



**Muriithi v Nyeri County Land Registrar (Miscellaneous Judicial Review
E001 of 2023) [2024] KEELC 25 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 25 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
MISCELLANEOUS JUDICIAL REVIEW E001 OF 2023**

JO OLOLA, J

JANUARY 19, 2024

**IN THE MATTER OF: AN APPLICATION BY JOSEPH WAMBUGU
MURIITH FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS
OF MANDAMUS AGAINST REGISTRAR OF LAND NYERI COUNTY**

AND

IN THE MATTER OF: LAND REFERENCE NO. NYERI/MUNICIPALITY BLOCK 1/1257

AND

**IN THE MATTER OF: ARTICLES 2(1), 3(1), 10, 21(1), 22(1), 23 (3)(F), 27(1),
62(1)(B), 165(6) & 159(2) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: LAND ACT NO. 6 OF 2012
AND LAND REGISTRATION ACT NO. 3 OF 2012**

AND

**IN THE MATTER OF: SECTION 8(2) OF THE LAW REFORM ACT, CAP 26 OF LAWS OF
KENYA AND PART III OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

BETWEEN

JOSEPH WAMBUGU MURIITHI APPLICANT

AND

NYERI COUNTY LAND REGISTRAR RESPONDENT

RULING

1. By the Chamber Summons application dated 29th April 2023, Joseph Wambugu Muriithi (the Ex-parte Applicant) prays for an order of *mandamus* to compel the Respondent to perform its statutory duties



- under Section 38 of the [Land Registration Act](#) No. 3 of 2012 by reconstructing the land registers for parcel No. Nyeri/Municipality Block 1/1257. In addition, the Ex-parte Applicant prays for an order of *mandamus* to issue to compel the Respondent to register him as the proprietor of the said parcel of land.
2. The application which is supported by a statement of facts as well as an affidavit verifying the same sworn by the Ex-parte Applicant is premised on the grounds that:
 - a). The Applicant herein purchased the land from one Duncan Ndei Muhoro who was the registered proprietor thereof;
 - b). The Applicant has sought to have the parcel of land transferred to himself but the registered proprietor has become unco-operative and unresponsive to the Applicant's wishes and as such the Applicant is unable to enjoy his rights as the proprietor;
 - c). The Land Registrar has failed, neglected and /or refused to reconstruct the land register for the above parcel; and
 - d). It is just and mete to grant the orders sought.
 3. The application is opposed by the Nyeri County Land Registrar (the Respondent). In a Replying Affidavit sworn by the County Land Registrar, Nyeri County, Nathan G. Githaiya, the Respondent avers that the Applicant is not the registered proprietor of the said parcel No. Nyeri /Municipality/ Block 1/1257.
 4. The Respondent asserts that while section 33 of the [Land Registration Act](#) No. 3 of 2012 empowers the Land Registrar to reconstruct any lost or destroyed Land Register, Regulation 28 of the [Land Registration \(General\) Regulations 2017](#) provide that on the loss or destruction of the Land Register, a person claiming to be a registered proprietor may apply to the Registrar for the reconstruction of the Register.
 5. The Respondent avers further that the application to reconstruct the file by the Applicant could not be allowed since he is not the registered proprietor of Land Parcel No. Nyeri/Municipality/Block 1 1257.
 6. I have carefully perused and considered the Chamber Summons as well as the response thereto. I have similarly perused the oral submissions made before me by the Learned Counsels representing the parties herein.
 7. By the application before me, the Applicant has sought an order of *mandamus* to be issued to compel the Nyeri County Land Registrar to reconstruct a file for land parcel No. Nyeri/Municipality/Block 1/1257 and to have the Applicant registered as the proprietor thereof.
 8. It is the Applicant's case that he purchased the suit property from one Duncan Ndei Muhoro as evidenced by a sale Agreement executed between himself and the said vendor on 17th July 2008. It is the Applicant's position that having purchased the same, he signed the transfer forms but he has since not been registered as the proprietor of the land on the basis that the Respondent is unable to trace the relevant Land Register in his office.
 9. The Applicant has asserted that he went to the Respondent's office whereupon he was advised to publish in the Kenya Gazette the said loss. It is his case that despite his complying with the advise, the Respondent has failed to reconstruct the file as required.
 10. In response to the said application, the Respondent has asserted that the relevant law only allows the registered proprietor to make such an application, to the Respondent. It is the Respondent's case that



the Applicant in neither the registered proprietor of the said property nor has he produced sufficient documentation to the satisfaction of the Respondent to prove that indeed the title is lost and that he ought to be registered as the proprietor thereto.

