REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 2 OF 2018

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF ARTICLE 27 (1), 47, 48 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF THE SENIOR PRINCIPAL MAGISTRATE COURT AT KANGUNDO

BETWEEN

ESTHER KAVIVE.....APPLICANT

AND

SENIOR PRINCIPAL MAGISTRATE'S COURT KANGUNDO.....1ST RESPONDENT

CHARLES KIVUVA MASESI.....2ND RESPONDENT

RULING

1. This Ruling is in respect of an application dated 3.04.2018 in which the Ex-parte applicant seeks the following orders;

a. An order of certiorari directed to the 1st Respondent quashing its decision and ruling delivered in court on 27.03.2018 and the judgement dated 19.08.2015 in civil suit number 288 of 2009.

b. An order of prohibition directed to the 1st Respondent or any other subordinate court whatsoever from hearing or further hearing or determining and/ or giving any further orders in Civil suit number 288 of 2009 and the file be transferred to Machakos High Court.

c. Costs.

2. The same is founded on the grounds that the ex-parte Applicant entered into an illegal contract with the 2nd Respondent to sell property known as **MWALA/MWANYANI/929** which was and is subject to **Succession Number 30 Of 2013 estate of Gideon Muli Mwake** as one of the assets and that the court went ahead to determine the matter without addressing the issue of jurisdiction and in which the Applicant was ordered to pay Kshs. 170,000 together with interest to which she paid Kshs. 300,000 being the final settlement of the suit in order to

maintain the relationship between the families. The ex-Parte Applicant averred that she was served with a proclamation notice on 7.10.2015 by Base Auctioneers and later learnt that the 1st Respondent had issued final orders awarding Kshs. 649,205 to the 2nd Respondent without a substantive suit. The applicant states that she has never been served with a plaint nor summons and has been denied an opportunity to be heard. She contended that the orders issued are oppressive and will cause a grave injustice to her.

3. The 1st Respondent has not filed any response to the application and has never participated in these proceedings.

4. The 2nd Respondent filed a replying affidavit dated 12.04.2018 in which he stated that the ex-parte Applicant had not laid a single ground for judicial review. He stated that he is the Plaintiff in **Kangundo SPMCC 288 of 2009** where he sued the ex-parte Applicant for breach of a land contract and recovery of the monies paid to her. He stated that the ex-parte Applicant made part payment with an agreement that the rest would be settled in instalments. He stated that the ex-parte Applicant has a habit of changing her case and appointing new advocates for instance, in that suit, she has had five (5) advocates in the matter. That when the ex-parte applicant refused to pay the balance, he filed an application for judgement on admission of claim which application was heard and determined in his favour. He then sought to execute the judgement but the ex-parte Applicant subsequently filed an application for review and setting aside of the ruling and decree as well as an injunction against the auctioneers which was heard and dismissed with costs. That he sought to execute the decree again and despite the Applicant being summoned to court three (3) times, she failed to appear and instead appointed the firm of Ndetto & Co Advocates who gave an undertaking that she would pay the decretal amount in 3 instalments which has not been done to date. He stated that this court has no jurisdiction to re-evaluate the evidence as it would be tantamount to sitting as an appeal court. He stated that the Applicant wants to deny him the fruits of his judgement and this court should dismiss the application but however should the court be inclined to grant the order of stay then the Ex Parte Applicant should be ordered to deposit the decretal sum in court pending the hearing and determination of the suit.

5. The Ex-parte applicant filed a response to the 2nd respondent's replying affidavit wherein she deponed inter alia; that the subject matter of the lower court suit relates to parcel number **Mwala/Mwanyani/929** registered in the name of her late husband one Gedion Muli Mwake but that the 2nd respondent had coerced her to enter into an agreement for sale at Kshs 170,000/; that as the property was still in names of her deceased husband then the transaction amounted to intermeddling in the estate; that her family later agreed to refund the aforesaid monies but increased to Kshs 300,000/ which she handed over at the 2nd respondent's advocate's offices where she signed a document which she later came to learn that it was a consent; that she was later shocked to learn that the purported consent was filed by the 2nd respondent in court whereupon the 1st respondent entered judgement against her; that her attempt to seek for setting aside the 1st respondent's orders was dismissed; that the 1st respondent did not have jurisdiction to entertain the matter as it was land which ought to have been lodged at the Environment and Land Court.

6. The matter came up for directions on 12.04.2018 where parties agreed to dispose the matter by way of written submissions.

