



**Millenix Investments Limited v Chief Land Registrar, Kajiado; Kinyanjui & another (Interested Parties) (Environment and Land Judicial Review Miscellaneous Application E026 of 2021) [2024] KEELC 3483 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3483 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E026 OF 2021**

**MN GICHERU, J**

**APRIL 24, 2024**

**IN THE MATTER OF THE APPLICATION FOR LEAVE TO APPLY FOR THE  
JUDICIAL REVIEW ORDERS OF CERTIORARI MANDAMUS AND PROHIBITION  
IN THE MATTER OF AN APPLICATION BY MILLENIX INVESTMENTS LIMITED FOR  
JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF LAND REGISTRATION ACT, 2012**

**AND**

**IN THE MATTER OF A DECISION BY THE CHIEF LAND REGISTRAR KAJIADO  
DATED 5TH MAY 2021 IN RESPECT OF BOUNDARY DISPUTE KAJIADO/  
KITENGELA/2317 AND 1899 –VERSUS- KAJIADO/KITENGELA/1898**

**AND**

**IN THE MATTER OF LAND TITLE DEED NO. KAJIADO/KITENGELA/31490**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT, 2012**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF ARTICLES 10, 40, 47, 60 OF CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**MILLENIX INVESTMENTS LIMITED ..... APPLICANT**

**AND**



**CHIEF LAND REGISTRAR, KAJIADO ..... RESPONDENT**

**AND**

**STANLEY KINYANJUI ..... INTERESTED PARTY**

**REUBEN NAKUO ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the chamber summons dated 19/5/2021. The summons which is brought under Order 53 Rules 1 (1) and (2) and (2) Civil Procedure Rules as well as Sections 8 and 9 of the Law Reform Act seeks the following residual orders.

SUBPARA 2.

That leave be granted to the applicants to apply for an order of Certiorari to remove into this court for the purposes of its being quashed the decision of the respondent in respect of boundary dispute between Kajiado/Kitengela/2317 and Kajiado/Kitengela/1889 and 1899 made on 5/5/2021 over the applicant's land parcel known as Kajiado/Kitengela/31490 which was excised from Kajiado/Kitengela/1898.

SUBPARA b.

Prohibition against the respondent restraining her, her agents and/or representatives from implementing, acting upon or enforcing the decision dated 5/5/2021 in any manner whatsoever depriving and/or with intent to deprive the applicant of its right to own L.R. No. 31490 and quiet use and enjoyment thereof.

SUBPARA c.

Prohibition against the 1<sup>st</sup> interested party from trespassing, occupying, invading and/or interfering in any manner whatsoever with the applicant's quiet possession of L.R. 31490(excused from L.R. 1898).

SUBPARA d.

Mandamus compelling the respondent to amend or cause the Registry Map to be amended to conform to the original position as demarcated by the group ranch officials.

2. The summons is supported by a verifying affidavit dated 18/5/2021 and sworn by Edward Bitok, a director of the 1<sup>st</sup> Ex parte applicant. The affidavit has six (6) annexures. In addition, there is an amended statutory statement dated 10/6/2022 which adds three more ex parte applicants to make the following, Millenix Investments, Angelo Wachira, Stella Nanzia Kashenu and Rose W. Maket as the applicants. The second applicant has sworn a second verifying affidavit dated 14/6/2022 which has three (3) annexures.

3. In summary, the applicants' case is as follows.

Firstly, they own or owned L.R. 31490 and 31491 which may have been subdivided into many other parcels with different titles and owners.

Secondly, the respondent made a decision on 5/5/2021 which adversely affected the land parcels belonging to the applicants and others which were excised from L.R. 1898.



Thirdly, the respondents acted ultra-vires and also unprocedurally by failing to consider the resurvey that gave rise to L.R. No. 1898, failing to consider the evidence of the group ranch officials and solely relying on the evidence presented by the 1<sup>st</sup> interested party.

Fourthly, the 1<sup>st</sup> applicant is a bona fide purchaser for value without notice who relied on official records in the custody of the respondent.

Fifthly, the respondent acted irrationally by ignoring the fact that all parcels of land allocated by the group ranch had four (4) beacons unlike the 2<sup>nd</sup> interested party's which had five (5) beacons.

Sixthly, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants are some of the beneficial owners of former parcel no. 31491 which was subdivided into 29 plots with different titles and owners having been excised from L.R. 1898.

Seventhly, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants were never invited by the respondent in the meetings which culminated in the respondent's impugned decision hence they were condemned unheard.

Finally, there is imminent risk that the respondent and the 1<sup>st</sup> interested party will enforce the orders arising out of the impugned decision depriving the applicants of their right to own and enjoy quiet possession of their land.

