



**Republic v Attorney General & 2 others; Mwobe (Exparte) (Environment and Land Judicial Review Case E001 of 2022) [2024] KEELC 1013 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1013 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2022  
A KANIARU, J  
FEBRUARY 27, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**ASSISTANT DIRECTOR OF LAND ADJUDICATION & SETTLEMENT  
MBEERE SOUTH (KIRITIRI) ..... 2<sup>ND</sup> RESPONDENT**

**GEORGE WANYOIKE NJOROGE ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JEREMIAH NYAGA MWOBE ..... EXPARTE**

**JUDGMENT**

1. This judgment is on a judicial Review suit filed vide a Notice of Motion application dated 17.06.2022 and filed on 21.06.2022 under a Certificate of Urgency. It is expressed to be brought under Articles 10,23,25, 40,47,48 & 50 (1) of *the Constitution* of Kenya 2010, Sections 7,8,9,11& 12 of the *Fair Administrative Action Act*, Section 13 of the Environment & Land Court Act, 2011, and Order 53 of the Civil Procedure Rules. The prayers sought are as follows:

1. Spent.
2. That the Applicant herein be granted an Order of Certiorari to move into this Honourable Court for the purpose of being quashed a decision of the 2<sup>nd</sup> Respondent on transfer of PLOT No. 1542 PHOTO TWO MWEA WACHORO measuring 10 acres to GEORGE WANYOIKE NJOROGE who is the 3<sup>rd</sup> Respondent/Interested party in total contravention of the *Land Adjudication Act* Cap 283 Part 11, 11(b) & (e), 12(1) & (2), Part III, 13 (2)



3. That the Applicant herein be granted an order Mandamus to compel the 2<sup>nd</sup> Respondent to rectify its records to reflect the ownership of PLOT No. 1542 PHOTO 2 MWEA WACHORO to the status quo prior to implementing the unilateral decision of the 2<sup>nd</sup> Respondent dated 08.09.2021.
  4. That the leave granted herein continues to operate as stay against the Respondents from in any way dealing with PLOT NO. 1542 PHOTO 2 MWEA WACHORO by way of cultivating, transferring, leasing or in any way alienate the said property.
  5. A declaration that when the 2<sup>nd</sup> Respondent registered another party other than the applicant, his act is a nullity and fraudulent as the applicant at all material time to this proceeding has been the registered owner of the land referred to as PLOT NO. 1542 PHOTO 2 MWEA WACHORO.
  6. An order for eviction to evict the 3<sup>rd</sup> Respondent, the interested parties by themselves, their directors, agents, servants and employees from the suit property being PLOT NO. 1542 PHOTO 2 MWEA WACHORO.
  7. That costs of this application be provided for.
1. The application is premised on the grounds on its face and the affidavit sworn in support thereof by JEREMIAH NYAGA MWOBE to wit; that he is the registered allottee of PLOT NO. 1542 PHOTO 2 WACHORO MWEA. That after the allotment, the 3<sup>rd</sup> Respondent trespassed into his land. That he made a report of this trespass and lodged an objection on his parcel of land at the land adjudication office which took too long to get addressed. That when it was finally heard he was not given an opportunity to be represented by a person who was conversant with the proceedings. That the proceedings were done in English which he is not conversant with and his pleas to get an advocate or a person conversant with English were not headed to. That even after the proceedings were done, it took too long for him to be issued with a copy of the proceedings and he was not able to file an appeal with the ministry of lands as is required by law. That the decision of the Adjudication Officer has deprived him of his right to own property. That the officer also failed to guide him on the procedure of appeal.
  2. It is notable however, that the Applicant in this case did not seek leave to file the application for judicial review as is required by law. It is also very interesting that none of the other parties noted this anomaly despite being represented by advocates. The Applicant simply filed the substantive motion without seeking leave which is wrong. The Courts have on numerous occasions pronounced themselves on the mandatory nature of the leave stage when parties are seeking for orders of judicial review of mandamus, prohibition or certiorari under Order 53 (Rule 1) of the Civil Procedure Rules which provides as follows;
    1. No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
    2. An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement



setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

4. Also, the court in *Uwe Meixner & another v Attorney General* [2005] eKLR, as cited in *Republic v Chief Magistrate Milimani Commercial Courts & 2 others Ex Parte Fredrick Bett* [2022] eKLR it was held;

“That the leave of court is a prerequisite to making a substantive application for Judicial Review with a view to filtering out frivolous applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the applicant has an arguable case. Thus, the first step in the Judicial Review procedure involves the mandatory “leave stage.” At this stage an application for leave to bring Judicial Review proceedings must first be made. The leave stage as held by Waki J. (as he then was) is used to identify and filter out, at an early stage, claims which may be trivial or without merit.”

The court in *Fredrick Bett* case supra went on to say;

“The advent of the Fair Administrative Actions Act (The FAAA) expanded the scope of reliefs under judicial review. There was no departure, however, from the salient feature of judicial review, which is that, it relates

to the court’s power to supervise the exercise of administrative actions by those in authority or in quasi-judicial bodies. It is a special jurisdiction that must be distinguished from petitions to remedy breaches of fundamental rights and freedoms under *the constitution* or ordinary causes of action under the civil jurisdiction of the court. The FAAA did not provide an alternative procedure of moving the court under judicial review and order 53 of the civil procedure Rules was not repealed. Neither did the FAAA remove the need to sift applications that met the threshold for grant of leave to apply for judicial review orders. Order 53 thus remains the provision governing invocation of judicial review jurisdiction. I am in agreement with the holding of Korir, J in *Felix Kiprono Matagei v Attorney General; Law Society of Kenya (Amicus Curiae)* [2021] eKLR where he was of the view that “the procedural rules in Order 53 of the CPR governed judicial review prior the promulgation of *the Constitution* and are still in force as they have not been repealed.”

5. From the above, it is clear that a party seeking orders for judicial review must first seek leave through an ex-parte chamber summons to file the substantive application for judicial review which has not been done in this case.
6. This court is therefore inclined to dismiss the Notice of Motion application dated 17.06.2022 for failing to comply with the provisions of Order 53 of the Civil Procedure Rules.
7. Each party to bear their own costs.

**JUDGMENT DATE, SIGNED and DELIVERED** in open court at **EMBU** this **27<sup>th</sup>** day of **FEBRUARY, 2024.**

**In the presence of;**

**Applicant – present**

**Respondent – present**

**Kiongo for 1<sup>st</sup> and 2<sup>nd</sup> respondent – present**



**Court assistant - Leadys**

**A. KANIARU**

**JUDGE – ELC, EMBU**

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