7. The ex-parte Applicant filed his submissions dated 18.06.2018 in which she opined that the 1st Respondent in relying on an illegal contract in arriving at its judgement amounted to an illegality, as the court did not address the fact that the seller was not the administrator of the estate of the deceased and also that **Kangundo Civil Suit 288 of 2009** was ongoing. She submitted that the 1st Respondent concealed material facts in order to hoodwink the 2nd Respondent into admitting an illegal consent. Further, that she is illiterate, old and sickly and wanted to settle the matter amicably and was given a note to append her signature at the 2nd Respondent advocate's office. She alleges that at the time, her advocate, the late Mr. Kituku was not aware of the existence nor signing of the consent as he was mischievously not involved. She submitted that the matter had been settled and that 2nd Respondent was to get Kshs 170,000 but instead Kshs 300,000 was only paid by the applicant after her family agreed that it be a fair consideration to compensate the 2nd Respondent adequately as the suit property had appreciated in value.

8. She further submitted that she had legitimate expectation that the 1st Respondent would grant her a fair hearing and opined that the 2nd Respondent hoodwinked the 1st Respondent into believing that there was a consent agreement. It was her submission that the 1st Respondent while handling **Civil Suit 288 of 2019** exhibited illegality, irrationality and impropriety of procedure. That no party can benefit from an illegal contract and therefore the 1st respondent acted ultra vires in allowing the matter to proceed and entering judgement against the Applicant.

9. As regards jurisdiction of the court to hear and determine civil suit number 288 of 2009, she submitted that the subject matter was **MWALA/MWANYANI/929** situated in Kangundo, Machakos County and as such could only be heard by the Environment and Land Court. She relied on the following cases to support her case; **The Owners of Motor Vessel Lilian S vs Caltex Oil Kenya Limited (1989) KLR 1 and Owners and Masters of the Motor Vessel " Joey" vs Owners and Masters of the Motor Tugs "Barbara" and Steve B [2008] 1 EA 367, R vs Panel on takeover and Mergers Ex Parte Datafin [1987] QB 815, Re National Hospital Insurance Fund Act and Central Organization of Trade Unions (Kenya), NAIROBI [2006] 1 EA 47, Kuria & 3 Others vs Attorney General [2002]2 KLR 69, Republic Vs Kenya Revenue Authority, Ex Parte Yaya Towers Limited [2008] eKLR, Republic vs Commissioner of Lands Ex Parte Lake Flowers Limited Misc app 1235 of 1998, Re Bivac International SA (Bureau Veritas) 2 EA 43 and Chitty on Contracts, Twenty eighth edition volume.**

10. The 2nd Respondent filed submissions dated 3.10.2018 in which he relied on his replying affidavit on record and further submitted that the allegation that the ex-parte applicant was not served with a plaint nor summons is false and has been made in bad faith as from page 4 of the ruling dated 19.05.2015, the court noted that the defendant filed a defence on 8.01.2010 dated 31.12.2009 the suit having commenced by way of a plaint. He further submitted that the Applicant fully participated in the proceedings and even filed a response and submissions which the court considered and made a ruling in 19.05.2015. That the ruling dated 27.03.2017 in regard to the Applicant's application for reinstatement of the application of stay of execution, the 1st Respondent heard the parties and delivered its ruling.

11. As regards the allegation that the 1st Respondent acted on an illegal contract and consent to determine the case, the 2nd Respondent submitted that he never sought for specific performance nor to be granted the land but sought a refund of the money plus interest. That the ex Parte applicant approached him for settlement and paid an initial Kshs. 300,000 with an undertaking to settle the balance as per the consent

dated 15.09.2011. He submitted that parties who consent or undertake to do a particular thing in an agreement upon the happening of particular facts, then none of the parties should complain if the other choses to enforce the agreement which agreement the ex parte applicant entered into willingly on two occasions; at the time of sale and when she opted to compromise the matter. He further submitted that there is nothing illegal, immoral or against public policy in the circumstances.

12. On the issue of jurisdiction, he submitted that the suit was filed before the enactment of the Constitution of Kenya, 2010 and therefore the Environment and Land court had not been established and therefore the ex-parte' applicant's claims are misplaced. He therefore asked the court to dismiss the application with costs as it was mischievous, an abuse of the court process, bad in law and made in bad faith.

13. I have perused the application, responses thereto, the lower court record and the submissions of the parties herein and find the following issues necessary for determination:

a. Whether this court has jurisdiction to handle this matter.

b. Whether the Ex Parte Applicant is entitled to the orders sought.

