



Tyongik v District Land Registrar Nakuru; Kirobon Farmers Company Limited & another (Interested Parties) (Environment and Land Judicial Review Case 2 of 2024) [2025] KEELC 777 (KLR) (25 February 2025) (Judgment)

Neutral citation: [2025] KEELC 777 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 2 OF 2024
MAO ODENY, J
FEBRUARY 25, 2025**

BETWEEN

JOSEPH TYONGIK APPLICANT

AND

DISTRICT LAND REGISTRAR NAKURU RESPONDENT

AND

KIROBON FARMERS COMPANY LIMITED INTERESTED PARTY

SAMMY KIPKURGAT MUTAI INTERESTED PARTY

JUDGMENT

1. On 31st January, 2024, the court granted the Applicant leave to file Judicial Review proceedings against the Respondent in respect of parcel of land known as Nakuru/Olenguruone/Keringet Block 1/107 (Kirobon). The court directed the Applicant to file the substantive application within 21 days.
2. The Applicant filed a Notice of Motion seeking the following orders:
 - a. That the Honourable Court do issue an order of Mandamus directed at the Respondent herein, the Land Registrar-Nakuru District, compelling her/him to register the ex-parte Applicant’s interests in the respective green card and issue him with a title deed for the parcel known as Nakuru Olenguruone/ Keringet Block 1/107 (Kirobon).
 - b. That the costs of this application be provided for.
3. The application is based on the grounds set out on the face of the application and the supporting affidavit of the Ex – parte Applicant where he deponed that he is a member of Kirobon Farmers



Company Ltd, where he purchased the suit property known as Nakuru Olenguruone/Keringet Block 1 Kirobon.

4. He further deponed that he was issued with a land clearance certificate by Kirobon Farmers Company Ltd dated 12th October, 2022 as the absolute proprietor of the suit parcel. Further that upon presenting the relevant conveyance documents to the Respondent for registration and paying the prescribed fee, the Respondent has refused to register his interest without any lawful justification or excuse.
5. It was the Applicant's evidence that he wrote a letter dated 2nd August, 2023 to the Land Registrar Nakuru District of which he has never received any response and urged the court to allow the application as prayed.
6. The Respondent filed a Replying Affidavit sworn on 28th November, 2024 by Emmah C. Sitienei the Land Registrar and deponed that the application is an abuse of the court process as a Judicial Review application is meant to challenge a decision made by a public officer and the applicant has not demonstrated which decision he is challenging. She further deponed that no decision has been made on whether to issue the Applicant with the title to the suit land or not.
7. It was the 1st respondent's case that the Applicant is yet to submit to their office the relevant documents which include a transfer, clearance form from the 1st Interested Party, area's chief letter, share certificate from the 1st Interested Party and an official receipt to prove payment of conveyance fees.
8. Samuel K. Birir, the Director and Chairman of the 1st Interested Party filed a Replying Affidavit and deponed that from the 1st Interested party's records, the Applicant is not the proprietor of LR No Nakuru/Olenguruone/Block 1/107 (Kirobon). It was his deposition that the Applicant is deceased hence the application is incompetent and should be dismissed with costs.
9. He deponed that it is true that the Applicant was a member of the Interested Party and he was allocated land parcel No. 64 which is approximately 30 acres. The 1st Interested Party's director deponed that the Applicant sold off his land parcel a long time ago and even at the time of confirmation, he was not on the land parcel and the same was confirmed and registered in the name of the purchaser Johanna K. Cheptarus.
10. Sammy Kipkurgat Mutai, the 2nd Interested Party filed a Replying Affidavit sworn on 22nd August, 2024 and deponed that he is the lawful owner of the parcel of land known as Nakuru/Olenguruone/Keringet Block 1/107 (Kirobon) and has been in occupation of the same including the 10 acres claimed by the Applicant and nobody has made any claim against him. He further deponed that in the year 2000, some unknown people resurveyed his parcel in his absence unlawfully and fraudulently reducing it by 10 acres and causing it to be allocated a new number, Nakuru /Olenguruone/Keringet Block 1/107 (Kirobon).
11. It was his evidence that he approached the Nakuru District Land Disputes Tribunal, which found that he was the rightful owner of the land which decision was later adopted and enforced as a judgment in Nakuru Misc App No 21 of 2002.
12. The Applicant filed a Further Affidavit sworn on 22nd October, 2024 and deponed that he is not deceased and that it is true that the Farm Committee resolved that 10 acres of land be hived off parcel No. 76 and the 10 acres be allocated to him. The Applicant stated that the 10 acres is the reason he is in court seeking orders to compel the register to issue the title in his favour.
13. He deponed that the land dispute tribunal does not have jurisdiction to deal with issues of ownership and title and further that the 2nd Interested Party has not produced any documents to show ownership of the subject land he is not a member of the 1st Interested Party.



