



**Republic v National Land Commission; Ridgeways International Ltd (Exparte Applicant);
Milicoins Limited & another (Interested Parties) (Environment and Land Case Judicial
Review Application 31 of 2018) [2024] KEELC 4900 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4900 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION 31 OF 2018**

CA OCHIENG, J

JUNE 20, 2024

**IN THE MATTER OF AN APPLICATION BY RIDGEWAYS
INTERNATIONAL LIMITED FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF MANDAMUS**

AND

IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF THE CIVIL PROCEDURE RULES, 2010

AND

**IN THE MATTER OF THE NATIONAL LAND
COMMISSION ACT NO. 5 OF 2012 LAWS OF KENYA**

AND

IN THE MATTER OF THE LAND ACT NO. 6 OF 2012, LAWS OF KENYA

AND

**IN THE MATTER OF SECTIONS 3, 4, 6, 7, 10 (1) AND 12 OF
THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

AND

**IN THE MATTER OF ARTICLES 10, 12, 23(3) (F), 40, 47, 48,
50, 61, 64, 67 AND 159 OF THE CONSTITUTION OF KENYA**

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL LAND COMMISSION RESPONDENT



AND

RIDGEWAYS INTERNATIONAL LTD EXPARTE APPLICANT

AND

MILICOINS LIMITED INTERESTED PARTY

DASAHE INVESTMENT LIMITED INTERESTED PARTY

JUDGMENT

1. What is before Court for determination is the *ex parte* Applicant's Notice of Motion dated the 15th July, 2019 and filed on 17th July, 2019 where it seeks the following Orders:
 - i. That an order of Mandamus be issued to compel the Respondent to issue a decision/or determination on the legality and propriety of LR no.337/4762 and LR no. 337/4763 in Mavoko, Machakos County resulting from the inquiry proceedings that were conducted by the Respondent and concluded on 18th February, 2016.
 - ii. That the Honourable Court be pleased to grant further Orders and Directions as it may deem fit and just to grant.
 - iii. That the costs of this Application be in the Cause.
2. Which Application is premised on the matters set out in the Statutory Statement as well as the Affidavit of Gathumbi Mwangi.
3. The Respondent filed Grounds of Opposition dated the 8th November, 2019 where it argued that it has jurisdiction to review grants on disposition of public land, by dint of Section 14 of the [National Land Commission Act](#). Further, that the issue of legality of the *ex parte* Applicant's title over the suit properties cannot be sufficiently addressed in this forum.
4. The Interested Party filed a Replying Affidavit sworn by SAI PRASAD PARCHURI where he opposed the instant Notice of Motion Application and insisted that the application was overtaken by events. Further, the proceedings before the Respondent were properly done. He insisted that, the *ex parte* Applicant already filed a suit in relation to titles LR no 337/4762 and LR no 337/4763 issued by Respondent.

Submissions by the *ex parte* Applicant

5. The *ex parte* Applicant in its submissions provided the background of the dispute herein and contended that the Respondent proceeded to clandestinely cancel its title without involving it and directed compensation to be paid to the Interested Parties. It contended that it is unclear how such a decision was reached noting that the Respondent had not completed its inquiry to determine parties with interest on the land, as required by Section 112(3)(a) of the [Land Act](#). It claimed, *vide* a letter dated 8th November, 2016, the Respondent herein apologized for the delay in concluding the review of titles to the disputed properties and sought its indulgence as they finalized with the determination, which was one year after the Respondent's Chairman *vide* a letter dated 7th October, 2015 proceeded to revoke the Applicant's title. It further submitted that failure to deliver a determination before proceeding with issuance of an award is a shirking of the Respondent's statutorily imposed duty toward the Applicant and violates the principle of legality.



