure Rules. Three, the application for orders of certiorari can only be made within 21 days after the Applicant has obtained leave of the court which the Applicant has failed to do. Four, the Applicant has not filed an affidavit giving the names and addresses etc of the**

parties affected. There are other grounds put forth by the 2nd Respondent which I do not consider necessary to exhaust.

(5) Counsel for the Applicant and the 2nd Respondent filed written submissions dated 16-2-2026 and 17-4-2026 respectively. I did not see any such submissions by the Counsel for the 1st Respondent. The issues identified by learned Counsel for the parties as follows.

- (i) **Whether the Applicant's originating summons is defective.**
- (ii) **Whether this Court ought to stay the execution of the 2nd Respondent's verdict pending the hearing and determination of the originating motion.**
- (iii) **Whether this court ought to grant a temporary injunction pending the hearing and determination of the originating motion.**
- (iv) **Whether the Applicant is entitled to the orders sought.**
- (v) **Who should bear the costs of the application.**

(6) I have carefully considered the summons in its entirety including the grounds, the notice of motion, the supporting affidavit, the replying affidavit, the grounds of opposition, the supplementary affidavit, the written submissions, the issues raised therein and the law cited. I find that the issues as identified will resolve the dispute.

(7) Regard the 1st issue, I find that the originating motion is not defective. The Applicant's Counsel is right in saying that Judicial Review is no longer hinged on Order 53 of the Civil Procedure Rules only but also on Article 47 of the Constitution, the Fair Administrative Action Act and the Fair Administrative Action Rules. Judicial Review has shifted from a common law remedy to a constitutional right. The Courts are no longer limited to the traditional common law judicial review principles. Instead the courts examine proportionality, reasonableness, legitimate expectation, abuse of power, violation of constitutional values and substantive fairness. See the case of **Suchan Investment Ltd vs. Ministry of National Heritage and Culture and 3 Others [2016] eKLR.**

However, I find that the Applicant should not have approached the Court through the originating summons that he chose because the law provides a different mechanism to challenge the decision of the Land Registrar in a boundary dispute determination. That law

is regulation 40 of the Land Registration (General) Regulations 2017. The regulations provides the procedure to be followed in the ascertainment of a boundary in dispute . In this case, that is the procedure that was followed by the 2nd Respondent upto and including paragraph 5 of the said regulation. The next step that the Applicant should have followed is to be found in paragraph 6 of the regulation. It states-

‘Any party aggrieved by the decision of the Registrar made under paragraph [5] may, within thirty days of the notification, appeal the decision to the Court.’

It has been held by the Court of Appeal in the case of **Kiliavo Fresh Limited vs. National Environment Tribunal and 4 Others** that,

“ Where parliament has provided a specific statutory dispute resolution and appellate mechanism, a party must follow that procedure before invoking judicial review, unless exceptional circumstances justify departure from the statutory framework.”

It is my finding therefore that the application for judicial review is incompetent because the Applicant ought to have pursued the Appellate avenue specifically created by statute.

(8)On the second issue, I find that the Court should not order stay of execution of the 2nd Respondent’s verdict because the suit is not competent. The same determination befalls the 3rd and 4th issues.

(9)In summary and for the reasons already given, the entire originating summons is struck out with costs to the Respondents.

Dated, signed and Delivered virtually at Murang’a this 13th day of May, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Antony

Applicant’s Counsel – Mr Ian

1st Respondent’s Counsel – Mr Kimori

2nd Respondent’s Counsel – M/s Beatrice Mathenge