



REPUBLIC OF KENYA



Nzioki (Suing as the Administrator of the Estate of the Late Jackson Nzioki Mutweia) v Chief Land Registrar & 2 others (Constitutional Petition 15 of 2022) [2025] KEELC 745 (KLR) (24 February 2025) (Judgment)

Neutral citation: [2025] KEELC 745 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
CONSTITUTIONAL PETITION 15 OF 2022
CA OCHIENG, J
FEBRUARY 24, 2025**

BETWEEN

SAMUEL MUNYAO NZIOKI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE JACKSON NZIOKI MUTWEIA) PETITIONER

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

COUNTY LAND REGISTRAR, MACHAKOS 2ND RESPONDENT

DIRECTOR-LAND ADMINISTRATION, MINISTRY OF LANDS AND PHYSICAL PLANNING 3RD RESPONDENT

JUDGMENT

1. By a Petition dated the 12th October 2022, the Petitioner seeks;
 - a. A declaration that the Respondents have contravened the national values of good governance, integrity, transparency and accountability guaranteed by Article 10 of *the Constitution*.
 - b. A declaration that the Respondents have contravened the Petitioner's right to property guaranteed by Article 40 of *the Constitution*.
 - c. A declaration that the Petitioner's right to Fair Administrative Action is guaranteed by Article 47 of *the Constitution* and the Respondents have contravened the Petitioner's right under *the Constitution*.
 - d. An order compelling the Respondents to open a register for Ndithini/Mananja Block 4/Green Farm) 1-53 at Machakos Land Registry within 30 days from the date of the order.



- e. An order compelling the Respondents to issue lease documents and certificate of lease and/or title documents in respect of Ndithini/Mananja Block 4/5, Ndithini/ Mananja Block 4/6, Ndithini/Mananja Block 4/33 and Ndithini/Mananja Block 4/45 to the Petitioner within 30 days from the date of the order.
 - f. The costs of this Petition be awarded to the Petitioner.
 - g. The Honourable court do issue such other orders and further directions as it may deem fit to meet ends of justice.
2. The Petition was opposed by the Respondents vide their response dated the 18th April, 2024. Viva voce evidence was adduced in this matter wherein the Petitioner testified as the sole witness in his case, while the Respondents failed to call any witness.

Evidence of the Petitioner

3. The Petitioner who testified as PW1 adopted his affidavit in support of the Petition sworn on 12th October 2022 and his supplementary affidavit sworn on 10th February 2023, as his evidence in chief. He produced annexures to the said affidavits as Exhibit 1- 25. He claimed that the late Jackson Mutweia together with Muviku Makaa, Musau Mulinge, Ndunda Makaa, Kiongola Muange, Daniel Kilundu Mululu, Amos Mboso, Mukio Kosonge, Mutuka Loka, Paul Wambua Nzioka, Nthenge Makau, Elijah Solly, Julius Mutua Solly, Kenneth Solly and Betty Ndinda Nthioka formed a partnership, Green Hill Farm, and purchased a parcel of land known as Land Reference No. 9450/4, of which they registered themselves as owners and excluded the late Jackson Nzioki Mutweia.
4. It was his testimony that following the exclusion, the late Jackson Nzioki Mutweia filed Civil Suit No. 313 of 1979 against the said partners claiming inclusion of his name in the Land Register and following a judgment issued on 26th October, 1986, a Vesting Order was registered on 16th December, 1988 vesting him as a common tenant in equal shares with the others.
5. He contended that the late Muviku Makaa together with co-owners of Land Reference No. 9450/4 handed the original Grant No. I.R 27089 to the Respondents for converting registration of the parcel from Registration of Titles Act (repealed) to Registered Land Act (repealed). He stated that the said Grant is in the custody of the 3rd Respondent. Further, that the property was subdivided and a survey of land was carried out between 1990 and 1995, when the late Jackson Nzioki Mutweia was shown his four (4) parcels. He was emphatic that the process of conversion also incorporated subdivision together with Change of User and resulted in the creation of a Registry Index Map (RIM) for Ndithini/Mananja Block 4 (Greenhill Farm)/1-53.
6. It was his further testimony that vide a letter dated the 15th January 2002, the Director of Surveys wrote to the 1st Respondent and forwarded sealed copies of the new Registry Index Map and relevant Area List resultant from the subdivision of LR No.9450/4 confirming that the property had been converted to Ndithini/Mananja Block 4 (Greenhill Farm)/1-53.
7. He stated that as a result of the subdivision, the four (4) parcels owned by the estate of the late Jackson Nzioki Mutweia were identified as: Ndithini/ Mananja Block 4/5 -12.7451 acres, Ndithini/ Mananja BLOCK 4/6 - 47.3650 acres, Ndithini/Mananja Block 4/33-81.74448 acres and Ndithini/Mananja Block 4/45-0.1038 acres.
8. He testified that despite the conversion being carried out in 2002, the Respondents have failed to open a Land Register for Ndithini/Mananja Block 4 (Greenhill Farm)/1-53 and to issue the estate of late