6. It submitted that the Respondent's conduct failed to meet the constitutional and statutory threshold of fair administrative action. It argued that it is yet to receive any reason, written or otherwise, explaining how and why the Interested Party's title was upheld despite the Respondent holding Public Proceedings for this purpose. Further, that no lawful and reasonable justification has been given by the Respondent as to its failure in issuing a determination and this has occasioned the ex parte Applicant unnecessary delay, which has further added to the injury suffered.
7. It reiterated that Section 113 of the Land Act required that the Respondent completes its inquiry as to parties interested in the property, before proceeding with the issuance of an Award. However, vide the letter dated 7th October, 2015, it became aware that its title had been revoked and the same was given to the Interested Party that subsequently, received compensation on the property. Further, it has not been given the reasoning behind the decision to uphold the Interested Party's title despite the provisions of Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act. It reiterated that failure by the Respondent to make a determination and give a copy of the written determination to it, is contrary to the provisions espoused in Section 14 of the National Land Commission Act as well as Articles 47 and 50 of the Constitution of Kenya, 2010.
8. To buttress its averments, it relied on the following decisions: Republic v Fazul Mahamed & 3 others ex parte Okiya Omtatab Okoiti [2018] eKLR; Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others [2016] eKLR; Keroche Industries Limited v Kenya Revenue Authority & 5 Others [2007] eKLR; Republic v Independent Policing Oversight Authority ex parte Kenya Ports Authority & 2 others [2016] eKLR; Republic v The National Examinations Council, ex parte Gathenji & others (Appeal no 266 of 1996); Republic v Non-Governmental Organizations Co-ordination Board & Another ex parte Transgender Education and Advocacy & 3 others [2014] eKLR; Republic v Rosemary Wairimu Munene, ex parte Applicant v Ibururu Dairy Farmers Co-operative Society Ltd Judicial Review application no 6 of 2014; Municipal Council of Mombasa v Republic & Umoja Consultants Ltd Civil Appeal no185 of 2001; Super Nova Properties Limited v The National Land Commission [2019] eKLR and Haraf Traders Limited v Narok County Government [2022] eKLR.

1st Interested Party's Submissions

9. The 1st Interested Party contended that the ex parte Applicant's suit is a non-starter and must fail. It argued that the jurisdiction of Environment & Land Court on matters concerning compulsory acquisition of land or any dispute arising from such process is of Appellate nature and the ex parte Applicant ought to have preferred its grievances at the Land Compensation Tribunal and thereafter appeal to this Court if aggrieved by their findings. It insisted that the ex parte Applicant has conceded that the National Land Commission in their letter of 7th October, 2015, which it has tendered in evidence validated the Interested Party's Title and revoked its title. Further, the proceedings herein were filed way after the six (6) months window period allowed by law to quash decisions made by an administrative body. It reiterated that the ex parte Applicant's claim is one of dispute over land ownership and can only be instituted by way of a Complaint and not Judicial Review.
10. It submitted that the Respondent had rendered its decision and the orders sought by the ex parte Applicant cannot issue as they have been overtaken by events. Further, the only remedy available to the ex parte Applicant is to file a suit by way of a Complaint and challenge the Respondent's decision and seek appropriate reliefs.
11. To buttress its averments, it relied on the following decisions: Kenya National Examination Council v Republic: Civil Appeal Number 266 of 1996 (1996) LLR 7290; Roshanali Essa Hasham v Registration of Accounts Board: Civil Appeal Number 42 of 1980; Court of Appeal Civil Appeal no 15 of 2018:



Orange Democratic Movement (ODM) v the National Treasury & Others which cited in approval the case *Union of India v Shree Gajanan Mahanaj Sanjibhen* (2002) 5 SCC 44.

Analysis and Determination

12. Upon consideration of the instant Notice of Motion Application including the Statutory Statement, respective Affidavits, annexures and rivalling submissions, the only issue for determination is whether the *ex parte* Applicant is entitled to orders of mandamusto compel the Respondent to issue a decision/ or determination on the legality and propriety of LR no 337/4762 and LR no 337/4763 in Mavoko, Machakos County resulting from the inquiry proceedings that were concluded on 18th February, 2016.
13. Section 7 of the *Fair Administrative Actions Act* provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to— (a) a court in accordance with Section 8 or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law. Subsection (2) provides that a court or tribunal under subsection (1) may review an administrative action or decision on any of the grounds listed in the said Section.
14. While Article 47 of the *Constitution* stipulates thus:
 - “(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. (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall— (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.”
15. Lord Diplock in the case of *Council for Civil Service Unions v Minister for Civil Service* [1985] A.C. 374, at 401D clearly set the standards of Judicial Review and said:

“Judicial Review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by Judicial Review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for Judicial Review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”
16. In the case of *Republic v 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.”

