



**Njoroge v Mwea Irrigation Scheme Manager & another (Environment and Land Judicial Review Case E003 of 2024) [2025] KEELC 1419 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1419 (KLR)

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

**JM MUTUNGI, J  
MARCH 20, 2025**

**BETWEEN**

**WANJIRU NJOROGE ..... APPLICANT**

**AND**

**MWEA IRRIGATION SCHEME MANAGER ..... 1<sup>ST</sup> RESPONDENT**

**BERNARD KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The exparte Applicant was granted leave to institute Judicial Review proceedings on 20<sup>th</sup> February 2024 and by a Notice of Motion dated 9<sup>th</sup> April 2024 instituted the present Judicial Review proceedings seeking inter alia the following orders:-
  1. That an order of Certiorari do issue to move to this Honourable Court and quash the proceedings and award of the Advisory Committee of the National Irrigation Settlement Scheme made on 11<sup>th</sup> July 2023, in respect of Rice Holding No. 495 Unit T.25 Tebere Section.
  2. That an order of Prohibition and Mandamus do issue against Senior Scheme Manager of the National Irrigation Board- Mwea Irrigation Settlement Scheme to stop execution or proceeding with execution of the said award made on 20<sup>th</sup> February 2024 relating to Rice Holding No. 495 Unit T.25 Tebere Section in favour of 2<sup>nd</sup> Respondent herein or any other person and such execution if any be declared null and void and the senior manager be compelled to restore the entire rice holding in the name of the Ex-parte Applicant herein as per the Court Order given on 8<sup>th</sup> November 2005 vide Wang'uru R.M Misc. Succ Cause No. 22 of 2005 and also in compliance with the Irrigation (National Irrigation Scheme) Regulations made pursuant to Section 27 of the Irrigation Act Cap 347 Laws of Kenya.



3. That the Interested Party be condemned to pay costs of this application and the ex-parte chamber summons dated 12<sup>th</sup> January 2017.
2. The Motion was supported on the annexed Verifying Affidavit sworn by the ex-parte Applicant, where she stated that she was the lawful owner of Rice-holding No. 495, Unit T. 25, Tebere Section, which she acquired through Wang'uru R.M Misc. Succ Cause No. 22 of 2005. She explained that the rice holding originally belonged to her late husband, Bernard Kamau Kimondo, also known as Kimondo Mukono. Following her husband's death, the Scheme Manager of the National Irrigation Authority informed the Wang'uru Court of his passing to determine a successor for the rice holding. She confirmed that the Court ruled in her favor, appointing her as the rightful successor of the rice-holding. She asserted that the court order granting her absolute ownership of the rice holding was still valid and has never been challenged in any Court. After the Court's decision, the Senior Scheme Manager of the National Irrigation Authority wrote to the Irrigation Officer, requesting that the proprietorship changes be recorded to reflect the Court's decision. As a result, the Scheme Manager authorized her to use and cultivate the rice holding and issued her a Tenant Card dated 6<sup>th</sup> March 1995.
3. The Applicant further explained that her late husband had another wife, Wangoi Kimondo Mukonjo and that during his lifetime, her husband allocated a piece of land in Laikipia County, measuring 9 acres, to his said first wife, while she received the rice holding in Mwea Tebere Section, which measured 4 acres. The Applicant further contended that her co-wife and her children allowed the entire 9-acre parcel in Laikipia County to become wasted and have since started intruding on her rightful share by allegedly corrupting the Scheme Manager with the intention of taking over the land assigned to her and her children for cultivation. It was her position that the advisory committee's decision to award part of the rice holding to the 2<sup>nd</sup> Respondent was made in excess of jurisdiction, usurping the Court's authority, and was, therefore, ultra vires. Consequently, she urged that the proceedings and award made by the Senior Scheme Manager of the National Irrigation Authority on 29<sup>th</sup> August 2023 and 24<sup>th</sup> October 2023 be quashed due to being made in excess of jurisdiction. She also sought an order prohibiting the Senior Scheme Manager from executing or proceeding with the award in favor of the 2<sup>nd</sup> Respondent or any other person regarding the rice holding. She prayed that the Senior Scheme Manager be compelled to restore the entire rice holding in her name.
4. In a Replying Affidavit, sworn by Bernard Kamau on 14<sup>th</sup> May 2024, he averred that Kimondo Mukonja was the original owner of the rice holding. He stated that following Mukonja's death on 8<sup>th</sup> April 1993, the Scheme Management initiated a succession process for the rice holding and that on 6<sup>th</sup> March 1995, the ex-parte Applicant was appointed to hold the rice holding in trust for him. He explained that after being issued a tenant card and license, the ex-parte Applicant directed her children through an Affidavit to utilize two acres of the rice holding but did not allocate any portion to him. Being dissatisfied he averred he filed a complaint with the Arbitration Committee, which is the body responsible for resolving disputes within the Scheme.
5. The 2<sup>nd</sup> Respondent stated that on 1<sup>st</sup> July 2023, after hearing from all the parties involved, the Committee directed the ex-parte Applicant to hold 2 acres of the rice-holding while he retained 2 acres. The 2<sup>nd</sup> Respondent averred that the Advisory Committee made a fair determination. He averred that he had been using his 2 acres of rice holding for over 30 years before the Committee's decision.

