



**Republic v Land Registrar Murang’a & another; Kamonye (Exparte Applicant)  
(Judicial Review E001 of 2023) [2024] KEELC 4892 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4892 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
JUDICIAL REVIEW E001 OF 2023**

**LN GACHERU, J**

**JUNE 19, 2024**

**IN THE MATTER OF AN APPLICATION FOR LEAVE BY MICHAEL KUNG’U  
KAMONYE TO COMMENCE JUDICIAL REVIEW PROCEEDINGS AGAINST THE  
LAND REGISTRAR MURANG’A FOR ORDERS OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF CONTRAVENTION OF ARTICLES  
40, 47 & 50 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF SECTIONS 14, 24(A),  
25(1), 26(1) & 79 OF THE LAND REGISTRATION ACT (NO.3 OF 2012)**

**AND**

**IN THE MATTER OF CONTRAVENTION OF SECTIONS 4 AND 7  
OF THE FAIR ADMINISTRATIVE ACTIONS ACT, NO.4 OF 2015**

**AND**

**IN THE MATTER OF IRREGULAR CANCELLATION/REVOCATION  
OF TITLE DEED FOR MITUBIRI/WEMPA/BLOCK I/5809**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE LAND REGISTRAR MURANG’A ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MICHAEL KUNG’U KAMONYE ..... EXPARTE APPLICANT**



## JUDGMENT

1. This is a Judicial Review Application brought vide a Notice of Motion Application dated 14<sup>th</sup> August, 2023, and filed on 23<sup>rd</sup> August, 2023, premised on Order 53 Rule 3 of the Civil Procedure Rules, 2010, wherein the Ex- Parte Applicant has sought for the following reliefs:
  - i. That this Honourable court be pleased to grant an Order of CERTIORARI to remove into this Honourable court for the purposes of quashing the 1<sup>st</sup> Respondent's decision of cancelling/revoking title deed for land parcel number MITUBIRI/WEMPA/BLOCK-I/5809 issued to the Applicant.
  - ii. That this Honourable court be pleased to grant an Order of MANDAMUS compelling the Respondents to restore in the Land Register and all other relevant documents held at Murang'a Lands Registry, the Applicant as the registered and absolute proprietor of title to land parcel Number MITUBIRI/WEMPA/BLOCK-I/5809, and removing the restriction placed on the subject property on the 7<sup>th</sup> July 2022, by the 1<sup>st</sup> Respondent.
  - iii. That the costs of this application be provided for."
2. This Judicial Review Application is premised on the grounds set out on its face and by the Supporting Affidavit sworn by the ex-parte Applicant, MICHAEL KUNG'U KAMONYE on 23<sup>rd</sup> August, 2023.
3. It is the Applicant claims that he is the proprietor of land parcel No. MITUBIRI/WEMPA/BLOCK-I/5809 (the suit property), which he acquired through a purchase, executed vide a sale agreement dated 24<sup>th</sup> February, 2022, and title deed was issued in his name on 30<sup>th</sup> March, 2022. It is the Applicant's further averment that on 7<sup>th</sup> March, 2023, he discovered that his title deed to the suit land was cancelled by the 1<sup>st</sup> Respondent herein (the Land Registrar Murang'a) on 1<sup>st</sup> February, 2023, without any legal basis, and without being granted an opportunity to be heard; thereby, denying him a fair hearing.
4. He further contended that the 1<sup>st</sup> Respondent herein never notified him of its intention to cancel or revoke the title deed to the suit property, which offends the principles of natural justice; particularly, the fundamental principle of audi alteram partem ("nobody shall be condemned unheard").
5. The Applicant further averred that the 1<sup>st</sup> Respondent's decision to cancel the Applicant's title deed to the suit property was done without jurisdiction and exceeded powers granted to the 1<sup>st</sup> Respondent under Section 79 of the Land Registration Act, 2012; thus, rendering the aforesaid decision illegal, procedurally improper, irrational, unreasonable and prejudicial to the Applicant's rights.
6. In his Statutory Statement dated 23<sup>rd</sup> August, 2023, the Applicant stated that he occupied the suit land immediately upon purchasing the same from the vendor Judith Kavere Idagiza, and thereafter, he subdivided the suit land into smaller parcels of land.
7. He also stated that around July, 2022, he discovered that a restriction was placed on the suit land through an order of the court issued in Miscellaneous Succession E114 of 2022 (Chief Magistrate's Court, Gatundu). The Applicant contended that neither himself, nor the 1<sup>st</sup> Respondent herein were parties in the said Miscellaneous Succession E114 of 2022 (Chief Magistrate's Court, Gatundu).
8. It was his further averment that the main issue in contention in Miscellaneous Succession E114 of 2022 (Chief Magistrate's Court, Gatundu), concerned the revocation/annulment of a Grant of Letters