11. In his application, the Applicant has placed reliance on Section 33 of the [Land Registration Act](#), 2012. The said section provides as follows:-

“ 33

- (1) Where a Certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issuance of a duplicate certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease.
- (2). The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee, that the certificate of title or a certificate of lease has been lost or destroyed.”

12. From my reading of the above provision, it was apparent that as contended by the Respondent, such an application ought to be made by the registered proprietor of the land where the certificate is either lost or destroyed. In the matter before me, the Applicant has not led any evidence to the effect that the certificate was either lost or destroyed. All he avers is that the person from whom he purchased the land had become unco-operative and unresponsive to him. And while in their submissions herein the Applicant’s counsel insisted that they had filed all the necessary documents, there was no evidence of any statutory declaration made as to the loss or destruction of the certificate nor any evidence of such loss having been published in any Kenya Gazette notice.

13. As was stated in [Evans Nyakwana –vs- Cleophas Bwana Ongaro](#) [2015] eKLR;-

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (1) of the [Evidence Act](#) Cap 80 of the Laws of Kenya which provides:-

“107

- (1) Whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

14. It is instructive that while the Applicant purports that the vendor of the suit property has been unco-operative and unresponsive, the said vendor has not been enjoined in this application. The alleged sale of the property involved both the Applicant and the alleged Vendor and where there is any dispute arising out of the sale, both parties ought to be accorded a fair opportunity to present their case.

15. From a perusal of the alleged sale Agreement between the Applicant and the said Duncan Ndei Muhoro, it was apparent that the purchase price had not been paid. While the purchase price is said under clause 3 to be in the region of Kshs. 1,100,000/=, it is apparent under clause 3 (a) that only a sum of Kshs. 234,153/= was paid on the date of execution to enable the Vendor to pay “outstanding land



rents.” The balance of Kshs. 865,847/= was to be paid at the time of execution of the transfer. There was no evidence of any transfer documents executed between the Applicant and the alleged Vendor and no transfer of the property has been done.

16. It was further evident from a perusal of Paragraph 6 of the agreement prepared by Messrs Nderi & Kingati Advocates that the Applicant had never even seen the certificate of title he alleged to have been in the Vendor’s name. That can be discerned from the said clause wherein the said Vendor warrants that he has a good title and that he was in possession of an allotment letter whose date is left blank in the document. Under Clause 6 of the Special Conditions, the original certificate of lease was to be deposited in the office of the said Advocates on the completion date. No copy of the certificate has been annexed to this application.
17. As it were, in order to succeed in an application for judicial review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and /or procedural impropriety. Indeed as was held in Republic -vs- Public Procurement Administration Review Board & 2 Others Ex-parte Rongo University [2018] eKLR.

“The grant of the orders of *certiorari*, *mandamus* and prohibition is discretionary. The court is entitled to consider the nature of the process against which judicial review is sought and satisfy itself that there is reasonable basis to justify the orders sought.”

18. I have considered the matter before me and I was unable to find how the Respondent’s refusal to act herein could be said to be tainted with any illegality, irrationality and /or procedural impropriety. The Applicant has simply failed to comply with the requirement of the law to warrant the taking of any action in his favour.
19. It follows that I was unable to find any iota of merit in the Chamber Summons application dated 29th April 2023. I dismiss the same with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NYERI THIS 19TH DAY OF JANUARY, 2024.

In the presence of:

Mr. Nderi for the Ex-parte Applicant.

No appearance for the Respondent.

Court Assistant: Kendi

