



**Republic v District Land Adjudication Officer Tigania West/East & another; Gaciata (Suing as the legal rep of the Estate of Thurania Anjuri) (Exparte Applicant); Ibaya & 5 others (Interested Parties) (Environment and Land Judicial Review Case E007 of 2022) [2024] KEELC 3652 (KLR) (18 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 3652 (KLR)

**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E007 OF 2022**

**CK YANO, J**

**JANUARY 18, 2024**

**IN THE MATTER OF AN APPLICATION FOR  
JUDICIAL REVIEW ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT**

**AND**

**IN THE MATTER OF ORDER 53(3) OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF SECTION 19, 20, & 26 OF THE LAND ADJUDICATION ACT**

**AND**

**IN THE MATTER OF ARTICLES 23, 40 & 47 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF LAND PARCEL NO. 945 URINGU/1/ADJUDICATION SECTION**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DISTRICT LAND ADJUDICATION OFFICER TIGANIA WEST/  
EAST ..... 1<sup>ST</sup> RESPONDENT**



**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**SIMON GACIATA (SUING AS THE LEGAL REP OF THE ESTATE OF  
THURANIRA ANJURI) ..... EXPARTE APPLICANT**

**AND**

**ISAAC MUGAMB IBAYA ..... INTERESTED PARTY**

**KENNETH MUGAMBI IBAYA ..... INTERESTED PARTY**

**CHARLES GITONGA IBAYA ..... INTERESTED PARTY**

**JOSEPH KINYIA IBAYA ..... INTERESTED PARTY**

**MUKETHA NKIRITI ..... INTERESTED PARTY**

**ROBERT THIANE ..... INTERESTED PARTY**

### **JUDGMENT**

1. Pursuant to leave granted by the court on 25<sup>th</sup> July, 2022, the ex-parte applicant instituted Judicial Review proceedings vide the Notice of Motion application dated 15<sup>th</sup> August, 2022 seeking an order of mandamus be issued compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents to enforce the adjudication committee decision rendered on 6<sup>th</sup> May 1999 in objection proceedings No. 805 in respect to land parcel No. 945 Uringu1/Adjudication Section.
2. The application is premised on the facts set out in the statements of facts and affidavit verifying facts sworn by Simon Gaciata on 15<sup>th</sup> August, 2022.
3. The application is opposed by the respondents who filed grounds of opposition dated 3<sup>rd</sup> October, 2023 and the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> interested parties who filed affidavits sworn on the October, 2022 and 30<sup>th</sup> September, 2022 respectively. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> interested parties never filed any response to the application.

#### **Ex-parte Applicant's Case**

4. It is the ex-parte applicant's case that his family had gathered land Parcel No. 945 Uringu 1 Adjudication Section during adjudication and had settled therein and carried out extensive developments thereon. That upon demarcation the said land Parcel No. 945 was displaced and the interested parties were erroneously given the said as land Parcel Nos. 2673, 2813, and 890. Being aggrieved by the said decision, the ex-parte applicant lodged objection NO. 805 which was heard by the Adjudication Committee and the 1<sup>st</sup> respondent who decided in favour of the applicant on 6<sup>th</sup> May 1999. The ex-parte applicant contends that the committee directed the 1<sup>st</sup> respondent to rectify the demarcation map in accordance with its judgment but failed to implement the said decision, thus breaching their duties. That the 2<sup>nd</sup> respondent proceeded to issue title deeds to the interested parties.
5. The ex-parte applicant further states that owing to the omissions of the 1<sup>st</sup> respondent, they have had various disputes including Meru ELC Petition No. 19 of 2013 and the interested parties are out to forcefully evict the applicant and his family from his homestead which he has known as his home for decades. It is the ex-parte applicant's contention that the actions of the respondents of



not implementing the decision of the land adjudication committee is illegal, actuated with malice, unreasonable, unilateral, irrational and biased.