- of Administration intestate which was confirmed on 28<sup>th</sup>, April 2022. He also contended that the aforesaid Grant did not make any reference whatsoever to the suit property.
9. Further, it was contended that the Court in Miscellaneous Succession E114 of 2022, did not issue any orders in respect of the suit property nor order for cancellation of the title held by the exparte Applicant herein.
  10. The Judicial Review is opposed by the 1<sup>st</sup> Respondent through a Replying Affidavit sworn by Elosy M. Mputhia, a Land Registrar, based at Muranga Lands Office, dated 24<sup>th</sup> November, 2023, and filed before the Court on 28<sup>th</sup> November 2023.
  11. The Deponent contended that the title to the suit land was cancelled pursuant to an order of the Court issued on 9<sup>th</sup> January, 2023, in Miscellaneous Succession E114 of 2022 (Gatundu). She also averred that from the wording of paragraph (c) of the aforesaid Court order, which was annexed to the Replying Affidavit of the said Elosy Mputhia, marked “EMM3”, it is clear that any title issued as per the Grant confirmed on 28<sup>th</sup> April, 2022, was cancelled by the said Order of the Court, and reverted to the estate of the deceased, John Wanyika awaiting the issuance of a fresh Grant and distribution of the estate in question by the Court.
  12. Further, the 1<sup>st</sup> Respondent contended that in cancelling the Applicant’s title to the suit property, the Land Registrar acted pursuant to the provisions of Section 80(1) of the Land Registration Act, and denied committing any illegality in respect of the aforesaid cancellation.
  13. This Judicial Review was canvassed by way of written submissions.
  14. The Ex- parte Applicant filed written submissions on 26<sup>th</sup> January, 2024, through the Law Firm of WAMBUI KIBICHO & CO Advocates. The Applicant submitted that three (3) documents are essential in making the determination of whether the Court in Miscellaneous Succession E114 of 2022 (Gatundu), issued orders concerning the suit property, namely:
    1. A copy of the Court’s ruling dated 9<sup>th</sup> January, 2023 in Miscellaneous Succession E114 of 2022 (Gatundu).
    2. A certified copy of the Order of Honorable Wangeci Ngumi dated 9<sup>th</sup> January, 2023.
    3. A copy of the certificate of confirmation of grant confirmed on 28<sup>th</sup> April 2022.
  15. It was submitted that in the Ruling dated 9<sup>th</sup> January, 2023, in Miscellaneous Succession E114 of 2022 (Gatundu), the Court declined to issue any orders in respect of the suit property as recorded in the final two (2) paragraphs of the aforesaid ruling.
  16. Further, the Applicant submitted that the Order of the Court dated 9<sup>th</sup> January, 2023, delivered in Miscellaneous Succession E114 of 2022 (Gatundu), did not make any reference to the suit land and referred only to the Grant which was confirmed on 28<sup>th</sup> April 2022.
  17. It was further submitted that the 1<sup>st</sup> Respondent’s contention that cancellation of title to the suit land was pursuant to a Court Order issued in Miscellaneous Succession E114 of 2022 (Gatundu), was not the correct position, terming the same as a “fallacy” as there exists no order to that effect. He further submitted that the Certificate of Confirmation of Grant dated 28th April, 2022, does not include the suit property and the only property listed thereon is described as: Mhasibu Housing Co. Ltd Share Certificate No. 198.
  18. Further, the Applicant maintained that the 1st Respondent’s decision to cancel his title to the suit land was illegal, ultra-vires and grossly prejudicial to his rights, because there was no directive within the