14. It is not in dispute that this matter was filed Kangundo SPMCC 288 of 2009 **Charles Kivuva Masesi –Vs- Esther Kavive Muli** in respect of **L.R Number MWALA/MWANYANI/929** which case was heard and ended up being settled out of court. The record indicates that there was part fulfilment of the judgement with several applications by the ex-parte applicant seeking orders of stay and setting aside which appear to have been dismissed by the 1st respondent, the latest ruling being the one dated 27/3/2017.

15. This court is clothed with the jurisdiction to handle judicial review matters and the question at hand is whether the Ex Parte Applicant has met the threshold of judicial review in order for her to be granted the orders sought.

16. Article 47 of the Constitution of Kenya, 2010 provides for fair administrative action. It provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The **Fair Administrative Action Act, 2014** was enacted to enable the enjoyment of rights under Article 47 of the constitution and section **7 (2)** thereof provides for the grounds upon which the court may review an order.

17. The Supreme Court in **Judges and Magistrates Vetting Board vs Centre for Human Rights and Democracy [2014] eKLR** stated that :

"[161] when Courts conduct judicial review, they are in essence ensuring that the decisions made by the relevant bodies are lawful. Consequently, should they find that the decision made is unlawful, Courts can set aside that decision. Judicial review, therefore, can be said to safeguard the rule of law, and individual rights; and ensures that decision makers are not above the law, but have taken responsibility for making lawful decisions, in the knowledge that they are reviewable."

18. The description of Judicial review is stated in the case of Re **Bivac International SA (Bureau Veritas) [2005] 2 EA 43,** where the court opined that

"… judicial review is like the Biblical mustard seed which a man took and sowed in his field and which is the smallest of all seeds but when it grew up it became the biggest shrub of all and became a tree so that the birds of the air came and sheltered in its branches, judicial review stems from the doctrine of ultra vires and the rules of natural justice and has grown to become a legal tree with branches in illegality, irrationality, impropriety of procedure (the three "I's") and has become the most powerful enforcer of constitutionalism, one of the greatest promoters of the rule of law and perhaps one of the most powerful tools against abuse of power and arbitrariness. It has been said that the growth of judicial review can only be compared to the never-ending categories of negligence after the celebrated case of Donoghue vs. Stephenson in the last century…"

19. Further, in the case of **Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited [2008] eKLR** it was held that;

the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of the JR 3 OF 2021 PAGE 59 | 82 individual judges for that of the authority constituted by law to decide the matter in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing abuse of power, be itself, guilty of usurpation of power.

20. The first issue that has been raised is the issue of jurisdiction. The ex-parte applicant alleges that the 1st Respondent did not have jurisdiction to handle the matter and in prayer 2 asks for an order of certiorari while the 2nd Respondent alludes to this court not having jurisdiction as it would be sitting as an appeal court. I will handle each question separately.

21. Firstly, on matters jurisdiction, I will refer to the words of the Late Justice Nyarangi (as he then was) in the case of ***Owners of Motor Vessel Lillian " S" –vs- Caltex Oil (Kenya) Limited (1989) KLR*** where he rightly held that:

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter

before it the moment it holds the opinion that it is without jurisdiction".

22. As regards whether the lower court had jurisdiction to handle land matters, I am guided by the amendments to the **Environment and Land Court Act, No. 19 of 2011** (the ELC Act) with a view to conferring the Magistrates courts with authority to hear and determine disputes relating to employment and labour relations and the environment and the use and occupation of, and title to land.

23. I note that this suit was filed in 2009 prior to the promulgation of the Constitution of Kenya, 2010 and the law cited above. The Magistrates' court Act under Magistrate's Court as per section 9 of the Magistrates' court Act shall —

a) **in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (Cap. 12A) and subject to the pecuniary limits under Section 7(1) as above mentioned hear and determine claims relating to —**

a. environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

b. compulsory acquisition of land;

c. land administration and management;

d. public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

e. environment and land generally."

In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including interim or permanent preservation orders including injunctions; Prerogative Orders, award of damages, compensation, specific performance, restitution, declaration or costs.