Jackson Nzioki Mutweia with title documents for the aforementioned four parcels of land, despite him making all payments in that respect as required by the National Land Commission.

9. He averred that failure to process and issue title documents has denied the estate of the late Jackson Nzioki Mutweia, the ability to complete transmission of the properties to beneficiaries of the said estate, use the said properties in accessing credit facilities and infringed on his right to property, as well as the right to administrative action, which is expeditious and efficient.
10. PW1 further testified that the identification of ownership of parcels No. 1-53 was concluded by the National Land Commission and he has always been available to sign the four (4) leases in dispute, having obtained Confirmation of Grant in respect to the estate of the late Jackson Nzioki Mutweia.
11. In cross-examination, PW1 reiterated that his father's name (Late Jackson Nzioki Mutweia) was not on the original title but he is now registered vide a Vesting Order. He insisted that the original title to the suit parcel was surrendered to the Land Registry. He reaffirmed that the letter dated the 15th January 2002 confirms that a new Registry Index Map was created.
12. He stated that that as per letters dated the 5th May 2015 and 12th May 2015 respectively, the National Land Commission intimated to owners that they had not surrendered the original title yet by that time, a subdivision had already been done. He averred that the Leases were generated by surveyors and his father's name appears at Nos. 5, 6, 33 and 45 of the Register at pages 47-48 of his bundle.
13. In re-examination, PW1 reiterated that the mother title was transmitted to the Land's office and that the typographical error; i.e, Ndithini/Manja instead of Mananja emanated from the National Land Commission.
14. He clarified that there was no dispute as to ownership of the four (4) parcels of land that he is claiming title documents for, on behalf of his father's estate. He explained that the mother title generated 53 parcels, its owners are known and have settled on the suit parcels as per the list. Further, that the map he produced, has the seal of the Surveyor, Machakos. He was emphatic that he did not receive any communication from the Respondents on the reason for delay in the issuance of the titles.

Evidence of the Respondents

15. While the Respondents did not call any witness, vide their response dated the 18th April 2024, they denied breaching any constitutional right/statutory provision as pleaded by the Petitioner. They contended that upon being informed that majority of the registered owners of the parent title were deceased and confirmation that they were jointly registered as owners of the parent title, no surrender could be effected without a proper legal representative to sign the surrender form, for the forwarded leases for registration as per the provisions of Sections 49 to 51 of the [Land Act](#).
16. They further averred that only thirty (30) Leases were forwarded to the 2nd Respondent for registration, where it was found that they had typographical errors with regard to the parcels being Ndithini/Manja Block 4 instead of Ndithini/Mananja Block 4 and thus could not be registered, until their rectification was done by the Respondents.

Submissions

17. The Petitioner in his submissions provided a background of the dispute herein including the legal foundation of the Petition. He submitted that despite having power to open a new register under Section 16 of the Registered [Land Act](#) (Cap 300) repealed, Section 7 (6) of the [Land Registration Act](#) and Section 22 (2) of the [Land Registration Act](#), the 1st and 2nd Respondents failed to do so, even after the Director of Survey had confirmed conversion, subdivision and existence of a Registry Index map.