6. Learned counsel for the ex-parte applicant gave a brief summary of the case and submitted inter-alia, that the conditions for grant of the orders sought herein are that it must be shown that the public officer has failed to perform his duties, that the court will not grant mandamus where there is an alternative remedy available to the applicant, and that it may be refused if the enforcement of the order will pose implementation challenges that require the court's supervision. The applicant's counsel relied on the case of *Evanson Jidiraph Kamau & Another Versus Attorney General, Mombasa HC. MISC. Application No. 40 of 2000* and submitted that the ex-parte applicant has demonstrated that the respondents have failed to perform their duties and there is no alternative remedy herein since if the orders sought are not granted, the net effect would be eviction of the applicant and his family from the suit land. Further, that there is no implementation challenge to this case but an order directing the respondents to comply with what had already been determined. They also relied on the case of *Republic Versus Commissioner of Lands & Another, ex-parte Kithinji Murugu M'agere, Nairobi High Court Misc. Application No. 395 of 2012*, *Republic Versus Kenya National Examinations Council ex-parte Gathenji & Others (1997) eKLR* and *Republic Versus Town Clerk, Kisumu Municipality, ex-parte East African Engineering Consultants [2007] & EA 441* and Section 1B of the [Civil Procedure Act](#).
7. The ex-parte applicant's counsel further submitted that the respondents averment that the 1<sup>st</sup> respondent is no longer seized of jurisdiction over the suit parcel of land since the same is now registered under the [Land Registration Act, 2012](#) is wrong and untenable and submitted that the same would amount to seeking to benefit from a wrong doing since the act of the respondents in not implementing the aforesaid decision and instead proceeding to issue unlawful title deeds contrary to the existing decision was a nullity from the onset. The applicant's counsel relied on the case of *Meru ELC Petition No. 5 of 2020 Joseph Murithi Imathiu & 4 others Versus The Land Adjudication and Settlement Officer Uringu 1, Adjudication Section & 5 others*.

### **Respondents Case**

8. The respondents grounds of opposition are as follows:-
  - i. That the application is misplaced and an abuse of the court process as the order of mandamus sought is likely to have been implemented given the inordinate delay in seeking for implementation.
  - ii. That the 1<sup>st</sup> respondent is no longer seized of jurisdiction over the suit parcel since the same are now registered under the [Land Registration Act, 2012](#).
  - iii. That given the registered status of the suit land, it automatically renders the Notice of motion an academic and an exercise in futility.
  - iv. That no prior request for implementation and refusal has been made by the applicant rendering the application immature.
9. The respondents prayed for the application to be dismissed with costs. Learned counsel for the respondents submitted that the application herein is time barred having been filed 23 years after the cause of action arose contrary to Section 3(1) of the [Public Authorities Limitation Act, Cap. 39](#) Laws of Kenya and Section 4(2) of the [Limitation of Actions Act, Cap 22](#) Laws of Kenya and because of that, this honourable court lacks jurisdiction to entertain this suit. The respondents counsel relied on the case of *Owners of Motor Vessel "Lilian S" Versus Caltex Oil (Kenya) Limited (1989) KLRI*.



10. The respondents counsel further submitted that the applicant has been indolent in prosecuting his alleged interest in the suit land and has not given any reason for the inordinate delay of more than 20 years. That in light of the delay and the principle that equity aids the vigilant not the indolent, this court finds it fit to decline granting the reliefs sought. Learned counsel for the respondents relied on the case of Republic Versus District Land Adjudication and Settlement Officer Maara sub-county & 3 others, ex-parte applicant: M’nyiri Ragwa; Njeru Kiriri (interested party) [2021] eKLR.

They also relied on the case of Republic Versus Jomo Kenyatta University of Agriculture and Technology ex-parte Elijah Kamau Mwangi [2021] eKLR and submitted that the Principles that apply for an order of mandamus to issue have not been met in this case. That the suit parcel has since been registered and the 1<sup>st</sup> respondent herein is no longer seized of jurisdiction over the suit land. The respondents added that the applicant has not demonstrated that he has requested for implementation of the said decision to the respondents. That the Land Registration Act further provides the applicant with a legal remedy to apply for rectification of an error made on the register to the Registrar. The respondents prayed for the dismissal of the application herein with costs.

### **The 1<sup>st</sup> Interested Party’s Case**

11. The 1<sup>st</sup> interested party stated that his name is Isaac Mutuma Ibaya and not Isaac Mugambi Ibaya. His case is that the application herein for judicial review does not hold water since the ex-parte applicant lost the AR case objection No. 805/1999 while Meru High Court Petition No. 19 of 2013 was dismissed on 13<sup>th</sup> March, 2018 and 16<sup>th</sup> April, 2022 for lack of prosecution. The interested party averred that his land is Parcel No. 3379 for which he has title which is indispensable. He pointed out that Parcel No. 945 belongs to the estate of Thurania Anjuri, a brother to the ex-parte applicant. He denied the prayers sought by the ex-parte applicant and pointed out that having lost AR Case objection No. 805 of 1999, the ex-parte applicant never appealed to the minister as provided in law and argued that this suit is res-judicata. He prayed for the application herein to be dismissed with costs for being unmerited.