24. Prior to the promulgation of the Constitution of Kenya, 2010, land matters were handled by the already established courts for as long as the same was within their pecuniary jurisdiction. Section 7 (1) of the Magistrate's Court Act provides for the pecuniary jurisdiction of such courts as;

a. twenty million shillings, where the court is presided over by a chief magistrate;

b. fifteen million shillings, where the court is presided over by a senior principal magistrate;

c. ten million shillings, where the court is presided over by a principal magistrate;

d. seven million shillings, where the court is presided over by a senior resident magistrate; or

e. five million shillings, where the court is presided over by a resident magistrate.

25. The 1st Respondent is a senior principal magistrate's court and therefore I agree with the 2nd Respondent that the 1st Respondent had jurisdiction to handle the matter and therefore the allegation that it acted ultra vires does not hold any water. Further, as noted from the lower court record, the claim by the 2nd respondent was for refund of purchase price consideration and not a claim for specific performance and to be given land. That being the position, I find that it was a commercial dispute for a claim whose value was below Kshs.1 million. The ex-parte applicant admitted in her replying affidavits and in the court record that the issue was about refund of purchase price. If that is the position, her claim that the trial court had no jurisdiction over land matters seems to be dishonest on her part as she knows that the claim lodged before the court was for refund and not a claim for land. It is clear that the ex-parte applicant upon being denied a request for review of the lower court judgement has decided to string the 2nd respondent by bringing in the new dimension of the dispute being a land matter so as to wrest the ball from the 1st respondent to be played in another arena. This in my view is mischievous and smacks bad faith on the part of the ex-parte applicant especially when looked at from the nature of the dispute as revealed by the lower court record.

26. The 2nd Respondent has stated that this court will be sitting as an appeal court if it determines the issues presented before it. Some of the issues raised by the ex-parte applicant would fall squarely as grounds of appeal before the relevant court. I note the ex-parte applicant has been filing applications but none of the rulings of the 2nd Respondent have ever been appealed from. The law allows parties to seek an appeal where they are dissatisfied with the decision of a court. As far as an application for judicial review is concerned, this court refers to and relies on the case of **Judges and Magistrates Vetting Board vs Centre for Human Rights and Democracy supra and Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited (supra)** and will only look at the decision making process rather than the merits of the case.

27. Having done away with the issue of jurisdiction, I now look at the next issue which is whether the ex parte applicant is entitled to the orders sought which are;

a. An order of certiorari directed to the 1st Respondent quashing its decision and ruling delivered in court on 27.03.2018 and the judgement dated 19.08.2015 in civil suit number 288 of 2009.

b. An order of prohibition directed to the 1st Respondent or any other subordinate court whatsoever from hearing or further hearing or determining and/ or giving any further orders in Civil suit number 288 of 2009 and the file be transferred to Machakos High Court.

c. Costs.

28. The parameters of judicial review were set out by the Court of Appeal in the case of **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996** where the court stated as follows:

> **"Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that JR 3 OF 2021 PAGE 57 | 82 tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. 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...The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, 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 a 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 a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way...These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed JR 3 OF 2021 PAGE 58 | 82 i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...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."**

29. The case of **Hangsraz Mahatma Gandhi Institute & 2 others [2008] MR 127** comes to mind at this point in reminding us what judicial review is. The court rendered itself thus;

> **"Judicial Review is not a fishing expedition in unchartered seas. The course had been laid down in numerous case laws. It is that this court is concerned only with reviewing, not the merits of the decision reached, but of the decision making process of the authority concerned. It would scrutinize the procedure adopted to arrive at the decisions to ascertain that it is in uniformity with all elements of fairness, reasonableness and most of all its legality. It must be borne in mind and which had been repeated many times by this court that it is not its role to substitute itself for the opinion of the authorities concerned. This court on a judicial review application does not act as a court of appeal of the decision of the body concerned and it will not interfere in any way in the exercise of the discretionary power which the statute had granted to the body concerned. However, it will intervene when the body concerned had acted ultra vires its powers, reached a decision which is manifestly unreasonable in the Wednesbury sense; had acted in an unfairly manner and the applicant was not given a fair treatment."**

30. The ex parte applicant cited issues of illegality, irrationality and impropriety in the manner the 1st Respondent arrived at its judgement. She also raised the issue of having legitimate expectation that she would be given a fair hearing and lastly the issue of the 1st Respondent acting *Ultra Vires* in relying on an illegal contract and consent. The cardinal rule in evidence is that he who alleges must prove the same. Section 107 of the Evidence Act Cap 80 Laws of Kenya provides that;

> **"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."**

31. This court is tasked with looking at the decision making process, in particular how the court arrived at the various rulings made in **Kangundo Civil Suit 288 of 2009.** I have perused the court record in **Kangundo Civil Suit 288 of 2009** in order to find our if the court gave the ex-parte applicant a fair trial and whether the various grounds alleged have been proven.