- Court Order dated 9th January, 2023, delivered in Miscellaneous Succession E114 of 2022 (Gatundu), compelling the 1st Respondent to cancel his title to the suit property.
19. He cited the holding of the Court in the cases of Municipal Council of Mombasa Vs Republic, Umoja Consultants Ltd [2002] e KLR; Pastoli Vs Kabole District Local Government Canal & Others [2008]2 EA 300; and, Republic Vs Land Registrar Thika Ex-Parte Maria Wairimu Michael; Wanjiku Mwaura (Interested Party) [2021] e KLR, where the Court described the nature of Judicial Review. Thus, it was his ultimate submissions that the present Application meets the threshold for Judicial Review.
  20. Further reliance was placed on the holding of the Court in the case of Supernova Properties Ltd & Another V District Land Registrar Mombasa & 2 others and the Kenya Anti-Corruption Commission & 2 others (Interested Parties) [2018] e KLR, regarding the import of the powers conferred upon the 1<sup>st</sup> Respondent by the Section 79 of the [Land Registration Act](#). It was submitted that Section 79 of the [Land Registration Act](#), is concerned with rectification of title and does not confer powers of unilateral revocation of title upon the 1<sup>st</sup> Respondent.
  21. In support of the contention that he was condemned unheard by the 1<sup>st</sup> Respondent during the process leading up to the cancellation of title over the suit land, the Ex-parte Applicant relied on the holding of the Court in the cases of Catherine Chepkemoi Mukenyang Vs Evanson Pkemei Lomaduny & Another [2022] eKLR; and, Kenya Human Rights Commission Vs NGO Co-ordination Board [2016] e KLR.
  22. On their party, the Respondents filed their written submissions on 5<sup>th</sup> February, 2024, and raised one issue for determination as follows:
    - a. Whether the 1<sup>st</sup> Respondent has the power to cancel title to land?
  23. It was submitted that, according to the provisions of Section 80 of the [Land Registration Act](#), the 1<sup>st</sup> Respondent possesses the power to cancel title to land pursuant to an order of the Court. In support of the preceding position, reliance was placed on the decision of the Court in the cases of Republic Vs The [Registrar of Titles Mombasa & 2 others Ex-Parte Emfil Ltd \[2012\] eKLR \(Misc. Civil Application No. 84 of 2011\)](#); where the court held that the Registrar could only cancel title by dint of a court order, and the case of Mary Ruguru Njoroge Vs John Samuel Gachuma Mbugua & 4 Others [2014]e KLR: where the Court held;

“the court too has powers to order the rectification of the title or register in appropriate circumstances. The court will under section 80(1) of the [Land Registration Act](#), order the cancellation or amendment of entry or any registration when it is satisfied that the registration was obtained made or omitted by fraud or mistake.”
  24. It was further submitted that the Respondents relied on the Order of the court delivered on 9<sup>th</sup> January, 2023, in cancelling the Applicant’s title over the suit property. They urged the court to find that the Land Registrar – Murang’a acted within the confines of the law and the cancellation of the title was legal and justified.
  25. The above summary contains the pleadings of the parties and the rival written submissions, which this court has carefully read and considered together with the cited authorities, and finds as follows;
  26. There is no doubt that the suit property herein Mitubiri/ Wempa/Block 1/5809, was registered in the name of John Wanyika Kagume (now deceased), on 2<sup>nd</sup> March 2011, and title deed, was issued to him on 8<sup>th</sup> March 2011. After the demise of the said John Wanyika Kagume, one Judith Kavere Idagiza, took out Letters of Administration, which Letters were confirmed on 27<sup>th</sup> April 2022, and the property that



was distributed was Mhasibu Housing Co. Ltd Share Cert. No. 198, which property was devolved to Judith Kavere Idagiza, as the sole beneficiary.