### **Submissions of the Parties**

6. The ex-parte Applicant filed her submissions on 19<sup>th</sup> July 2024, addressing three main issues: the infringement of her right to be heard, the determination of the doctrine of trust by the committee;



which was a matter that could only be resolved by a Court of Law;—and the irrationality and unreasonableness of the decision made.

7. The Applicant's Counsel argued that the Committee hearing was conducted in her absence. She claimed that she was not informed of the meeting and was unaware that it was taking place. Counsel asserted that this lack of notification of the hearing, infringed upon the *ex parte* Applicant's right to be heard. Counsel further argued that the 2<sup>nd</sup> Respondent had claimed that the Applicant held the parcel of land in trust for him which was an issue that only the Court could determine and not the National Irrigation Authority Advisory, as happened in this case. The Applicant further argued that the Committee's decision was both irrational and unreasonable since the 2<sup>nd</sup> Respondent failed to produce any ownership documents during the to substantiate his claim. The Applicant contended she was not afforded an opportunity to be heard and that violated her right to a fair hearing and a breach of the rules of natural justice.
8. The 2<sup>nd</sup> Respondent filed his written submission on 13<sup>th</sup> November 2024. He argued on two points of law: whether the National Irrigation Authority, Mwea Irrigation scheme, had jurisdiction to hear the dispute regarding the rice-holding and whether the orders of Judicial Review are available to the Applicant. Counsel for the 2<sup>nd</sup> Respondent submitted that Section 25 (1) of the *Irrigation Act* 2019 gives the Irrigation Water Users Association the mandate to solve disputes related to Irrigation and drainage scheme development, management, water allocations and delivery, financing, operation and maintenance, and other matters. He submitted that the issue that led to the convening of the Advisory Committee fell within the scope of the disputes to be determined by the arbitration Committee of the Irrigation and the committee had the requisite jurisdiction to determine the dispute.
9. Counsel further argued that, contrary to the allegation that the *ex parte* Applicant was not involved in the hearing, both parties were given the opportunity to present their respective cases before a verdict was reached. Counsel submitted that the Committee's decision was fair, objective, and followed proper procedures. Additionally, Counsel asserted that the allegation by the Applicant regarding the 2<sup>nd</sup> Respondent's failure to produce an ownership document for the rice holding goes to the merits of the case which was not within the purview of a Judicial Review application. The Counsel submitted that, this Court functions as an Appellate Court and therefore lacked the jurisdiction to review the merits of the matter the subject of review. In conclusion, Counsel contended that the Applicant had not demonstrated sufficient cause to warrant the intervention of this Court in granting the orders sought by the Applicant.

### **Analysis and Determination**

10. After consideration and evaluation of the parties' pleadings, evidence, and submissions, the key issues for determination are firstly, whether the *ex parte* Applicant's right to be heard was infringed; secondly, whether the Advisory Committee overstepped its authority in reaching its verdict; and thirdly, whether the decision made by the Dispute Arbitration Committee was reasonable, rational, and fair and whether the Applicant is entitled to the orders sought.

### **Whether the *ex parte* Applicant's right to be heard was infringed**

11. Judicial Review is a legal remedy designed to ensure fair treatment by the decision-making bodies. To succeed in a Judicial Review application, the Applicant must demonstrate that the decision in question was either illegal, irrational, or procedurally improper. For example, this could occur if the Applicant



was not given a chance to be heard. The right to a fair hearing is embodied under Article 50 (1) of *the Constitution* which provides as follows:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court, or if appropriate, another independent and impartial tribunal or body.”