4. The motion is opposed by the 1<sup>st</sup> interested party who has sworn a replying affidavit dated 14/6/2021 in which he deposes as follows.

Firstly, the respondent has power under Section 79 of the Land Registration Act, Act No. 3 of 2012 to make the decision dated 5/5/2021 on the rectification of the registers for L.R. 2317 and 31490.

Secondly, the applicants must demonstrate want of fair administrative action on the part of the respondent in the process leading to the making of the decision dated 5/5/2021 in terms of Article 47 of the Constitution and Fair Administrative Action Act which they have not done.

Thirdly, the 1<sup>st</sup> applicant has not challenged the process leading to the making of the decision dated 5/5/2021 or the merit thereof.

Fourthly, the applicants are victims of an active participant in an irregular title procured by the second interested party against whom a claim for compensation should be made as the applicants bought land that does not exist on the ground.

Fifthly, the applicants claim against the 1<sup>st</sup> interested party is one of title and possession and ought to have been commenced by way of a plaint where their competing interests can be determined by way of viva voce evidence. Their claim does not lie in judicial review and this summons ought to be dismissed with costs. The second interested party in an affidavit dated 17/9/2021 substantially supports the position taken by the first respondent.

5. Counsel for the parties filed written submissions dated 17/5/2023 in the case of the applicant and the 2<sup>nd</sup> interested party. Counsel for other parties did not file any submissions by the set timeline of 29/2/2024. The counsel who filed written submissions identified the following issues for determination.
  - a. Whether the applicant has established grounds for the court to grant the leave sought.
  - b. Who should bear the costs of the application.
  - c. Whether the respondent acted unprocedurally in making a decision over the boundary dispute between Kajiado/Kitengela/2317 and L.R. 1899 –versus- 1898 on 5/5/2021 to the effect that all titles emanating from the resurvey of L.R. No. 1898 be expunged.



- d. Whether leave should be granted to the applicant's for judicial review orders.
6. I have carefully considered the summons dated 19/5/2021 in its entirety including the verifying affidavits, grounds, annexures, replying affidavits, written submissions and the law cited therein and in find as follows on the issues raised and identified by learned counsel for the parties.
7. On the first issue, I find that the applicants have not established grounds for the grant of the leave sought. This is because while the summons meets three out of the four ingredients set out in the case of Republic –versus- K.R.A. Commissioner, Ex Parte Keycorp Reals Advisory Limited (2019) eKLR, it fails the key ingredients of an arguable case with reasonable chance of success. It fails this test because the applicants are saying that just because they have title documents without land on the ground, land should be created for them on the land belonging to the 1<sup>st</sup> interested party. It should not be lost that the respondent had statutory power to make the decision that he did on 5/5/2021. Even if leave were granted as sought, at the hearing of the substantive application, no more evidence than already pleaded, would be available. The applicants have established the following.
- i. locus standi,
  - ii. being affected by the decision of the Land Registrar,
  - iii. the decision complained of was made by a public body and it concerned a public law matter but they have failed to prove that,
  - iv. they have an arguable case with a reasonable chance of success.
8. On the issue of whether the respondent acted unprocedurally in making the decision of 5/5/2021, I find that he acted procedurally. From the available record, there were 22 people in attendance when the site visit took place. These people included the 1<sup>st</sup> applicant's representative Edward Bitok. It is noteworthy that when the summons was just filed on 20/5/2021, there was only one applicant who is the 1<sup>st</sup> applicant. The rest of the applicants namely Argelo Wachira, Stella Nanzia Kashenu and Rose W. Maket joined the case later via the amended statutory statement filed in court on 31/10/2022 more than 1 ½ years after the petition was filed. They have not stated anywhere in their pleadings if they too appeared before the respondent for the site visit or when they acquired their respective parcels. The copies of the title deeds attached to the verifying affidavit of Angelo Wachira are so faint that one cannot tell the date they were issued. Whatever their case may be, there is nothing to show that they claim land that they can prove exists on the ground. They are therefore bound by the finding on the first issue at paragraph (6) above.
0. On the third issue of whether leave should be granted to the applicant's for judicial review orders, I find that it should not be granted. I am persuaded that the judicial review remedy is not the appropriate remedy in this case owing to the complex issues that arise such as fraudulent sale of non-existent lands, forged mutation forms and maps and absence of key players in these suspected fraud from these proceedings.
11. For the above stated reasons, I find no merit in the summons dated 19/5/2021 and I dismiss it with costs to the respondent and interested parties.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24<sup>TH</sup> DAY OF APRIL 2024.**

**M.N. GICHERU**



**JUDGE**