27. However, vide an Application dated 8<sup>th</sup> June 2022, Lawrence Kagume Wanyika and Abigael Gathiga Nguju Nyika, sought for revocation of the said Confirmed Grant made to Judith Kavere Idagiza and Mary Taabu Abuyeka, and the same be annulled, and other prayers too. The said Application was canvassed through written submissions.
28. After analyzing the said Application, relevant provisions of law and the written submissions, the Probate Court at Gatundu SPM Court, allowed the said application and held as follows;
  - i. that the grant issued on 25<sup>th</sup> April 2022, and confirmed on 28<sup>th</sup> April 2022, is defective as the same was obtained fraudulently and by concealment from the court of material facts and based on falsehoods. The said grant is hereby revoked and annulled under the provision of section 76 of the *Law of Succession Act*.
  - ii. that a proper distribution of the deceased estate herein be made pursuant to a fresh grant according to the law, among other orders.
29. It is also evident that the Probate Court at Gatundu had observed that by the time the Letters of Administration were issued, on 25<sup>th</sup> April 2022, and confirmed on 28<sup>th</sup> April 2022, the suit property, Mitubiri/ Wempa/ Block 1/ 5809, which initially belonged to the deceased had already been registered in the name of Judith Kavere, before having taken letters of Administration and Confirmation of Grant.
30. This was contrary to section 45 of the Law of Succession and amounted to intermeddling in the estate of a deceased person. In the case of *Morris Mwiti Mburungu vs Denis M & others (2016) eKLR*, the Court held; -

“.....where any person interferes with the free property of the deceased or deals with the estate of the deceased person contrary to the provisions of section 45 and 82 of the Act, that is intermeddling, is unlawful and cannot be protected by the Court. The transaction is subject to be nullified and set aside at the instant of the innocent beneficiaries who may have been affected by the act, but they were not involved.”
31. Indeed, the Probate Court did observe the above illegality and stated as follows in her judgement; on perusal of the title deed, annexed to the said Affidavit, it is clear that the same was registered in the name of the first Respondent on 10<sup>th</sup> February 2022, way after the deceased had passed on. The letters of Administration were issued to the Respondent way after the transfer was done. It is not clear how this was done, but the same was unprocedural.
32. Further the Probate Court observed that; I have perused the Summons for Revocation of Grant dated 8<sup>th</sup> June 2022, and note that despite the Applicants making a robust submissions on the issue, they did not pray for cancellation of the title deed, nor an order for a declaration that the same should revert to the estate of the deceased. in the circumstances, I shall not make any orders touching on the said parcel....
33. From the above portion of the Probate Court’s determination dated 9<sup>th</sup> January 2023, it is clear that the Letters of Administration dated 25<sup>th</sup> April 2022, were cancelled together with the Confirmed Grant dated 28<sup>th</sup> April 2022. In the Confirmed Grant, the property that was distributed was Mhasibu shares, and not the suit property Mitubiri/ Wempa/ Block 1/ 5809.



34. Further, it is clear that after the suit property Mitubiri/ Wempa/ Block 1/ 5809, was transferred to Judith Kavere without having obtained Letters of Administration, she immediately sold the said property to the ex-parte Applicant herein Michael Kungu Kamonye, vide a sale agreement dated 24<sup>th</sup> February 2022, for ksh 2,300,000/=. Thereafter, the suit property was registered in the name of the exparte Applicant on 30<sup>th</sup> March 2022, and a title deed was issued in his name.
35. This title Block 1/ 5809, was closed for subdivision on 14<sup>th</sup> June 2022, and new title deeds were issued being Mitubiri/ Wempa/ Block 1/ 13411- 13420, in the name of the Exparte Applicant. However, after the Application for revocation was filed, Restrictions were placed on all the new titles indicating; No dealings pending conclusion of Gatundu Succ Cause No. E114 OF 2022, issued on 29<sup>th</sup> June 2022.
36. It is also evident that after the ruling of the court that revoked the letters of administration issued to Judith Kavere on 25<sup>th</sup> April 2022, and the Confirmed Grant of 28<sup>th</sup> April 2022, and reverting the distributed property to the estate of the deceased, the subdivisions of the suit property, were cancelled and the suit property reverted to its original number Mitubiri/ Wempa/ Block 1/ 5809, in the name of the deceased John Wanyika Kagume.
37. It is the above cancellation and reversion of the title to the name of the deceased, John Wanyika Kagume, that aggrieved the ex- parte Applicant and thus this Judicial Review Application. The question for determination is whether the said Judicial Review is merited?
38. In determining whether the instant JR is merited or not, the court finds the issues for determination are as follow;
  - i. Did the Probate Court issue an order for cancellation of the Exparte Applicant's titles?
  - ii. Whether the Exparte Applicant has met threshold for grant of Judicial Review orders of Certiorari and Mandamus?
  - iii. Who should bear costs of this Judicial Review?

