



**Lubulellah v County Government of Kakamega & 3 others (Environment and Land  
Judicial Review Case 1 of 2023) [2024] KEELC 14003 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14003 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2023  
DO OHUNGO, J  
DECEMBER 16, 2024**

**BETWEEN**

**ANTHONY MILIMU LUBULELLAH ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KAKAMEGA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE, KAKAMEGA  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR, KAKAMEGA COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Applicant moved the Court through Chamber Summons dated 15<sup>th</sup> December 2022, which he filed in the High Court at Milimani Law Courts, as HCJR No. E181 of 2022. On 3<sup>rd</sup> May 2023, the High Court at Milimani Law Courts (J. Ngaa, J.) ordered transfer of the matter to the High Court at Kakamega. Subsequently, on 13<sup>th</sup> June 2023, the High Court at Kakamega (S. Chirchir, J.) ordered transfer of the matter to this Court.
2. The following orders are sought in the Chamber Summons:
  1. That the Applicant, Anthony Milimu Lubulellah, be granted leave to apply for Judicial Review orders of Mandamus directed against the Respondents jointly and severally to pay the Applicant the sum of KShs. 95,000,000 (Kenya Shillings Ninety Five Million) and/or any other sums the court may deem apt in compensation of the Applicant for the compulsory acquisition of his land by the Respondents, as found and ordered by the Environment and Land Court in Kakamega ELC Petition No. 8 of 2018 - Anthony Milimu Lubulellah v County Government



of Kakamega & Land Registrar Kakamega County & another [2019] eKLR; plus costs taxed therein at Kshs. 229,403.

2. That the costs of this application be costs in the cause.
3. The application is based the grounds listed on its face and is supported by a statutory statement, a verifying affidavit and a supporting affidavit sworn by the Applicant. He deposed that is the registered proprietor of land title number Kakamega Municipality/Block III/2 (the suit property) and that he filed Kakamega ELC Petition Number 8 of 2018 against the First, Third and Fourth Respondents herein and that judgment was delivered therein on 26<sup>th</sup> September 2019 in which the Court declared that his rights under Article 40 (3) of *the Constitution* was violated and further ordered the said Respondents to adequately compensate him for compulsorily acquiring the suit property. He added that despite demanding compensation from the First Respondent as was ordered, the First Respondent had not taken any steps to process the compensation. He deposed that the open market value of the suit property is KShs 95,000,000 and annexed among others, a valuation report by Syagga and Associates Limited.
4. The First and Second Respondents opposed the application through a Replying Affidavit sworn by Vivianne Mmbaka Komwonyo, the First Respondent's County Attorney. She deposed that all issues of compensation lie solely with the National Land Commission and that the sum of KShs 95,000,000 was subjective and had not been approved by the National Land Commission pursuant to the *National Land Commission Act* and the Land (Assessment of Just Compensation) Rules 2017. She added that the Court in Kakamega ELC Petition Number 8 of 2018 did not quantify the quantum of compensation since it was aware that the courts do not have that mandate. She urged the Court to dismiss the application with costs to the First and Second Respondents.
5. Although evidence of service upon them was availed, the Third and Fourth Respondents did not respond to the application and did not participate in its hearing.
6. The application was canvassed through written submissions. The Applicant filed written submissions dated 13<sup>th</sup> December 2023. He contended that it is not disputed he is the registered owner of the suit property and that the judgment had never been set aside. That, consequently, the Respondents should comply but had refused to comply despite being served. That in the circumstances, leave to commence Judicial Review to compel the Respondents to compensate him should be granted.
7. On their part, the First and Second Respondents filed written submissions dated 22<sup>nd</sup> November 2023. They contended that since what is before the Court is an application for leave to commence Judicial Review, the merits of the substantive Judicial Review application should not be gone into at this stage. They added that leave is not granted as a formality and that the court must be satisfied that there are grounds to warrant leave. That even though there is a judgement, any enforcement of the judgement should be sought in the matter where the judgement was issued.
8. The First and Second Respondents further argued that a perusal of the draft Notice of Motion that is to be filed shows that the Applicant wants the court to become a valuer, yet the court has no such jurisdiction. They urged the Court to dismiss the application since the contemplated Judicial Review proceedings will be still born.
9. In a rejoinder, the Applicant contended through his counsel that execution cannot be issued in the normal manner against the government and that this Court will not be asked to be a valuer since a valuation report was filed in the petition.



10. I have carefully considered the application, affidavits and submissions. The issue for determination is whether the orders sought should issue.
11. A perusal of the application shows that the Applicant is seeking “leave to apply for Judicial Review orders of Mandamus directed against the Respondents jointly and severally to pay the Applicant the sum of KShs. 95,000,000 (Kenya Shillings Ninety Five Million) and/or any other sums the court may deem apt in compensation of the Applicant for the compulsory acquisition of his land ...” Put differently, if allowed to commence judicial review proceedings, the Applicant intends to urge the Court to compel the Respondents, through an order of mandamus, to pay him KShs. 95,000,000.
12. The Court of Appeal stated in *Lubna Ali Sheikh Abdalla Bajaber & another v Chief Magistrate’s Court, Mombasa 2 others* [2018] eKLR as follows regarding the purpose of an application for leave to commence judicial review proceedings:

Leave to file Judicial Review proceedings is not granted as a matter of course or as a mere formality. We reiterate here that the purpose of leave to apply for Judicial Review is to sift the claims to ensure that applications that are frivolous, vexatious, scandalous or those which raise no triable or arguable issues are eliminated at the nascent stage. In other words, before a case can be passed for Judicial Review, the court hearing the application for leave must satisfy itself that the applicant has a prima facie or arguable case that calls for consideration by the court sitting on Judicial Review.
13. Does the Applicant have a prima facie case? The Applicant intends to apply for judicial review order of mandamus. The scope of an order is to compel the performance of a public duty. See *Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR. In this case, the Applicant wants the Respondents to be compelled to pay him, on the strength of the judgment, KShs. 95,000,000 (Kenya Shillings Ninety Five Million).
14. I have perused the judgment. The Court did not quantify compensation. Instead, the Court only ordered the Respondents to adequately compensate the Applicant. The Applicant has arrived the sum he intends to seek through his own valuation. There is an elaborate statutory procedure, in Part VIII of the *Land Act* 2012, for determining the quantum of compensation on account of compulsory acquisition of land. The Court, sitting as a judicial review Court, does not have the mandate to determine quantum of compensation.
15. A Courts of law does not act in vain. To allow the Applicant’s application would be an act in futility since the Court cannot determine the quantum of compensation. The Court has a duty to see to it that its processes are not engaged in a futile manner. The Applicant should pursue compensation through the correct course.
16. I find no merit in Chamber Summons dated 15<sup>th</sup> December 2022 and I therefore dismiss it. In view of the circumstances of the dispute, I make no order as to costs.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 16<sup>TH</sup> DAY OF DECEMBER 2024.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Mr Eugene Lubulela for the Applicant

Mr Ashitiva for the First and Second Respondents



No appearance for the Third and Fourth Respondents

Court Assistant: M Nguyayi

