



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mwai & 49 others (Environment and Land Judicial Review Case
E003 of 2024) [2025] KEELC 808 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 808 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2024**

JM KAMAU, J

FEBRUARY 20, 2025

(FORMERLY NAIVASHA ELC JR. E003 OF 2021)

**IN THE MATTER OF THE CONSTITUTION OF
KENYA ARTICLE 5, 10, 12, 19, 20, 21, 27 & 176**

AND

IN THE MATTER OF ORDER 53 RULES 1 OF THE CIVIL PROCEDURE RULES

AND

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW
REFORM ACT CAP 26 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL
REVIEW PROCEEDINGS FOR AN ORDER OR CERTIORARI**

AND MANDAMUS

AND

**IN THE MATTER OF THE COUNTY GOVERNMENT
ACT SECTION 3(A), (B) & (I), 5(1) & (2), 34, 36, 37**

AND

**IN THE MATTER OF THE COUNTY GOVERNMENTS
PROCUREMENT REGULATIONS SECTION 3, 7 & 10**

AND

**IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL
ACT NO.33 OF 2015 SECTION 33, 34, 44, 46, 47, 51, 68, 65, 66, 69, 73, 77, 78 & 86**

AND

**IN THE MATTER OF AN APPLICATION FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS**



IN THE MATTER OF

STEPHEN NJUGUNA MWAI	1 ST APPLICANT
PETER WAITITU GATOTO	2 ND APPLICANT
PAUL GATOTO KABUTHIA	3 RD APPLICANT
ANDREW GITAU KAMAU	4 TH APPLICANT
JOSEPH MATHEGE MUTHUNGU	5 TH APPLICANT
KARIRI WATORO GIKONYO	6 TH APPLICANT
JOHN WAWERU WAINAINA	7 TH APPLICANT
PETER KIMANI NJUGUNA	8 TH APPLICANT
FRANCIS NDAU	9 TH APPLICANT
JOSEPH KAMAU	10 TH APPLICANT
GEOFREY GITHINJI	11 TH APPLICANT
SERAH MUTHONI KAMAU	12 TH APPLICANT
FREDRICK KARANJA	13 TH APPLICANT
JOSEPH KARIUKI	14 TH APPLICANT
REUBEN MUIGAI	15 TH APPLICANT
HANNAH NYAKERU	16 TH APPLICANT
KIMANI NJUGUNA	17 TH APPLICANT
FLORENCE GACHIHI	18 TH APPLICANT
DAVID KARANJA	19 TH APPLICANT
RAPHAEL NDUNG’U	20 TH APPLICANT
JACOB WANG’OMBE	21 ST APPLICANT
JOSEPH K MUTONYA	22 ND APPLICANT
PHILIP WARUINGE	23 RD APPLICANT
HILUM MWANGI	24 TH APPLICANT
HANNAH MUTHONI	25 TH APPLICANT
JOSEPH MATHENGE	26 TH APPLICANT
ELIUD NDIRITU	27 TH APPLICANT
JAMES KAMAU	28 TH APPLICANT
ESTHER W. GACHIHI	29 TH APPLICANT
S NJUGUNA	30 TH APPLICANT



TERESIAH WACUNGA	31 ST APPLICANT
SIMON NDUNGO	32 ND APPLICANT
JOHANA KARIUKI	33 RD APPLICANT
DAVID NDIRITU	34 TH APPLICANT
TABITHA WAMBUI	35 TH APPLICANT
HANNAH WANJA MARIMBI	36 TH APPLICANT
FRANCIS NDIRANGU	37 TH APPLICANT
JAMES MUTHIGA	38 TH APPLICANT
SIMON NJUGUNA	39 TH APPLICANT
WANGARI KAMUCIBI	40 TH APPLICANT
GEOFFREY THIONG'O MWANGI	41 ST APPLICANT
CECILIAH NYAMBURA	42 ND APPLICANT
ELIZABETH WANGUI	43 RD APPLICANT
CIVILIAN KIMANI	44 TH APPLICANT
JOYCE WANGARI	45 TH APPLICANT
WANJIRU WANG'OMBE	46 TH APPLICANT
PETER NG'ANG'A	47 TH APPLICANT
SAMUEL MAINA	48 TH APPLICANT
DEBRA NDUTA	49 TH APPLICANT
MILKA WAIRIMU	50 TH APPLICANT