**i). Did the Probate court issue an order of cancellation of the Exparte Applicant's titles?**

39. It is evident from the Applicant's pleadings that the bone of contention is the cancellation or revocation of his title deeds. The Applicant alleged that his title deeds were canceled without involving him and that he was not given an opportunity to be heard. On their part, the Respondents contended that the trial court at Gatundu SPM Court, had revoked the Grant that had been confirmed over the estate of John Wanyika, and directed that the property reverts to the estate of the deceased. That in compliance with the said orders, the 1<sup>st</sup> Respondent revoked and/ or cancelled the title issued to Judith Kavere, and the subsequent transfer to the exparte Applicant herein.
40. It not in doubt that the exparte Applicant was registered as the proprietor of the suit properties on 14<sup>th</sup> June 2022. With the said registration, he prima facie became the absolute and indefeasible owner of the suit property. He was issued with title deeds, which certificates of titles could only be challenged on the grounds of fraud, misrepresentation or irregular acquisition. This is provided for under Section 26 of the *Land Registration Act*.
41. Further, it is evident that a certificate of title is conclusive evidence of ownership and is prima facie evidence that the registered proprietor is the owner. Section 24 of the *Land Registration Act* (2012), gives the registered proprietor absolute rights over land, it provides:

“Subject to this Act—



- a. The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
  - b. The registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease”.
42. It is also very clear that the title in respect of land is protected under Section 26 of the same Act, which provides:
  - (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
43. Flowing from the foregoing provisions, a registered proprietor enjoys the statutory protection of title as long as he/she can show that the title was acquired procedurally. The circumstances when title can be cancelled or revoked are enumerated under Section (26(1) (a) & (b) of the [Land Registration Act](#).
44. Section 79(1) of the [Land Registration Act](#) provides as follows:
  - (1) The Registrar may rectify the register or any instrument presented for registration in the following cases—
    - (a) In formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;
    - (b) In any case and at any time with the consent of all affected parties; or
    - (c) If upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;
    - (d) For purposes of updating the register;
    - (e) For purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.”
45. Section 80 of the [Land Registration Act](#) states as follows:
  - (1) Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
  - (2) The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is



sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”

46. From the above provisions of law, it is clear that a certificate of title that is acquired procedurally is protected by the law. However, unprocedurally acquired certificate of title is a candidate for cancellation and or revocation. Such cancellation can be done as provided by the Act. (See section 25 of *Land Registration Act*).
47. In the present case, the 1<sup>st</sup> Respondent justified the decision to cancel the Applicant’s title over the suit land on the directives contained in a court order dated 9<sup>th</sup> January 2023, delivered in Miscellaneous Succession E114 of 2022 (Gatundu).
48. The aforesaid Court Order is allegedly premised on a Ruling issued by the Probate court at Gatundu SPM. This Court has perused the said Ruling together with the Court Order. For clarity, the penultimate page of the Ruling delivered on 9<sup>th</sup> January, 2023 in Miscellaneous Succession E114 of 2022 (Gatundu) reads as follows:

“The issue on parcel no. MITUBIRI/WEMPA/BLOCK-I/5809 was raised. It is not in doubt that the said parcel was registered in the name of the deceased at the time of his demise as established by the search annexed to the further affidavit. On perusal of the title deed annexed to the said affidavit, it is clear that the same was registered in the name of the first Respondent on 10<sup>th</sup> February, 2022 way after the deceased had passed on. The Letters of Administration were issued to the Respondents on 25<sup>th</sup> April 2022, way after the said transfer was done. It is not clear how this was done but the same was unprocedural.

