

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC MISC CIVIL APPLICATION NO. E005 OF 2025

REPUBLIC
APPLICANT

VERSUS

COUNTY GOVERNMENT OF KILIFI 1ST
RESPONDENT

LAND REGISTRAR KILIFI2ND
RESPONDENT

AND

FAUSTINE MWASHE CHIVATSI 1ST INTERESTED
PARTY

CHRIS WEKESA2ND INTERESTED
PARTY

AND

JUMA CHIVATSI NGALAEx Parte
APPLICANT

JUDGMENT

1. The Amended Notice of Motion dated 7th of October 2025 seeks the following orders:

- a. *A certiorari order to move into the High Court and quash the decision of the County Government of Kilifi made on the 7th October 2024 on the interest of the pass of land known as plot numbers 372-xx 129 township without further gazettelement*
- b. *An order of Mandamus do issue company the County Government of Kilifi and the Land Registrar Kilifi from effecting the said decision-made on the 7th October 2024*
- c. *Such other or further order as the court made him fit and just to Grant.*

2. The grounds on which the motion is premised are that the *ex parte* applicant allegedly owns the suit property but the 1st and 2nd interested parties have colluded to defraud him of the same. It is

claimed that the 1st interested party sold the suit property to the 2nd interested party. The 1st respondent heard the dispute regarding the suit property and awarded the same to the 2nd interested party while awarding the applicant compensation. It is claimed that the 1st respondent failed to critically analyze the facts of the case thus came up with a misinformed decision that has infringed on the applicant's right to own property. The application has been brought under the provisions of Order 40 rules 1,2,3(1), & 4, order 51 Rule 1 CPR, section 1A,1B,3A, and 63 (c) CPA Article 159(2)(d) of the Constitution of Kenya.

3. The application is supported by the evidence of the *ex parte* applicant dated 7th October 2025.

4. The 2nd respondent filed grounds of opposition dated 24th June 2025 as follows:

- a. *That the application is premature as the orders sought against the 2nd respondent are premised on assumptions and expectation that the decision by the County Government of Kilifi will be implemented by the 2nd respondent;*
- b. *The application does not raise a cause of action against the 2nd respondent as the orders sought against the 2nd respondent are based on the presumption that the 2nd respondent might implement the decision of the County Government of Kilifi dated 7th October 2024;*
- c. *The application lacks sufficient evidence to suggest that the 4th respondent will and /or is intending to implement the 7th October 2024 decision by the County Government of Kilifi;*
- d. *The application lacks merit and is an abuse of the court process.*

5. The 1st Interested Party filed his grounds of opposition and replying affidavit both dated 5th May 2025. The 2nd Interested Party filed his replying affidavit dated 29th April 2025. The cumulative gist of those

responses of the Interested Parties is that the present case is a land dispute that ought to have been presented to court by way of an ordinary suit and not by way of a Judicial Review application; that the *ex parte* applicant has failed to attach any documentary evidence to demonstrate that he owns the suit property and consequently lacks *locus standi* to sue in respect of the suit property; that the claim is in any event time barred by statute the 1st interested party having been registered as proprietor on 27th March 1998; that it is vexatious and an abuse of process; that the 1st Interested Party was the owner of the land who later sold it to the 2nd Interested Party; that the records at the County Government Offices changed in favour of the 2nd Interested Party, and he has been utilizing the same since the year 2010;

6. I have examined the court record herein. The application for leave was brought and allowed on 25th February 2025 and it granted the *ex parte* applicant leave to file and served the substantive application for Judicial Review within **21** days of the order. Those **21** days lapsed on 18th March 2025 and there is nothing that has been placed before this court to demonstrate that the leave granted having lapsed, fresh leave had been sought again, so as to enable the filing of the substantive Judicial Review Notice of Motion out of time. As such, there has never been any application before this court, the Motion dated 19th March 2025 having been filed out of time on Wednesday, 19th March 2025 without leave. Also, that motion having been brought out of time and being a nullity, there

was nothing to amend and consequently the amended motion dated 7th October 2025 is therefore incompetent.

7. For the foregoing reasons the Amended Notice of Motion dated **7/10/2025** is hereby struck out with costs to the respondents.

Dated, signed and delivered at Malindi on this 12th May 2026.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE
JUDGE, ELC MALINDI.**