18. He argued that the said omission is a violation of Article 47 of *the Constitution* and Section 4 (1) of the Fair Administrative Actions Act and a threat to his right to property.
19. He relied on the case of Republic v Chief Land Registrar, Nairobi & Another (Exparte Applicants) [2024] KEELC 1700, and submitted that a dereliction of duty arose as a result of the Respondents' omission as being state officers. Further, that the Respondents are bound by the provisions of Articles 10 (1), (2), Article 27 (1) and (2) as well Article 232 of *the Constitution*, which outlines the values and principles of public service and the dereliction of duty calls for intervention of this court.
20. He further submitted that since the Respondents failed to perform their public duty, Article 23 (3) provides relief and does not limit the court to only the reliefs listed thereunder but gives it liberty to grant appropriate reliefs as well as to secure the protection of the right violated. To support his averments, he relied on the case of Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 Others [2018] eKLR.
21. He further submitted that the court has power to issue an order of mandamus in a Constitutional Petition and that such an order could take the form of a judicial review order. To support this averment, he relied on the case of Gitata (Suing as the administrator of the estate of Robert Gitata Gichohi-deceased) v National Land Commission & 2 Others [2023] KEELC 304 (KLR).
22. The Respondents in their submissions argued that the Petition does not raise any constitutional violations due to the perceived delay in issuing lease titles to the Petitioner, thus the court should invoke the doctrine of constitutional avoidance. Further, that its mandate as a constitutional court under Article 22 and 23 of *the Constitution* was not invoked as issues raised can be dispensed with by way of judicial Review. To buttress this averment, they relied on the case of Stephen Muthami Mbau & 10 Others v Kenya Railways Corporation & Another [2022] eKLR and the case of CNM V WMG [2018] eKLR.
23. They submitted that the guiding principles for seeking judicial review orders are applicable and must be demonstrated. They insisted that the dispute herein does not fall within the ambit of judicial review as the Petitioner failed to attach a decision for review in accordance with the set provisions and precedents.
24. They also submitted that allegations of constitutional violations should not only be precisely pleaded but must also be proved to the required standard. Further, that in the case of mandamus, it is untenable as what the Petitioner seeks to compel is out of the performance of the duty required.

Analysis and Determination

25. Upon consideration of the Petition, the Respondents' response, testimony of the witness, exhibits and rivalling submissions, the only issue for determination is whether the Petitioner is entitled to the Orders as sought in the Petition.
26. It is not in dispute that the Petitioner's father, late Jackson Nzioki Mutweia became registered as one of the common owners of LR No. 9450/4 pursuant to a Vesting order issued vide the judgment of Justice D. Schofield issued in High Court Nairobi Civil Suit 313 of 1979 on 24th October 1986. The said vesting order was entered as entry No. 4 on the title LR 9450/4 - I.R 27089.
27. It was the Petitioner's contention that the registered proprietors of LR 9450/4 surrendered their original Grant for conversion to Registered Land and this culminated in the creation of fifty-three (53) new Registered *Land Act* titles. I note as per the letter dated the 15th January 2002 from the Survey of Kenya, addressed to the Chief Land Registrar, a new Registry Index Map was generated from the subdivision converting the parcel Ndithini/Mananja Block 4 (Green Hill Farm) 1-53. Further, an Area



List was also annexed to the said letter. I note as per Letter dated the 4th May, 2015 from the National Land Commission, addressed to the Director of Survey, it requested for a Sealed Copy of the RIM and Area List for title preparation. However, I note on 5th May, 2015, the National Land Commission sought for surrender of the original title from the owners and referred to the mother title as Ndithini/Manja Block 4, instead of Ndithini/Mananja Block 4. According to the Ministry of Lands letter dated 25th May 2022 about seventeen (17) lease documents were released to the District Land Registrar, Machakos for registration. The said letter continued to refer to the parcels as Ndithini/Manja Block 4 instead of Ndithini/Mananja Block 4.

28. The Petitioner argues that despite adhering to all the legal processes to enable the deceased estate, be registered as proprietor of four parcels of land from the aforementioned mother title, the Respondents have failed to open registers for the new parcels Ndithini/Mananja Block 4/Green Hill Farm 1-53. He contended that failure by the Respondents to open the register for subdivided parcel violates his rights under Article 10, 40 and 47 of *the Constitution*.
29. The Respondents insisted that the Leases were not registered since most of the registered owners were deceased. Further, they were recalled to await the beneficiaries of the deceased owners to initiate succession proceedings to facilitate opening of registers for the suit parcels. However, they did not annex any documentation to prove this averment.
30. They confirmed that the Leases had errors as they were indicated as Ndithini/Manja Block 4 instead of Ndithini/Mananja Block 4, but did not indicate what steps they had undertaken to rectify the anomaly. They further insisted that the Petitioner did not satisfy the threshold in *Anarita Karimi Njeru v The Republic (1979) eKLR*.
31. On fair administrative action, Article 47 (1) and (2) of *the Constitution* provides that: ‘(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.’
32. Further, Article 40 of *the Constitution* provides that: (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property — (a) of any description; and (b) in any part of Kenya. (2) Parliament shall not enact a law that permits the State or any person — (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4). (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation— (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that — (i) requires prompt payment in full, of just compensation to the person; and (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law. (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land. (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya. (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.’
33. In his main prayers, the Petitioner sought for various orders including a prayer to compel the Respondents to issue him with Certificates of Lease for his late father’s land. In my view, the fulcrum of the dispute emanated from a delay by the Respondents who are public servants, in issuing the