As pointed out by the Respondents, parties are bound by their pleadings. I have perused the Summons for Revocation of grant dated 8<sup>th</sup> June 2022 and note that, despite the Applicants making a robust submission on the issue, they did not pray for the cancellation of the title nor an order for a declaration that the same should revert to the estate of the deceased. In the circumstance, I shall not make any orders touching on the said parcel”.
49. From the foregoing, it is clear that in its Ruling dated in 9<sup>th</sup> January, 2023 in Miscellaneous Succession E114 of 2022 (Gatundu), the Court was categorical that it would not issue any directives in respect of the suit property for the reasons set out hereinabove.
50. Therefore, it is evident that the trial court at Gatundu did not issue any order for cancellation of the title deeds held by the Exparte Applicant. Granted, the Applicant may have acquired the suit property through a process that was tainted with misrepresentation and non- disclosure of material facts. However, the trial court did not give explicit orders for cancellation of the title held by the exparte Applicant.
51. The Court did not issue an order for cancellation of the title deed over the suit property and in light of the preceding clear directives from the Court, the decision by the 1<sup>st</sup> Respondent to cancel the Applicant’s title to the suit land cannot find refuge in either the Ruling or the Order of the Court issued in Miscellaneous Succession E114 of 2022 (Gatundu), both dated 9<sup>th</sup> January, 2023.



52. For clarity, paragraph (c) of the Order of the Court dated 9<sup>th</sup> January, 2023 issued in Miscellaneous Succession E114 of 2022 (Gatundu), reads as follows:

“c. That any step taken as per the confirmed grant is hereby reversed and if any title has been issued to revert back to the deceased’s estate pending the issuance of a fresh grant and distribution of the said estate by the Honorable Court”.

53. This Court has also perused the Certificate of Confirmation of Grant dated 28<sup>th</sup> April, 2023, which was revoked by the Court vide the Order issued on 9<sup>th</sup> January, 2023. There is a single article of property mentioned in the aforesaid Certificate of Confirmation of Grant under the heading “DESCRIPTION OF PROPERTY” namely, “Mhasibu Housing Co. Ltd Share Cert. NO. 198”. Therefore, the suit land could not form the subject of the aforesaid Order for revocation of Grant of Letters of Administration issued by the Court on 9<sup>th</sup> January 2023,

54. This Court finds and holds that the suit property Mitubiri/Wempa Block1/ 5809, which was subsequently subdivided to give rise to various title deeds is not mentioned in the Certificate of Confirmation of Grant dated 28<sup>th</sup> April, 2023. Therefore, the 1<sup>st</sup> Respondent might have misinterpreted the court order delivered on 9<sup>th</sup> January 2023, which revoked the Grant dated 28<sup>th</sup> April, 2023. As a consequence of the said misrepresentation, the 1<sup>st</sup> Respondent proceeded to cancel the Applicant’s title to the suit property, whereas the suit property is not mentioned in the aforesaid Grant of Letters of Administration.

**ii). Whether the exparte Applicant has met threshold for grant of Judicial Review orders of Certiorari and Mandamus.**

55. The exparte Applicant sought for the orders of Certiorari and Mandamus to quash the decision of the 1<sup>st</sup> Respondent of cancelling/ revoking the title deed for the suit property, and also to compel the Respondents to restore in the Land Register, all the relevant documents at Muranga Lands Registry to revert the Applicant as the registered owner of the suit property, Mitubiri/ Wempa/ Block 1/5809.

56. These are prerogative orders issued by courts to check on excesses or procedural legality of a decision made by public bodies. Thus, they are remedies provided for in administrative matters sought through Judicial Review. In the case of *Kenya National Examination Council vs Republic (exparte Geoffrey Gathenji & Another, Nairobi Civil Appeal No. 266 of 1996*, the court held that an order of certiorari can quash a decision already made, as this order is issued if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with.

57. Further, an order of mandamus is issued to compel a public body to perform a public duty which is imposed on a person or body of persons by statute, and where that person has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. See Halsbury’s Law of England 4<sup>th</sup> Edition. Vol. 7p111 para 89:

“the order of mandamus is most extensive remedial nature and is in form of a command issuing from the High court, 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 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 specific legal right and no specific legal remedy for enforcing that right....”



