



**Kariuki v County Government of Kajiado & 2 others (Judicial Review . E007 of 2022) [2023] KEELC 923 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 923 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
JUDICIAL REVIEW . E007 OF 2022**

**LC KOMINGOI, J**

**FEBRUARY 16, 2023**

**IN THE MATTER OF: ARTICLES 2, 23, 27(4), 40,  
50 AND 165 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE  
LAW REFORM ACT CAP 26 OF LAWS OF KENYA**

**AND**

**IN THE MATTER OF: ORDER 50, RULE 6 AND ORDER 53, RULE  
53, RULES 1, 2, 3, AND 4 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW  
OF ORDERS OF MANDAMUS, CERTIORARI AND PROHIBITION**

**BETWEEN**

**BENSON NJENDU KARIUKI ..... APPLICANT**

**AND**

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

**COUNTY LAND REGISTRAR, COUNTY – GOVERNMENT OF  
KAJIADO ..... 2<sup>ND</sup> RESPONDENT**

**KIRISIET OLE MONIREI ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This is the Notice of Motion dated 9/9/2022 brought by Benson Njendu Kariuki. It is brought under order 50, rule 6 and order 53, rules 1, 2, 3 and 4 of the [Civil Procedure Rules](#), Sections 8 and 9 of the



Law Reform Act Cap 26 of Laws of Kenya, Articles 2, 23, 27(4), 40, 50 and 165 of the Constitution of Kenya and all other enabling provisions of law.

2. It seeks orders;
  - i. Spent.
  - ii. That an order of *certiorari* do issue to remove into for the purposes of being quashing the decision/ruling of the first and second Respondent contained in its letters dated 22/6/2022 that Plots Numbers A123 and A91 belong to the third Respondent which was totally against the Constitution, the Laws of Kenya and the rules of natural justice.
  - iii. That an order of *mandamus* do issue directing the second Respondent to register the Applicant as the owner of Plots Numbers A123 and A91 and issue title documents to the Applicant accordingly.
  - iv. That an order of prohibition do issue prohibiting the first and second Respondent from using the decision/ruling contained in its letters dated 22/6/2022 in tranfering Plots Numbers A123 and A91 to the third Respondents and/or any other person and/or institution and/or at all in contravention of the Applicant's constitutional rights.
  - v. Costs of this Application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 13.
4. The application is supported by statutory statement and the supporting affidavit sworn on the 9/9/2022.

#### **The Ex-parte Applicant's Case.**

5. It is the *ex parte* Applicant's case that he is the owner of Plot Numbers A91 and A123. It is his case that he acquired Plot Numbers A123 (formerly 192 business) through Nairobi Succession Cause Number 2128 of 2013. In the matter of the Estate of Sarah Wamaitha Njendu (Deceased).
6. He further stated that the deceased who was the *ex parte* Applicant's wife purchased the plot in on 5<sup>th</sup> June, 2001 and a transfer was effected by the 2<sup>nd</sup> Respondent's office upon payment of the requisite fees. The deceased continued to pay rates until the *ex parte* Applicant took over upon her demise.
7. It is the *ex parte* Applicant's case that in March 2022, he was invited to a dispute resolution meeting on 13/4/2022, 30/5/2022 and 6/6/2022 by the 2<sup>nd</sup> Respondent through a short message service (sms). No hearing took place except that he was told to produce his documents. He was not shown the complainant. He was later informed through a text to collect the verdict dated 22/6/2022 by the 1<sup>st</sup> Respondent which stated that the plots belonged to the 3<sup>rd</sup> Respondent.
8. It is his case that the verdict states that the committee had taken into consideration oral submissions, witness evidence, examination of ownership documents, verification of land registry records and the defunct County Land Management Board report yet he has never been involved in the hearing.  
He was neither granted an opportunity to call witnesses nor give his evidence. His right to property has been violated.
9. The Respondents having been served with the Application failed to file any responses.
10. On the October 12, 2022, the court directed that the Notice of Motion be canvassed by way of written submissions.