Petitioner with Certificates of Lease over his late father's land. Further, I opine that these prayers are indeed anchored on Article 47 of *the Constitution* as well as the *Fair Administrative Action Act*. Upon perusal of the annexures herein, I note as per the contents of the letter dated the 15th January 2002, the Director of Surveys wrote to the 1st Respondent and forwarded sealed copies of the new Registry Index Map and relevant Area List resultant from the subdivision of LR No. 9450/4 confirming that the property had been converted to Ndithini/Mananja Block 4 (Greenhill Farm)/1-53. Further, the Respondents despite admitting there was a mistake in the name 'Mananja', has not indicated why they have taken a long time to rectify this mistake. Despite their claim that several of the owners were deceased, hence surrender could not be signed, they have not provided the list of the deceased persons. From the documents annexed by both parties, it is evident that, the Respondents have taken two decades from the time the RIM and Area List were submitted by the Director of Survey for processing of the titles.

34. In the case of *Mumo Matemo v Trusted Society of Human Rights Alliance Civil APP. 290/2012 (2013) eKLR*: the court observed that:

“...the principle in *Anarita Karimi Njeru (supra)* underscores the importance of defining the dispute to be decided by the court... Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru (supra)* that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle”.

35. Based on the facts before me while associating myself with the decision quoted, I find that this Petition indeed meets the Constitutional threshold of Petitions since for over two decades the Respondents have been derelict in implementing their administrative role in processing the Petitioner's title. Further, there has been no explanation proffered for the delay in issuing the titles.

36. In the case of *Republic vs. Kenya National Examinations Council ex parte Gathenji & 8 Others Civil Appeal No. 234 of 1996*, the Court of Appeal highlighted circumstances under which a party can seek an order of mandamus, and stated thus:

“The order of mandamus is of 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 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.”

37. The Respondents have argued that the Petitioner should have filed a judicial review instead of this Petition and annexed an order sought to be reviewed, however, I wish to reiterate that the fulcrum of this Petition revolves around failure of the public servant to implement their role in issuing a title. In my view, there is no indication that a party whose rights under Article 47 have been violated should only file a judicial review and I hence disagree with the Respondents averments. In the foregoing, I find that the Petitioner is indeed entitled to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. I opine that a delay of two decades cannot be wished away by the



Respondents as it demonstrates inefficiency, unreasonability and is procedurally unfair. Further, the delay herein indeed culminated in violation of the Petitioner's rights. In the foregoing, I find that the Respondents should indeed expeditiously process the Petitioner's title to the suit land.

38. In the circumstances, I find that the Petitioner is indeed entitled to the Orders as sought in the Petition and will enter Judgement in his favour in the following terms:
- a. A declaration be and is hereby issued that the Respondents have contravened the Petitioner's right to property guaranteed by Article 40 of *the Constitution*.
 - b. A declaration be and is hereby issued that the Petitioner's right to fair administrative action as guaranteed by Article 47 of *the Constitution* has been contravened by the Respondents.
 - c. An order be and is hereby issued compelling the Respondents to open a register for Ndithini/Mananja Block 4/Green Farm) 1-53 at Machakos Land Registry within 60 days from the date of this order.
 - d. An order be and is hereby issued compelling the Respondents to issue Lease documents and Certificate of lease and/or title documents in respect of Ndithini/Mananja Block 4/5, Ndithini/ Mananja Block 4/6, Ndithini/Mananja Block 4/33 and Ndithini/Mananja Block 4/45 to the Petitioner within 60 days from the date of this order.
 - e. The costs of this Petition is awarded to the Petitioner;

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF FEBRUARY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Njuguna for Petitioner

Court Assistant: Joan