### **5<sup>th</sup> Interested Party’s Case.**

12. The 5<sup>th</sup> interested party stated that land parcel No. 2813 does not belong to the estate of the late Thurania Anjuri. That the said estate own parcel No. 945 measuring 2.67 acres. That Meru High Court Petition No. 19 of 2013 filed by Simon Gaciata, the ex-parte applicant herein, was dismissed for lack of prosecution on 13<sup>th</sup> March, 2018. That the ex-parte applicant is seeking implementation of a decision in case AR objection No. 805 of 9<sup>th</sup> June, 2005 which he (the applicant) lost. The 5<sup>th</sup> interested party pointed out that the suit lands are registered to other people who have titles, arguing that the case is res-judicata. He prayed for the dismissal of the application with costs.

### **6<sup>th</sup> Interested Party’s Case.**

13. The 6<sup>th</sup> Interested party also stated that ex-parte applicant filed Meru ELC Petition No. 19 of 2013 which he failed to follow up and was dismissed for want of prosecution. He averred that objection case No. 805 of 1999 was filed by Amoroo clan and not the applicant herein who disagreed with it and went to court to stop the implementation of the said objection decision, hence this judicial review application is overtaken by events. That after the stoppage of the implementation of the said objection decision, the whole clan was demarcated and settled permanently on the ground for many years and that implementing it now will cause a lot of damage to the whole block which cannot be compensated by way of costs hence the prayers sought should not be given. The 6<sup>th</sup> interested party stated that the judicial review application was filed out of time and without leave and therefore the application should be dismissed.



14. The 6<sup>th</sup> Interested party averred that the applicant was Land Committee member and he was the one who plotted all the clan parcels of land and refused to honor the same and went ahead to stop his own work. That the applicant has come severally before court but without success. He stated that the applicant is buying time so as to continue enjoying the land of the children of his deceased brother who know nothing about cases, thus taking advantage and frustrating them. The 6<sup>th</sup> Interested party urged the court not to grant the ex-parte applicant the orders sought. It is his submission that the application herein lacks merit and should be dismissed with costs.

### **Analysis And Determination**

15. I have considered the application before me together with the statutory statement and the verifying affidavit in support thereof as well as the responses made. I have also considered the submissions by the advocates for the parties together with the authorities relied on. The issue that arises for determination is whether the orders sought herein should be granted or not.
16. In this case, it is the ex-parte applicants case that the 1<sup>st</sup> and 2<sup>nd</sup> respondents are in breach of their duty for failing to implement the decision of the adjudication committee delivered on 6<sup>th</sup> May, 1999 in objection proceedings No. 805 of 1999 in respect to land parcel Uringu1 Adjudication Section. The respondents and the interested parties argue that the application has been made after an inordinate delay, that the suit is res judicata the applicant having filed Meru ELC Petition No. 19 of 2013 and that the applicant has not met the threshold for the grant of an order of mandamus.
17. Judicial Review is the law concerning control by the courts of the powers, functions and procedures of administrative authorities and bodies discharging public functions. It is the process by which the High Court and courts of equal status exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies that perform public functions. Judicial Review has its foundation in the rule of law. It is the inherent jurisdiction of the High Court to ensure lawful and fair execution of administrative actions. Therefore, judicial review jurisdiction is neither criminal nor civil, but a public law jurisdiction (see Commissioner of Lands Versus Kunste Hotel Limited 1997) eKLR.
18. It has also been held that an application for Judicial Review may be refused for waiver of or acquiescence in an excess of jurisdiction or breach of the rules of natural justice, or because there is a more appropriate alternative remedy or because the applicant has delayed unreasonably before instituting the proceedings, or where awarding the orders sought would serve no useful purpose, or where it would be impracticable to supervise the implementation of the remedy.
19. In this case, the applicant is seeking an order of mandamus. The term mandamus comes from the word mandare which literally means “we command”. The order is thus a command by the court to an administrative authority or inferior tribunal directing it to perform a peremptory duty imposed upon it by law. It is clear therefore that when an authority fails in its legal duty to implement an order of a tribunal, mandamus can be issued compelling it to do so. However, to maintain an application for mandamus, an applicant must satisfy the court that he has a right to compel the public authority to perform the duty in question. Mandamus issues when the affected person has demanded the performance of a public duty, which demand has been met with refusal, failure or neglect. It is after this that he or she can invoke the jurisdiction of the court to command performance. Further, the courts ordinarily take into account various factors in determining whether a person or a body is amenable to Judicial Review order of mandamus. Whereas applications for certiorari must be instituted within six months of cause of action as stipulated in Section 9(3) of the *Law Reform Act* and Order 53 Rule 2 of the Civil Procedure Rules, no rules have so far been made to limit the time of applying for the orders



of mandamus and prohibition. A person can thus move the court at any time provided the actions sought to be compelled continue. However, even if a case falls into one of the categories where judicial review will lie, the court is not bound to grant it. The jurisdiction to make an order of mandamus and indeed any of the various orders in judicial review proceedings is discretionary. The court will make or not grant an order depending upon the circumstances of each particular case.