### **The *ex parte* Applicant Submissions.**

11. They are dated October 28, 2022. They raise two issues for determination.
  - a. Whether the Applicant has made out a case for the grant of the orders sought.
  - b. Whether the Applicant is entitled to costs.
12. It is submitted that the Applicant has satisfied the requirements for grant of judicial review orders. He has put forward the case of *Pastoli v Kabale District Local Government Council & others* (2008) E.A. 300 quoted in *R v Chief Magistrates Court Nyahururu & 2 others ex parte Jacinta Wangechi Kabia* (2022) eKLR.
13. The *ex parte* Applicant herein was not heard. No hearing was conducted. He was merely asked to show original documents which he did. He was not shown the complainant or any other person nor was he told his claim. To his surprise he was alerted through a text to collect the verdict and on arrival he was given two letters containing a verdict.
14. It is his submission that he was involved not in the process except for the tendering of the documents to the 2<sup>nd</sup> Respondent. The decision was made without a hearing or proper hearing.
15. The Applicant was not given an opportunity to give his evidence, call witnesses, see and hear the disputant's evidence and of his witnesses. He was not given an opportunity to have his witnesses and have counsel represent him. He prays that the Application be allowed.
16. I have carefully considered the notice of Motion, the affidavit in support, the written submissions and the authorities cited. The issues for determination are;
  - i. Whether the *ex parte* Applicant is entitled to the orders sought?
  - ii. Who should bear costs of this application?
17. The power to grant Prerogative Writs of *mandamus*, Prohibition and *certiorari* are vested in Section 8 (I) of the [Law Reform Act](#) (Cap 26 Laws of Kenya). This court will also be guided by Article 47 of the [Constitution](#) and the provisions of the [Fair Administrative Action Act](#) No 4 of 2015.
18. It is the *ex parte* Applicant's case that his proprietary rights were violated when the 1<sup>st</sup> Respondent issued a ruling that his plots A123 and A91 belong to the 3<sup>rd</sup> Respondent. This was despite the fact that he legally acquired them.

The decision was made without him being heard since he never provided his evidence nor call witnesses. He did not hear the complainant's case, the witnesses or see the documents. He provided evidence to show that he was notified to attend the meeting through a text.
19. It appears that the 1<sup>st</sup> Respondent may not have followed due process in arriving at the impugned decision. The Respondents were served but failed to file any responses. The *ex parte* Applicants averments have not been controverted.
20. Article 48 of the [Constitution](#) provides that the state must ensure all persons have access to justice. Article 50(1) (2) of the [Constitution](#) grants every person the right to a fair trial by courts and independent tribunals wherever there is a dispute.



21. In the case of *Pastoli v Kabale District Local Government Council & others* (2008) E.A. 300 at 3030 – 304, the grounds for judicial review were summarized as follows;

“In order to succeed in an application for judicial review, the Appellant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety...Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercise jurisdiction to make decision”.

I hereby find that this court can rightly issue an order of *certiorari* to quash the said decision arrived at without hearing the *ex parte* Applicant.

22. The *ex parte* Applicant also seeks an order of *mandamus* to compel the 2<sup>nd</sup> Respondent to register him as the owner of the suit properties. I decline to grant the same in the ground that supposing there is indeed a dispute on the suit properties? To issue an Order of *mandamus* would lock out whoever had complained. The dispute ought to be heard and resolved in the presence of all parties.
23. The *ex parte* Applicant also seeks an orders of Prohibition. In the case of *Kenya National Examination Council v Republic ex parte Geoffrey Gathenji Njoroge & others* Civil Appeal No 266 of 1996. The court of Appeal expressed itself as follows.

“Prohibition looks into the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of national justice. The High Court would be obliged to prohibit it from acting contrary to the rules of national justice.

...prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein excess of its jurisdiction or in contravention of the laws of the land...”

It does not however lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...only an Order of *certiorari* can quash a decision already made and an Order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction or where the Rules of Natural Justice are not complied with or for such like reasons...”

The impugned decision has already been made, I decline to grant an order of Prohibition.

24. In conclusion I find that the *ex parte* Applicant succeeds and I grant the orders sought namely;
- a. That an order of *certiorari* is hereby issued removing into this court for the purposes of being quashed the decision/ruling of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents contained in the letters dated 22/6/2022. That plot numbers A123 and A91 belong to the 3<sup>rd</sup> Defendant which decision/ ruling is hereby quashed.
  - b. That I make no orders as to costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**L. KOMINGOI**



**JUDGE**

**IN THE PRESENCE OF;**

**Mr. Gekonge for the Ex-parte Applicant**

**No appearance for the Respondents**

**Court assistant- Mutisya.**

