



**Ayieko & another v Kajiado Land Registrar & another; Lakiondo
(Interested Party) (Environment and Land Judicial Review Case
E004 of 2023) [2025] KEELC 190 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2023**

LC KOMINGOI, J

JANUARY 30, 2025

**IN THE MATTER FOR AN APPLICATION FOR LEAVE
TO APPLY FOR ORDERS OF INHIBITION AND MANDAMUS BY
ZACHARY OGAMBA AYIEKO AND NAOMI NYANUSI OGAMBA**

AND

**IN THE MATTER OF ARTICLES 20, 22, 23, 40, 162 (2) (B),
165 (6) AND 165 (7) OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF A BORDER DISPUTE

AND

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES, THE LAW REFORM ACT CAP 26 OF THE JUDICATURE**

BETWEEN

ZACHARY OGAMBA AYIEKO 1ST EXPARTE APPLICANT

NAOMI NYANUSI OGAMBA 2ND EXPARTE APPLICANT

AND

KAJIADO LAND REGISTRAR 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

AND

LESINGO LEKIONDO INTERESTED PARTY



JUDGMENT

1. This is Notice of Motion dated 22nd May 2023 brought under: Article 20, 22, 23, 40, 162(2)(b), 165(6) and 165(7) of *the Constitution*; Section 18(2), 19, 20 and 68 of the *Land Registration Act* and Order 53 of the Civil Procedure Rules seeking:
 - i. An order of mandamus compelling the 1st Respondent to finalise and release its report/ruling on the border dispute between the Applicants and the Interested Party regarding title No. Kajiado/Kaputiei North/21872 and title No. Kajiado/Kaputiei North/21873 and any other further subdivisions resulting from title No. Kajiado/Kaputiei North/21873 within a month or any time the Court deems reasonable.
 - ii. That the Applicants be granted 60 days' leave to consider and if not satisfied, apply for Judicial Review orders of Certiorari, mandamus and any other remedy they deem expedient in the event that they are dissatisfied with report/ruling given by the 1st Respondent as prayed in the first prayer.
2. This application is supported by the grounds on its face and by the sworn Affidavit of Zachary Ayieko Ogamba. He avers that the Interested Party initially owned parcel Kajiado/Kaputiei North/4783 which was subdivided into Kajiado/Kaputiei North/21873 and Kajiado/Kaputiei North/21872. He retained Kajiado/Kaputiei North/21873 and sold Kajiado/Kaputiei North/21872 to the Ex parte Applicants. The Interested Party went on to fence the property and in the year 2021 when the Ex parte Applicants were desirous of subdividing and selling part of their land they discovered that the acreage on the ground was different from the acreage on the mutation form with a two (2) acre difference. The Applicants then lodged a boundary dispute with the 1st Respondent and a site visit was conducted on 26th July 2022, in presence of the parties including potential buyers of the now subdivided Kajiado/Kaputiei North/21873 to Kajiado/Kaputiei North/34574-34579. The 1st Respondent was to release his report within 21 days but has never done so since the site visit despite several reminders thus preventing the Applicants from enjoying their right to property. The Ex parte Applicants thus pray that this Court compels the Land Registrar to finalise and release the Boundary dispute findings. They also seek 60 days leave to apply for judicial review orders if dissatisfied with the report. The Ex parte Applicants also sought an order of inhibition against any dealings on the suit properties pending determination of the boundary dispute.
3. The Respondents entered appearance but did not file any response.
4. The Interested Party neither entered appearance nor filed a response.
5. This application was canvassed by way of written submissions.

The Ex-Parte Applicants' Submissions

6. Counsel for the Ex parte Applicants submitted that this Court had a supervisory role over quasi-judicial bodies as guaranteed by Article 165(6) of *the Constitution* and that any person aggrieved by an administrative action has the right to seek judicial review as provided under Article 123(3)(f) and Section 7 of the *Fair Administrative Action Act*. The 1st respondent being the proper forum to deal with boundary disputes as espoused under Sections 18 and 19 of the *Land Registration Act* had the mandate to give its ruling within stipulated timelines, but this had not been done almost two years



later. This was a delay of justice for the Ex parte Applicants contrary to Article 159 of *the Constitution* and they were thus entitled to the prayers sought.

Analysis and determination

7. I have considered the Notice of Motion, the affidavit in support, the written submissions, the relevant authorities and statutes and find that the issues for determination are:
 - i. Whether the Ex parte Applicants are entitled to the prayer of mandamus and certiorari against the Respondents as prayed;
 - ii. Who should bear the costs of this application?
8. Mandamus is a judicial remedy issued by a Court directing a Government body, Corporation, or Public Authority to perform (or refrain from performing) a specific act that it is legally obligated to undertake (or abstain from). This obligation must arise from a public duty or, in certain cases, a statutory duty.
9. The primary purpose of an order of Mandamus is to address injustices where a specific legal right exists, but there is no corresponding legal remedy to enforce it. As an equitable remedy, the grant of Mandamus is at the discretion of the Court, guided by established legal principles.
10. Since Mandamus is a discretionary remedy, an application for its issuance must be made in good faith and for a legitimate purpose. The applicant must demonstrate a clear legal right to the performance of the duty in question, which must be distinct from any matter left to the discretion of the relevant authority.
11. An order of Mandamus is issued when a public officer or authority, under statutory obligation, fails to perform a specific duty despite a written demand.
12. The Ex parte Applicants seeks that the 1st Respondent be compelled to issue them with a ruling/ findings of the determination of the Boundary Dispute between them and the 1st Interested Party conducted on 26th July 2022.
13. The Court of Appeal in *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR held that:

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual... What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed...”
14. It is not in contention that it is the 1st Respondent’s duty to determine Boundary Disputes under Section 18 and 19 of the *Land Registration Act*. The Ex parte Applicants have provided evidence that this dispute was lodged as such and a site visit conducted although the findings are yet to be made known to the parties from 26th July 2022. Regulation 40 (8) of the Land Registration (General)



Regulations provides that; “A dispute for determination of a boundary and or parcel shall, unless in the case of special circumstances, be completed within a period not exceeding six months from the date of filing the application”. The 1st Respondent neither responded to this application nor gave reasons as to why this has not been done past the stipulated statutory timelines. I therefore find that the Ex parte Applicants have made out a case for grant of an order of mandamus.

15. The Ex parte Applicants have also sought an Order of Certiorari in the event that they are dissatisfied with the said ruling. I find that this is putting the cart before the horse. They do not know what the ruling is. In my view once the decision is given, there are laid down procedures on how to approach the court, where parties are dissatisfied with decision of a boundary dispute. I therefore decline to grant this prayer at this juncture.

16. Accordingly;

a. An Order of Mandamus is hereby granted compelling the 1st Respondent to finalize and release its report/ruling on the boundary dispute between the Exparte Applicants and the Interested Party in respect of Kajiado/Kaputuei North/21872 and Kajiado/Kaputuei North/21873 and any further sub-divisions resulting from Kajiado/Kaputuei North/21873 within forty five (45) days from the date of this Judgement.

b. Each party do bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF JANUARY 2025.

L. KOMINGOI

JUDGE

IN THE PRESENCE OF

Mr. Sagini for the Ex Parte Applicants.

N/A for the Respondents.

Court Assistant - Mutisya