58. It is the exparte Applicant's contention that the 1<sup>st</sup> Respondent unlawfully and un procedurally cancelled his title deeds and thus acted in excess of its jurisdiction and also failed to give him a fair hearing. The Exparte Applicant has relied on a plethora of decided cases among them the case of *Municipal Council of Mombasa vs Umoja Consultants Ltd ( 2002) eklr*, where the court held that;
- “the court would only be concerned with the process leading to the making of the decisions. How was the decision arrived at? Did those who made the decision have the power. were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account the relevant matters or did they take into account irrelevant matters...”
59. The circumstances under which judicial Review orders can be issued were set out in the Ugandan case of *Pastoli vs Kabole District Local Government Canal & others (2008) 2 EA 300*, where the court held;
- “in order to succeed in an application for judicial review, the Applicant has to show that the decision or the act complained of is tainted with illegality, irrationality and procedural impropriety.”
60. Therefore, the exparte Applicant herein has to establish the above parameters for him to succeed in this Judicial Review. As stated earlier, the applicant purchased the suit property from one Judith Kavere, who had transferred the suit land to herself before she had obtained Letters of Administration to the estate of the deceased and before the Grant had been confirmed. The action of Judith Kavere amounted to intermeddling in the deceased's estate. Therefore, the resultants sale of the suit land to the applicant was null and void.
61. However, it is evident that the exparte applicant who had obtained a title deed to the original suit property, which he later subdivided was not informed by the Land Registrar about the revocation of his titles. The land registrar alleged that she cancelled the title deed in compliance with the court order. However, this court found and held that there was no order that was issued by the Probate Court at Gatundu to cancel the certificates of titles held by the Exparte Applicant herein.
62. The Applicant acquired the suit property through the act of misrepresentation by Judith Kavere. However, the law is very clear in section 25 of *Land Registration Act*, that the rights of a registered owner can only be defeated through the provisions of the Act. Section 80 of *Land Registration Act*, provides for instances when a court can order for revocation of a certificate of title. The court herein had not cancelled the Applicant's certificate of titles. The 1<sup>st</sup> Respondent complied with a non-existence court order, and thus went beyond her mandate.
63. It is evident that the power to cancel certificate of title is only vested to the Courts and the Land Registrar has no power to revoke and/ or cancel the title deed, as the Land Registrar can only rectify the same as provided by Section 79 of *Land Registration Act*. In the case of *Republic v Land Registrar-Mombasa & 3 others Ex-parte Alladina Properties Limited [2018] eKLR*, the Court held as follows:
- “The power to rectify the register of titles for reason of fraud or mistake is the preserve of the Court under section 143 of the Registered *Land Act*... These clauses show that the only occasion in which the Registrar could have interfered with the titles was where there was an error or omission not materially affecting the interest of any proprietor. The Land Registrar of Mombasa had no power to revoke the applicant's title. Indeed, section 28 of The Registered *Land Act* does not give any powers to the respondents to revoke titles in



case of an illegal allocation or fraud or nullity if at all it is established. The title can only be declared null and void by a court of law after determination.”