Applicant's Submissions

14. Counsel for the Applicant filed submissions dated 31st October, 2024 and identified the following issues for determination:
 - a. Whether the Applicant has made out a case to warrant grant of judicial review orders?
 - b. Whether the 2nd Interested party has a registered interest in the suit property?
 - c. Whether the Applicant is entitled to the orders sought?
15. On the first issue, counsel submitted that the Respondent has not indicated any reasons why he/she has failed to issue a Certificate of Official Search and a certified copy of the green card. Counsel submitted that the Respondent has further not given any reasons why it has consistently refused to receive the Applicant's conveyance documents for registration. Further that the Respondent is a public office/officer and his actions and inactions are an affront to the Applicant's right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
16. Counsel submitted that his rights under Articles 40 and 47 have been violated and relied on the cases of Republic vs Law Society of Kenya Disciplinary Tribunal & Another Ex-Parte Muema Kitulu (2008) eKLR, Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd C.A Civil Appeal No 185 of 2001, Judicial Service Commission vs Mbalu Mutava & another [2014] eKLR, *Saire & Another vs Cabinet Secretary for Lands and Planning & Another (Petition 68 of 2022)* [2024] KEELRC 894 (KLR) and Communication Commission of Kenya & 4 others vs Royal Media Services Ltd & 4 others [2014] eKLR.
17. On the second issue, counsel relied on Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya and submitted that the 2nd Interested party has not adduced any evidence to establish his claim. Counsel further relied on Section 3 of the Land Dispute Tribunal Act 1990 (repealed) and submitted that the Land Disputes Tribunal has no jurisdiction to deal with ownership of the suit property and any such orders by the tribunal are a nullity and relied on the cases of M'Marete vs Republic & 3 others, Court of Appeal, Nyeri Civil Appeal 259 of 2000 [2004] eKLR, Kenya Hotel Properties Limited *vs Attorney General & 5 others (Petition 16 of 2020)* [2022] KESC 62 (KLR) and Samuel Kamau Macharia and Another vs Kenya Commercial Bank and 2 others [2012] eKLR.
18. On the third issue, counsel prayed that the orders sought in the Notice of motion dated 24th January, 2024 be allowed as prayed and cited the case of Kenya National Examination Council vs Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR.

1st Interested Party's Submissions

19. Counsel for the 1st Interested party filed submissions dated 10th February, 2025 and submitted that the correct procedure is not for the Applicant to force the Land Registrar to issue him with a title and that the Applicant has not demonstrated that the process of obtaining title or making the decision was tainted.
20. It was counsel's further submission that the Applicant has a specific legal remedy available for his claims and therefore does not deserve any order on judicial review. Counsel submitted that the Applicant can file a claim for his land parcel in the Land Court and urged the court to dismiss the application with costs.



2nd Interested Party's Submissions

21. Counsel for the 2nd Interested party filed submissions dated 11th October, 2024 and submitted that for an order of mandamus to issue, the Applicant must demonstrate a clear legal right to the performance of a public duty by a public officer of which the Applicant has failed to do so as he does not hold a valid title to Nakuru/ Olenguruone/Keringet Block 1/107 (Kirobon). Counsel relied on the case of Kenya National Examination Council vs Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR.
22. Counsel further submitted that the 2nd Respondent is the lawful owner of Nakuru/ Olenguruone/ Keringet Block 1/107 (Kirobon) and that the Applicant should await the outcome of ongoing proceedings in MCCMISC/30/2024 which will address the outstanding issues in respect of the suit land and cited the case of Republic vs Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR.
23. It was counsel's submission that the 2nd Interested party has made significant developments on the land without interference from the Applicant and is entitled to protection under the doctrine of legitimate expectation and relied on the case of Council of Civil Service Unions vs Minister for the Civil Service [1985] AC 374 and urged the court to dismiss the application with costs.

Analysis and Determination

24. The issue for determination is whether the Ex parte Applicant is entitled to an order of Mandamus directing the Respondent herein to register the Applicant's interests in the respective green card and issue him with a title deed for the parcel known as Nakuru Olenguruone/Keringet Block 1/107 (Kirobon).
25. In the case of Municipal Council of Mombasa v Republic & another [2002] eKLR the Court of Appeal held that:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself- such as whether there was or there was not sufficient evidence to support the decision.”
26. Similarly, in the case of OJSC Power Machines Limited, Trans Century Limited and Civicon Limited (consortium) -vs- Public Procurement Administrative Board of Kenya and 2 others (2017) eKLR, the Court of Appeal stated that:

“The law on the jurisdiction of the High Court to entertain judicial review proceedings is encapsulated in several decisions...The law, from these decisions is to the following effect; That the purpose of judicial review is to ensure that a party receives fair treatment in the hands of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceeding. Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision had the jurisdiction,



whether the persons affected by the decision were heard before the decision was made and whether in making the decision, the public body took into account irrelevant matters or did not taken into account relevant matters.”

27. This is a case where the issue of ownership of the disputed parcel of land is still pending. The Ex –parte Applicant also admits that there were 10 acres which were hived off from the original parcel of land which he claims should be registered in his name. There are also competing interests in the suit land which have not yet been resolved noting from the 1st and 2nd interested parties’ affidavits including an allegation that the Applicant was deceased. These are grave issues that cannot be resolved through a Judicial Review Application. No decision has been made by the public officer that has been challenged in this review to enable the court to determine whether the process followed was regular, fair and that the public body or officer took into account irrelevant matters therefore arrived at a wrong conclusion.
28. Mandamus can only issue where there is a duty imposed on a public officer or a body to do something. The law does not impose on the respondent a legal duty to register a party as a proprietor without following the laid down procedures such as the submission of the relevant documents which include a transfer, clearance form from the 1st Interested Party, area’s chief letter, share certificate from the 1st Interested Party and an official receipt to prove payment of conveyance fees. These are issues, which are still contested.
29. There is no evidence of any decision which has been made to warrant the Application for Judicial Review. The Applicant wants the court to determine the merits of the case including adjudication of the ownership of the suit land. The Respondent stated that there is no evidence that the Applicant submitted any documents for registration and a decision was made to either accept or reject the documents. The letter dated 2nd August 2023 that was annexed to the application was not for registration but a request for issuance of a copy of certificate of official search and green card to ascertain the veracity of the record.
30. I have considered the Application, the submissions by counsel and the relevant authorities and find that the application cannot be granted as it deals with more than what Judicial Review can offer or grant in the circumstances. Without evidence that the application was considered on its merits and rejected on unreasonable grounds, the instant application lacks merit and is therefore dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF FEBRUARY 2025.

M. A. ODENY

JUDGE