17. Further, in the case of *Republic v National Environmental Management Authority Ex parte Hakika Transport Services Limited* [2012] eKLR the court held, *inter alia*:-

“Prayer (d) is a request that this Court issues an order of mandamus to compel and/or direct the Respondent to renew and or re-issue an Environmental Impact Assessment Licence or authority to the Applicant. The law gives NEMA the discretion to issue, revoke, suspend or cancel an Environmental Impact Assessment Licence (Sections 58 and 67 of EMCA). Of course that discretion must be exercised within the dictates of the law. However, the discretion is with NEMA and an order of mandamus cannot be issued to command or compel it to reach a specific decision or carry out the discretion in a specific way.”

18. The *ex parte* Applicant has sought for an order of Mandamus seeking to compel the Respondent to issue a decision/or determination on the legality and propriety of LR no 337/4762 and LR no 337/4763 in Mavoko, Machakos County resulting from the inquiry proceedings that concluded on 18th February, 2016. The *ex parte* Applicant contends that the Respondent proceeded to clandestinely cancel its title without involving it and directed compensation to be paid to the Interested Parties. It explains that, it is unclear how such a decision was reached, as the Respondent had not completed its inquiry to determine parties with interest on the land as required by Section 112(3) (a) of the *Land Act*. It made reference to a letter dated the 8th November, 2016, where the Respondent had apologized for the delay in concluding the review of titles to the disputed properties and sought its indulgence as they finalized with the determination. Further, that the said letter was written one year after the Respondent’s Chairman vide a letter dated 7th October, 2015 proceeded to revoke its title. It reiterates that failure to deliver a determination before proceeding with issuance of an Award, violated the principle of legality.
19. In this instance, the *ex parte* Applicant has sought to compel the Respondent to give reasons for a decision delivered in 2015. Further, it seeks orders of mandamus, several years after its title had already been revoked and the 1st Interested Party compensated for its land. From a perusal of the documents presented, I note the fulcrum of the dispute herein actually revolves around compulsory acquisition of land. I note the Land Acquisition Tribunal was established to handle disputes emanating from compulsory acquisition of land and this court is only an Appellate Court. Further, where a title to the disputed land had already been revoked, a party has a recourse to file a civil suit for cancellation of the said title. The 1st Interested Party argues that the *ex parte* Applicant had conceded that the National Land Commission in their letter of 7th October, 2015, which it has tendered in evidence validated the Interested Party’s Title and revoked its title.
20. I note that the *ex parte* Applicant indeed participated in the process before the National Land Commission (Respondent) in respect to review of the titles. Further, it even filed Machakos ELC no 127 of 2017 in which it sued the Respondent and Interested Party, in respect to the aforementioned titles, which suit is still subsisting. I note it also filed the instant suit in 2018, seeking orders of mandamus for the Respondent to give reasons on the cancellation of its titles. It is my considered view that the *ex parte* Applicant should have sought one remedy instead of filing two suits, in the same court over the same subject matter.



21. Based on the facts before me while relying on the legal provisions cited and associating myself with the decisions quoted, I opine that the orders sought by the *ex parte* Applicant have actually been overtaken by events. I opine that the orders of mandamus sought herein cannot issue in vain and since the *ex parte* Applicant participated in the proceedings before the Respondent but opted to seek orders of mandamus later on, after the titles had been issued and the Interested Parties compensated for the parcels of land, it came too late in the day. Since the *ex parte* Applicant has already filed a civil suit challenging the proceedings before the NLC that culminated in the cancellation of its title, I opine that it should await the outcome of the said suit. In the circumstances, I do not find that there was any 'irrationality' or 'unreasonableness' on the part of the Respondent to warrant the orders as sought.
22. In the foregoing, I find the instant Notice of Motion Application unmerited and will proceed to dismiss it.
23. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20TH DAY OF JUNE, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Parties absent

Court Assistant – Simon/Ashley

