



Republic v Land Registrar – Thika & 16 others; Ngugi (Exparte Applicant) (Judicial Review Application E002 of 2023) [2024] KEELC 1601 (KLR) (26 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW APPLICATION E002 OF 2023**

**BM EBOSO, J
MARCH 26, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE LAND REGISTRAR – THIKA & 16 OTHERS RESPONDENT

AND

ELIZABETH W. NGUGI EXPARTE APPLICANT

RULING

1. Through a chamber summons application dated 14/3/2023, Elizabeth Wangari [the ex-parte applicant] seeks leave of this court to bring a judicial review motion for orders of mandamus directing the Gatundu Land Registrar and the Thika Land Registrar to cancel /expunge from the relevant land registers any names appearing after that of Mambo Muiruri Muigai in relation to the following parcels of land: (i) Juja/ Juja East Block 1/10; (ii) Juja Kiaura Block 8/1642; (iii) Juja Municipality Block 30/3396 [sic]; (iv) Juja Municipality Block 30/245 [sic]; (v) Thika Municipality 556/164 [sic]; (vi) Ngenda Nyamang’ara/1592; (vii) Ngenda/ Nyamang’ara /116; (viii) Ngenda/ Nyamang’ara/1066 (ix) Ngenda/ Nyamang’ara/986; (x) Ngenda/Mbari ya Mwihiya /T6; (xi) Ngenda/Mbari ya Mwihiya/ T89; (xii) Ngenda/ Nyamang’ara/314; and (xiii) Ngenda/Nyamang’ara /315.
2. The ex-parte applicant further seeks leave to initiate similar proceedings for mandamus orders compelling the Machakos Land Registrar to cancel/ expunge from the relevant register any names entered after that of Mambo Muiruri Muigai in relation to parcel numbers: (i) Ndalani/ Mavoloni Block 1/611; and (ii) Ndalani/ Mavoloni/643.
3. It is the case of the applicant that she was not privy to the “direction” that gave/ allotted the parcels of land to “anybody” subsequent to the death of Mambo Muiruri Muigai. The initial application did not have an identifiable respondent. On 14/3/2023, the court directed the ex-parte applicant to join



as respondent all persons affected by the contemplated orders of mandamus. Paul Ndungu Mambo opposed the application through a replying affidavit sworn on 11/7/2023.

4. The court has considered the application. The single issue to be determined in this ruling is the question as to whether the application under consideration meets the criteria for grant of leave under Order 53 of the Civil Procedure Rules.
5. The principle which guides our courts when exercising jurisdiction to grant leave under order 53 of the Civil Procedure Rules is well settled. Waki J [as he then was] outlined the applicable principle in Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996 as follows:

“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially”.

6. Does the application under consideration meet the above threshold? First, it does appear from the exhibited ruling of the Kiambu High Court, [Kasango J] dated 23/2/2023 that the Grant which had been issued to the ex-parte applicant in relation to the estate of the late Mambo Muiruri Muigai was revoked by the Court on 23/2/2023. A fresh Grant was issued to Andrew Muthee Mambo and David Kariuki Muigai. The legal import of the said ruling is that the applicant has no locus standi to initiate and maintain proceedings on behalf of the estate of Mambo Muiruri Muigai. On that ground alone, this suit is a non- starter.
7. Second, the dispute disclosed in the application under consideration is not a matter for judicial review. It is a dispute about registrations relating to land. It is a dispute about ownership of land. A dispute of this nature is best adjudicated on the platform of a civil suit where oral evidence is tendered by the parties. If indeed the estate of the late Mambo Muiruri Muigai has a legitimate claim of ownership of the itemized parcels of land, the proper platform on which to ventilate the claim is an ordinary civil suit to be initiated by way of a plaint or plaints. The estate does not require leave to initiate the civil suit(s).
8. For the above reasons, the application for leave is rejected. The application is accordingly dismissed. The applicant, Elizabeth W. Ngugi, will bear costs of the party/parties who entered appearance and participated in the proceedings.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 26TH DAY OF MARCH 2024

B M EBOSO

JUDGE



Court Assistant: Hinga