JUDGMENT

1. Pursuant to leave granted a Notice of Motion dated 6/5/2021 was filed on 7/5/2021 seeking the following prayers:
 1. That an Order of certiorari be made to remove into this Honourable court for the purpose of it being quashed the decision by the 1st Respondent to renege on the temporary Plots at Geta Bush market awarded to the Ex Parte Applicants.
 2. That an Order of mandamus to compel the Respondents to declare residents as bona fide owners of plots within Geta Bush market.
 3. That a declaration that the decision by the Respondent to award new allottees to the detriment of the Applicants is illegal, egregious and unlawful hence void and of no effect.
 4. An Order for costs.
2. The Motion was brought under Order 53 Rule 3(1) of the Civil Procedure Rules and Sections 8 and 9 of the [Law Reform Act](#) and all enabling provisions of the law and the same was supported by



the Grounds set out in the statutory statement and the Supporting Affidavit of Stephen Njuguna Mwai and Dominick Opiyo Okeyo respectively. In the said Verifying Affidavit, the Applicants deponed that they were allotted Plots at Geta Bush where they have conducted business for over 40 years and have been paying the requisite land rates and “business rates”. They also claimed that there was a fire that brought down the structures in the market on 9/3/2021 but that the following day the Governor, accompanied by the Cabinet Secretary, Trade and Industrialization visited the market area and promised to reinstate the Applicants back but never did so. The market was given to other persons which according to the *Ex Parte* Applicants, was contrary to the Rules of National Justice. The market space was awarded to people who never participated in the bidding process and that the Respondent’s actions were unlawful, arbitrary, malicious, capricious, unreasonable, discriminatory, actuated by bad faith and based on extraneous considerations against the Applicants’ lawful, legitimate and rightful expectations. Mr. Mwai concludes his Affidavit by saying that the Respondent introduced extravagant fees to be paid by the Private Hospital without notifying the relevant stakeholders. The *Ex Parte* Applicants attached to this Motion the following documents: -

1. An undated authority by the Ex Parte Applicants to Stephen Njuguna Mwai allowing him to swear the supporting and verifying Affidavits.
 2. Licenses from the County Council of Nyandarua.
 3. Allotment Letters.
 4. Receipts for rate payment.
 5. Deed Plans for the plots.
3. On their part, the Respondents through the 1st Respondents’ Chief Officer Industrialization and Trade, Mr. Samson Mweru, filed a Replaying Affidavit sworn on the 10/12/2021. The same was filed in court on 14/12/2021. In the said Affidavit, he deponed that Geta Bush Market was built on land belonging to the County Government of Nyandarua which subdivided part of the land into several plots and issued 10 temporary occupation licenses which were allocated and the respective allottees took possession, put up temporary wooden structures and they have been paying the requisite County Rates. Then the County Government constructed a permanent market shed in the remaining parcel of the land. Then on 19/3/2021, the 1st Respondent mapped out some space for the construction of permanent stalls/kiosks. But that later in the evening, a fire gutted the wooden structures thereon in spite of the spirited efforts by the County Government’s engines to put off the same.
4. The County Government later repossessed the burnt plots because they were on a road reserve and the respective allottees were to be relocated and the displaced traders were issued with new plots through balloting. The 1st Respondent has identified space for the said allottees and is in the process of developing a building plan to be adhered to in order to construct fire resistant structures. This was done after bidding and procurement process was duly followed in accordance with the law. To conclude, the Chief Officer depones that this suit is ill-advised, premature and founded on baseless fear as the allottees will “soon” be allocated new spaces and the suit is merely speculative and there is no violation of the *Ex Parte* Applicants’ rights or fundamental freedoms.
5. Having heard both parties through their respective Affidavits in court, the Respondents do not deny that the *Ex Parte* Applicants had been allotted plots but they admit that they gave them the plots on what was earmarked for a road reserve which they later repossessed and identified another place for putting up stalls for them. The County Government, however, did not provide to this court a map showing the new development and their contention would just be a way of getting a reprieve from court. They conclude that the *Ex Parte* Applicants rushed to court before the exercise of allocating



them the plots was concluded. I am surprised at the coincidence of the fire that gutted the Applicants' premises and the discovery of the Respondents that the place was meant for a road reserve and that they were to be relocated. The Applicants have a legitimate expectation to live and earn a living at a place given to them and for which they have been paying rates and business permits. The Respondents had an opportunity to show to the court the plan they have for the Geta Bush Market which they failed to do. The Applicants say that what they used to occupy has now been given to other occupants. This after the Applicant had, of course, established goodwill for the markets. I agree with the Applicants that the Respondent's actions were unlawful, arbitrary, malicious, capricious, unreasonable, discriminatory, actuated by bad faith and based on extraneous considerations against the Applicants' lawful, legitimate and rightful expectations. This cannot be allowed to take place in a democratic society and I Order that the Applicants are entitled to prayers 1, 2 and 3 in their Motion dated 6/5/2021 which orders are hereby allowed. They will also have the costs of this suit.

It is so Ordered.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 20TH DAY OF FEBRUARY 2025.

In the presence of:

N/A for the Applicants

Ms. Njeri Wanjiru for the Respondents

C/A – Eric

.....

MUGO KAMAU

JUDGE

