



**Igbal & 2 others v Oseur, Kajiado County Land Registrar & 4 others; Commission on Administrative-Justice (Office Of Ombudsman) (Interested Party) (Environment and Land Case Judicial Review Application E008 of 2021) [2024] KEELC 4947 (KLR) (25 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4947 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E008 OF 2021**  
**MN GICHERU, J**  
**JUNE 25, 2024**

**BETWEEN**

**TARIQ IGBAL ..... 1<sup>ST</sup> APPLICANT**  
**AHMED ABDULLAHI ..... 2<sup>ND</sup> APPLICANT**  
**FATUMA ZAMZAM NOOR ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JONATHAN OSEUR, KAJIADO COUNTY LAND REGISTRAR .... 1<sup>ST</sup> RESPONDENT**  
**HON HAMILTON PARSENIA, CECM - KAJIADO LANDS PHYSICAL PLANNING AND URBAN DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**  
**KAJIADO LANDS, PHYSICAL PLANNING AND URBAN DEVELOPMENT ..... 3<sup>RD</sup> RESPONDENT**  
**THE NATIONAL LAND COMMISSION, KAJIADO ..... 4<sup>TH</sup> RESPONDENT**  
**GLADYS RUGURU KARIUKI ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**COMMISSION ON ADMINISTRATIVE-JUSTICE (OFFICE OF OMBUDSMAN) ..... INTERESTED PARTY**

**JUDGMENT**

1. The applicants vide their notice of motion brought under Order 53 Rule 1(1) and 4 of the Civil Procedure Rules, the *Fair Administrative Action Act*, *the Constitution* of Kenya and all enabling provisions of law seek the following reliefs against the respondents and the interested party.



- 2) “ An order of Certiorari to bring into this court for the purposes of being quashed, the decision dated 20/5/2021 that resolved to allocate the applicant’s property being plot Numbers 1775/ Saina Annex, 1784/Saina Annex and/222A Saina Annex Estate to the 5<sup>th</sup> respondent.
  - 3) An order of prohibition prohibiting the 1<sup>st</sup> -4<sup>th</sup> respondents from issuing new generation allotment letters or revoking the applicant’s allotment letter for the suit property.
  - 4) An order of mandamus directed to the 1<sup>st</sup> to 4<sup>th</sup> respondents jointly and severally compelling them to reinstate/maintain the applicants ownership of the suit property and issue them with the new generation allotment letters for the suit plots.
  - 5) a declaration that the 1<sup>st</sup> – 4<sup>th</sup> respondents are on breach of Articles 10, 47, 50 and 227 of the Constitution and have offended the rules of natural justice and therefore award damages arising from the matters herein and interest thereon to be borne by the respondents.
2. The motion is based on twelve (12) grounds and a supporting affidavit sworn by the applicants which has eleven (11) annexures. In summary, the applicants’ case is as follows. Firstly, the applicants were the registered owners of the three (3) suit plots and they have allotment letters issued to them in the years 2011 and 2013 respectively. Secondly, they have been in occupation of the suit plots. Thirdly, they have been paying rates to the County Government of Kajiado. Fourthly, out of a dispute which is unknown to the applicants, the 1<sup>st</sup> to 4<sup>th</sup> respondents irregularly and unlawfully determined that the suit property belongs to the 5<sup>th</sup> respondent. Following this unlawful determination, the applicants wrote to the 1<sup>st</sup> and 4<sup>th</sup> respondents letters dated 1<sup>st</sup> and 14<sup>th</sup> June 2021 explaining their side of the story on their ownership of the suit property. Fifthly, the 1<sup>st</sup> – 4<sup>th</sup> respondents did not rectify the wrong that they committed of depriving them of their property without giving them a hearing. Finally, the 5<sup>th</sup> respondent has caused hostility on the ground and proceeded to fence off the suit property despite the applicants’ agents living thereon.
- For the above and other reasons, the applicants pray for above orders.
3. The respondents did not file any response to the applicants’ motion. The interested party filed a memorandum of appearance on 14/12/2022 through counsel on record but did not file any pleadings.
  4. At the trial on 2/3/2023, the 1<sup>st</sup> applicant testified on behalf of himself and his co-applicants and he was cross-examined by Mr. Kathyaka for the 5<sup>th</sup> respondent. His testimony is largely as per the affidavit on record.
  5. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the annexures and the testimony at the trial. I find that the following issues arise.
    - a. Whether the applicants were allocated the suit parcels.
    - b. Whether the applicants are in occupation of the suit land.
    - c. Whether the County Government’s letter dated 20/5/2021 gives sufficient reasons for revoking the applicants’ ownership of the suit land.
    - d. Whether the applicants are entitled to the orders sought.
  6. On the first issue, I find that the applicants were allocated the suit parcels. They have proved this by annexing the allotment letters issued by the County Government of Kajiado. These letters are prima facie evidence that the applicants own the suit land. This is especially so because the respondents and the interested parties have not filed any evidence to the contrary.



7. Regarding the second issue, I find that the applicants are in occupation of the suit land. Their deposition in paragraph 16 of the supporting affidavit that they are in occupation is not controverted by any evidence from the respondents or the interested party. Section 116 of the Evidence Act provides as follows.

“When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”.

The letter by the County Government of Kajiado dated 20/5/2021 does not explain how the applicants who are not only in occupation of the suit premises but also the allottees came to lose their land. The respondents and the interested party who have the burden in this case did not file any evidence to explain this.

8. My finding on the third issue is that the County Government has not in its letter of 20/5/2021 given any reasons for revoking the applicants’ ownership of the suit land. It is not explained why the people with the allotment letters and possession lost their land. There is no evidence that the applicants were given adequate notice, were heard, were given a right of appeal or review, were informed of the right to be present with their counsel or the nature of the case against them by the interested party and the evidence in her possession. This is a basic requirement under Section 4 of the Fair Administrative Actions Act and Article 47 of the Constitution.

9. On the final issue, I find that the applicants are entitled to the orders sought for the reasons already given. Consequently, I enter judgment for the applicants against the respondents as prayed for in terms of prayers 2, 3, 4 and 5 of the motion dated January 2022. Costs to the applicants.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25<sup>TH</sup> DAY OF JUNE 2024.**

**M.N. GICHERU**

**JUDGE**