64. Therefore, in cancelling the title deed of the suit property, the 1<sup>st</sup> Respondent acted in excess of her jurisdiction. Further, the Applicant was never informed of the cancellation, and thus the decision of the 1<sup>st</sup> Respondent was in contravention of the rule of natural justice. See the case of Catherine Chepkemoi Mukenyang vs Evanson Pkemei Lomadunyi & another (2002) eKLR, which quoted Halsbury Laws of England, 5<sup>th</sup> Edition 2010 vol 61 at para 639, on the rights to be heard and states as follows; “ the rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard ( the audi partem rule) is a fundamental principle of justice....”
65. The 1<sup>st</sup> Respondent admitted to having cancelled a title deed in compliance of a court order, which this court finds do not exist. Therefore, the decision of the 1<sup>st</sup> Respondent was ultra vires in revoking the said title deeds without a valid court order. In the case of Republic vs Land Registrar Taita Taveta District & Another (2015) eKLR, the court held:
- “ it is now accepted that the Registrar had no jurisdiction to revoke titles to land under the Registered *Land Act* or the Registration of Titles Act. In this regard, I reiterate my holding in Republic v. The Registrar of Titles, Mombasa & 2 Ors ex Parte Emfill Ltd., [2012] eKLR which, as shown below, the Court of Appeal approved-
- “For these reasons, I find that the government cannot revoke title to land even “for public need or interest” or for alleged illegality. The Government is obliged to move the Court for appropriate orders to revoke, cancel or rectify title in such circumstances. A unilateral decision published in the Gazette will not do. The considerations of public interest such as presented by the Respondent in this proceedings may only be used by the Court in an appropriate case in making an order for cancellation of title or in authorizing, subject to due compensation, the compulsory acquisition or take-over of the private property.”
66. It is not in doubt that the 1<sup>st</sup> Respondent did not have jurisdiction to cancel and revoke the Exparte Applicant’s title deed, and she acted ultra vires and did not give the Applicant an opportunity to be heard, which action is against the rule of natural justice. Thus, the applicant is entitled to the remedy of certiorari.
67. The Applicant has also sought for an order of mandamus to compel the 1<sup>st</sup> Respondent to restore in the Land Register and all other relevant documents held at Murang’a Land Registry, the Applicant as the registered and absolute proprietor of the suit property.
68. As the court has found that the 1<sup>st</sup> Respondent cancelled the title deed without court order and without informing the Applicant, it is prudent to restore the Land Register and all the documents held at the Land’s Registry, the name of the Applicant as the registered owner.
69. Even with that Restoration, it is evident that Judith Kavere transferred the suit land to her name before filing for letters of administration. Her action was illegal and whatever transaction she carried was null and void. See the case of Benson Mutuma Muriungi Vs C.E.O Kenya Police Sacco & Another [2016] eKLR, the Court defined what would constitute intermeddling as follows;

“ Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law of grant of representation to do so. The category



of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the Court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) or protection of the estate against any person.”

70. However, this case is not on the legality of the Applicants title/titles. That should be a determination in a different suit or forum. Even so, this is a court of justice, and justice should prevail. Having allowed an order of mandamus, this court further directs that the Restrictions that had been placed on all the resultant subdivisions of the suit property should be restored until when an appropriate suit shall be filed to test the legality of the Applicant’s title to the suit land.
71. Consequently the court directs that restriction orders earlier placed on the suit property Mitubiri/ Wempa/ Block 1/ 5809, and its resultant subdivisions should be restored and remain in force until further court orders.

**iii) who should bear costs of this proceedings?**

72. Section 27 of the *Civil Procedure Act*, provides that costs are granted at the discretion of the court. However, costs normally follow the event and are granted to the successful litigant. The Applicant has succeeded to the extent that the court has quashed the decision to revoke the tittle deed and has compelled the 1<sup>st</sup> Respondent to restore the land Register, as it was before revocation. This Court has further found that the process that led to acquisition of the suit property by the Applicant was tainted with illegality or irregularities since the vendor Judith Kavere had not obtained letters of administration when she caused the suit land to be transferred to herself and later sold it to the Applicant. See the case of Gladys Nkirote Mitunga vs Julius Majaum Itunga (2016) eKLR where the Court held;

“offence of intermeddling with property of deceased person.....include taking possession or occupation of, disposing of, receiving, paying out distributing, donating, charging, mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *law of Succession Act*”.

73. For the above reasons the court finds that each of parties herein should bear its own costs.
74. Having carefully considered the totality of the available evidence, the relevant provisions of law and the cited authorities, the court finds that the instant Judicial Review dated 14<sup>th</sup> August 2023, is merited and is allowed in terms of prayers No. i and ii, and Restriction orders earlier placed on the suit property Mitubiri/ Wempa/ Block 1/ 5809, and its resultant subdivisions should be restored and remain in force until further court orders. Each party to bear its own costs.
75. Consequently, the court directs and orders that;  
Restriction Orders earlier placed on the suit property Mitubiri/ Wempa/ Block 1/ 5809, and its resultant subdivisions be and are hereby restored and should remain in force until further orders of the Court.”



It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY IN MURANG'A THIS 19<sup>TH</sup> DAY OF JUNE 2024.**

**L. GACHERU**

**JUDGE**

Delivered online in the presence of;

Mr Olukaka for the Exparte Applicant

1 st Respondent

Absent

2<sup>nd</sup> Respondent

Joel Njonjo - Court Assistant

**L. GACHERU**

**JUDGE**

**19/6/2024**