32. The Ex parte applicant claims that she was not allowed to participate in the proceedings at the lower court. A look at the lower court record indicates the following documents were either filed or associated with the ex parte applicant;

a. Memorandum of Appearance of advocates dated 31.12.2009 filed on 08.01.2010 by the firm of Kituku & Company advocates.

b. Statement of defence dated 31.12.2009 filed on 08.01.2010 by the firm of Kituku & Company advocates.

c. List of documents and its attachments dated 9.05.2011 and filed on 11.05.2011 by the firm of Kituku & Company advocates.

d. Notice of change of advocates dated 16.12.2011 and filed on the same date by Uvyu & Company advocates

e. On 11.05.2011 she cross examined the Plaintiff's witness.

f. Consent dated 15.09.2011 signed by the Ex-parte applicant.

g. With regard to the notice of motion application dated 2.03.2015 seeking for judgement to be entered in favour of the Plaintiff, she filed a replying affidavit on 23.4.2015.

h. Submissions dated 22.06.2015 and filed on 2.07.2015 by the ex-parte applicant's advocates.

i. Notice of motion application dated 21.09.2015 filed by the ex-parte applicant's advocates.

j. Notice of motion application dated 13.10.2015 to which interim orders were issued on 13.10.2015 in favour of the ex-parte applicant.

k. Submissions filed on 13.11.2015 by the ex-parte applicant's advocates.

l. Notice of change of advocates dated 13.06.2017 by the ex-parte applicant's new advocates.

m. Notice of motion application dated 12.06.2017 and filed on 13.06.2017 by Ndetto & co advocates for the ex-parte applicant.

n. Notice of change of advocates dated 17.06.2017 filed on 18.07.2017 by the ex-parte applicant's advocates.

o. Notice of motion application dated 21.08.2017 by Maanzo & Co. advocates for the ex-parte applicant which was dismissed for want of prosecution.

p. Notice of motion application dated 12.09.2017 filed on 14.09.2017 by Maanzo & Co advocates on behalf of the ex-parte applicant.

33. A further look at the file indicates that both parties were given a chance to put in responses if need be and the ex parte applicant through her duly appointed advocates participated in all the proceedings including the latest being a notice to show cause dated 19.9.2016 which was fixed for orders on several dates such as 18.11.2016, 19.12.16, 27.1.2017 and 2.05.2017. She however did not attend court on 16.5.2017.

34. The issue of illegality, irrationality and impropriety does not arise at any point. I have perused the documents attached and it appears that both parties were given a chance to articulate their issues at each stage. The ex-parte applicant seems to be on a fishing expedition trying to find avenues to delay the matter. The suit was disposed of by the ruling dated 19.08.2015 which has not been appealed to date. It is therefore quite clear that the ex-parte applicant's rights to fair hearing were accorded by the 1st respondent. It is astonishing for the ex-parte applicant to allege that she had been condemned unheard yet she had an array of lawyers each filing notices of appointment at each particular time the ex-parte applicant fired her advocates and hired new ones and all applications filed were duly considered by the 1st respondent. It seems therefore that the ex-parte applicant is out to delay the matter to the prejudice of the 2nd respondent.

35. Litigation must come to an end. I note that the matter was filed in 2009 and a ruling delivered in 2015 and since then parties have been engaged in filing of applications. It also appears as if the Ex-parte applicant intends to appeal against the decisions of the court through the back door as the issues raised are issues the court cannot deal with at this point as it is not an appellate court. As stated by the decisions above, this court is only concerned with the procedure that was used to arrive at a particular decision. Having perused the file from **SMPCC Kangundo**, I note that both parties have been participating in the proceedings of the court and have at all times been given a chance to articulate their issues as revealed by the court record. I find the ex-parte applicant has not convinced this court that the 1st respondent violated her rights warranting this court to interfere with the trial court's decisions. I also find that she has not satisfied the court to warrant the grant of an order for prohibition against the 1st respondent.

36. In light of the foregoing, it is my finding that the ex-parte applicant's application dated 3.4.2018 lacks merit. The same is dismissed with costs to the 2nd respondent.

It is so ordered.

DATED AND DELIVERED AT MACHAKOS THIS 31ST DAY OF MAY, 2021

D. K. KEMEI

JUDGE