12. In the matter before the Court, the Applicant complains that there was no proper hearing of the case before the Advisory Committee as she was not given an opportunity to be heard. She states as follows in paragraph 19 of her statement of facts:-

“That at the time of the arbitration committee if they indeed wanted to have a proper hearing they ought to have invited every member of the Kimondo Mukonje family to the meeting but as they had ulterior motives to deprive me of the rice holding they casually brushed of the issue which I expressly pointed out.”

13. The Applicant claims that her perspective of having the entire family present was not taken into account. Given the circumstances of this case, can we truly say that she was not given a chance to be heard? The Applicant acknowledges that she was present at the meeting and explicitly states, “I expressly pointed out,” confirming her attendance during the proceedings. She has not provided any justification as to why it was essential to include every member of the Kimondo Mukonje family. A review of the pleadings reveals that the primary dispute in this case was between the Applicant and the 2<sup>nd</sup> Respondent. The Applicant was the legal owner of the rice holding, as evidenced by a tenant identification card in her name, while the 2<sup>nd</sup> Respondent claimed a beneficial interest over the suit plot on the basis that the Applicant held the plot in trust for him.
14. The Applicant submitted that she was denied the right to cross-examine the Respondent and adduce evidence. Based on the evidence presented and considering the circumstances of this case, I am not persuaded that the Applicant’s right to a fair hearing was violated. She was given the opportunity to appear before the Committee, and she did so, and her evidence was summed up in the record in the exhibited copy of the Committee’s proceedings. The fact that the entire family was not invited by the Advisory Committee does not mean that her right to be heard was denied. The dispute only pitted the Applicant and the 2<sup>nd</sup> Respondent. If the Applicant desired she could have called any of the family members as a witness.

### **Whether the advisory Committee overstepped its authority in reaching its verdict**

15. In reaching its verdict, the Applicant submitted that the Advisory Committee addressed the issue of trust, which was outside its jurisdiction. This contradicts the minutes dated 11<sup>th</sup> July 2023. The verdict states as follows: “After deliberations, the committee resolved that the rice holding be subdivided equally and registered as follows: Wanjiru Njoroge and Bernard Kamau will each hold 2 acres of the rice holding. A surveyor will ascertain the acreage of the rice fields and establish the boundaries between Wanjiru’s and Kamau’s fields. Bernard is to begin cultivating the rice holding after the current crop has been harvested.”
16. From the evidence on record, the committee considered the cases by both parties and reached a decision based on the evidence presented. I find that the Committee did not improperly adjudicate matters outside of its jurisdiction. The Committee in my view could properly consider and determine whether the 2<sup>nd</sup> Respondent had a beneficial interest in the suit plot.



## Whether the decision made by the Dispute Arbitration Committee was reasonable, rational, and fair

17. Article 47(1) and (2) of *the Constitution* provides as follows:

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.

18. Sections 4(1), (2) and (3) of the *Fair Administrative Action Act* 2015 provides as follows:

- (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the Administrator shall give the person affected by the decision-
  - (a) prior and adequate notice of the nature and reasons for the proposed Administrative action;
  - (b) an opportunity to be heard and to make representations in that regard;
  - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - (d) a statement of reasons pursuant to section 6;
  - (e) notice of the right to Legal representation, where applicable;
  - (f) notice of the right to cross-examine or where applicable; or
  - (g) information, materials and evidence to be relied upon in making the decision or taking the Administrative action..

19. In the Case of *Gathigia vs. Kenyatta University Nairobi* [2008] KLR 587 the Court held:

“I would at this stage adopt the observations made in the *Hypolito Cassiani De Souza vs. Chairman Members of Tanga Town Council* 1961 EA 77 where the court set down the general principles which should guide statutory domestic or Administrative tribunals sitting in a quasi-judicial capacity. P 386 – the Court said, “1. if a statute prescribes, or statutory rules and regulations binding on the domestic tribunal prescribe, the procedure to be followed, that procedure must be observed; 2. if no procedure is laid down, there may be an obvious implication that some form of inquiry must be made such as will enable the tribunal fairly to determine the question at issue; 3. In such a case, the tribunal, which should be properly constituted, must do its best to act justly and reach just ends by just means. It must act in good faith and fairly listen to both sides. It is not bound, however, to treat the question as a trial. It need not examine witnesses, and it can obtain information in any way it thinks best... 4. The person accused must know the nature of the accusation made; 5. A fair opportunity must be given to those who are parties to the controversy to correct or contradict any statement prejudicial to their view and to make any statement they may decide to bring forward; 6. The tribunal should see to it that matter that has come into



existence for the purpose of the quasi-lis is made available to both sides, and once the quasi-lis has started, if the tribunal receives a communication from one party or a third party, it should give the other party an opportunity of commenting on it.”