20. Whereas in this case the applicant seeks an order of mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents to enforce a decision rendered way back on 6<sup>th</sup> May 1999 in objection proceedings No. 805 in respect to Land Parcel No. 945 Uringu Adjudication Section, it is clear from the evidence on record that the said parcel of land has since been registered and titles issued. There is no prayer seeking the said registrations to be quashed so as to return the status of the suit property to the position it was on 6<sup>th</sup> May, 1999. As rightly submitted by the respondents and the interested parties, it is the view of this court that the applicant has not met the requirements for the grant of the order of mandamus due to the inordinate delay of more than 23 years on his part to apply for the orders herein. In ordinary circumstances, once a judgment has been entered in a civil suit or proceedings in favour of one party against another, the successful litigant is expected to execute the decree at once, unless there is an order of stay of execution. In this case, it has not been shown that the applicant ever requested for the implementation of the decision of 5<sup>th</sup> June 1999 by the respondents.

Instead, the material on record indicates that the applicant pursued other forms of litigation in seeking remedy over the suit land, including filing of Meru ELC Petition No. 19 of 2013 which he even failed to prosecute to conclusion and the same was dismissed for want of prosecution. In my view, the present suit was instituted as an afterthought and therefore is an abuse of the court process. The applicant ought to have moved with speed in seeking the implementation of the decision herein or prosecute the previous cases to conclusion.

22. In the case of Republic Versus Commissioner of Lands ex-parte Flowers Limited Nairobi HC. Misc. Application NO. 1235 of 1998, Nyamu J stated:

“Availability of other remedies is no bar to the granting of the judicial review relief but can however be an important factor in exercising the discretion whether or not to grant the relief.....”

22. In Republic Versus Independent and Electoral and Boundaries Commission ex-parte Mohamed Ibrahim Abdi & 4 Others [2017] eKLR Odunga J, (as he then was) stated as follows:

“It is now a cardinal principle that save in the most exceptional circumstances, the Judicial Review Jurisdiction would not be exercised and the court must not exercise it where there exists alternative remedy of the decision of the court is likely to affect 3<sup>rd</sup> parties without affording such parties a hearing. In Re Preston (1985) AC335 at P.25D Lord Scarman was of the view that a remedy by Judicial Review should not be made available where an alternative remedy existed and should only be made as a last resort. That was also the position in the English case of R(Regina) Versus Dudsheath, ex-parte, Meredith (1950) Aaller 741 at 743 Lord Goddard CJ said:-

“It is important to remember that “Mandamus” is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty and specially affects the rights of an individual, provided there is no appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it”.

23. Section 9(2) of the *[Fair Administrative Action Act](#)* No. 4 of 2015 provides:-



- (2) The High Court or subordinate court under Subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
24. The *Land Registration Act* under which the suit parcels of land are now registered provides the applicant with a Legal remedy to apply for rectification or an error made on the register to the registrar. In the circumstances of this case, to direct the respondents to enforce the decision of the adjudication Committee made on 6<sup>th</sup> May, 1999 has the potential of bringing more confusion over properties that have already been registered and titles issued under the relevant statute and may affect the rights of the registered owners without a hearing on merit. Applications for orders of Judicial review must be made promptly as soon as grounds giving rise to the need for judicial review become known. Undue and inordinate delay in applying for Judicial Review is a major factor for consideration. The applicant in this case let decades pass before instituting the proceedings herein. Public interests in good administration requires that public authorities and third parties should not be kept in suspense for any longer period than is absolutely necessary in fairness to the person affected by the decision. In my view, taking into account all the circumstances of this case, this court ought not to grant the orders sought in this application
25. In the premises, I decline to grant the orders sought herein and dismiss the application dated 25<sup>th</sup> July, 2022 with costs to the respondents and the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> Interested parties.
26. It is so ordered.

**DATED SIGNED AND DELIVERED AT MERU THIS 18<sup>TH</sup> DAY OF JANUARY, 2024.**

**HON. C. YANO**

**ELC – JUDGE**

In the presence of:-

Court Assistant: Kiragu

Kaba holding brief for Maranya for ex-parte applicant

No appearance for AG for respondents

Interested Parties present in person