20. In the Case of R vs. Vice Chancellor JKUAT Misc. Appl. No. 30 of 2007 it was held that:

“If the principles of natural justice are violated in respect of any decision, it is, indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principles of justice. The decision must be declared as no decision.”

21. The elements of procedural fairness in the administrative law context were provided by the Supreme Court of Canada in the Case of Baker vs. Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6 where the Court held:

“The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.”

22. The Ex-parte Applicant has challenged the decision made by the Arbitration Committee of the National Irrigation Authority, arguing that it was both unreasonable and unfair. The evidence on record, particularly a letter dated 6<sup>th</sup> March 1995 from the District Magistrate’s Court Wanguru in Misc. succ case No. 42 of 1994 to the Manager Mwea Irrigation Scheme, indicated that the rightful successor of the rice holding, No. 495 Tebere Section was Wanjiru Njoroge (Applicant) who was to hold the same in trust for Bernard Kamau Kimondo, the 2<sup>nd</sup> Respondent herein. In reviewing the advisory Committee’s decision, it was determined that the 4 acres of land would be split equally between the Ex-parte Applicant and the 2<sup>nd</sup> Respondent, with each party getting 2 acres. I find this to be a reasonable verdict that was neither unreasonable nor irrational considering right from inception the exparte Applicant was to hold the riceholding in trust for 2<sup>nd</sup> Respondent.

23. Before I conclude, I want to highlight that the scope of Judicial Review has recently expanded to include a consideration of the merits of the decisions being challenged. This marks a departure from the traditional approach, where Judicial Review was limited to examining whether there were any procedural improprieties in reaching the decision. Particularly, the Court before which a Judicial Review application is made under Section 7(2) of the [Fair Administrative Action Act](#), 2015, and Article 47 of [the Constitution](#) is now required to evaluate various aspects of merit review.

24. The Court of Appeal in the Case of Suchan Investment Ltd –vs- Ministry of National Heritage & Culture and 3 Others (2016) eKLR in upholding the shift from the traditional approach in Judicial Review application at paragraph 56 of its Judgment stated as follows:-

“56. Analysis of Article 47 of [the Constitution](#) as read with the [Fair Administrative Action Act](#) reveals the implicit shift of judicial review to include aspects of merit review of administrative action. Section 7 (2) (f) of the Act identifies one of the grounds for review to be a determination if relevant considerations were not taken into account in making the administrative decision; Section 7 (2) (j) identifies abuse of discretion as a ground for review while Section 7 (2) (k) stipulates that an administrative action can be reviewed if the impugned decision is unreasonable. Section 7 (2) (k) subsumes the dicta and principles



in the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corp.* [1948] 1 KB 223 on reasonableness as a ground for judicial review. Section 7 (2)(i)(i) and (iv) deals with rationality of the decision as a ground for review. In our view, whether relevant considerations were taken into account in making the impugned decision invites aspects of merit review. The grounds for review in Section 7 (2) (i) that require consideration if the administrative action was authorized by the empowering provision or not connected with the purpose for which it was taken and the evaluation of the reasons given for the decision implicitly require assessment of facts and to that extent merits of the decision. It must be noted that even if the merits of the decision is undertaken pursuant to the grounds in Section 7 (2) of the Act, the reviewing court has no mandate to substitute its own decision for that of the Administrator. The court can only remit the matter to the Administrator and or make orders stipulated in Section 11 of the Act. On a case by case basis, future Judicial decisions shall delineate the extent of merit review under the provisions of the *Fair Administrative Action Act.*”

25. I have evaluated the evidence for the purpose of conducting a limited merit review, as required by Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act, 2015*. I am satisfied that the principles of natural justice were upheld, as both parties were given the opportunity to present their cases in a procedurally fair manner. The preamble of the Committee proceedings clearly indicates that both parties were allowed to present their respective cases. The decision arrived at was neither unreasonable or irrational.
26. In the upshot, I do not consider that the process was flawed to the extent of rendering the Committee's decision irrational, unreasonable, or unfair. In the premises, it is my determination that the Notice of Motion application dated 9<sup>th</sup> April 2024 is without merit and I dismiss the same.
27. I take note that the Applicant and the 2<sup>nd</sup> Respondent are close family members and for that reason and in exercise of my discretion order that each party bears their own costs of the application.
28. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 20<sup>TH</sup> DAY OF MARCH 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

