



Republic v District Land Adjudication and Settlement Officer Igamba Ng’ombe Sub-County & 3 others; Riungu (Interested Party); Gitonga & another (Exparte Applicants) (Judicial Review E009 of 2022) [2023] KEELC 18955 (KLR) (26 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18955 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
JUDICIAL REVIEW E009 OF 2022**

**CK YANO, J
JULY 26, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER
IGAMBA NG’OMBE SUB-COUNTY 1ST RESPONDENT
DEPUTY COUNTY COMMISSIONER 2ND RESPONDENT
LAND REGISTRAR – MERU SOUTH 3RD RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT**

AND

M’NYIRI RIUNGU INTERESTED PARTY

AND

**FREDRICK GITONGA EXPARTE APPLICANT
M’INGERENI MATHAIYA EXPARTE APPLICANT**

JUDGMENT

1. Pursuant to leave granted on the 24th March 2022, the ex-parte applicants filed the notice of motion application dated 16th June 2022 seeking orders that:
 - a. An order of certiorari be issued by the Honourable court for the purposes of it being quashed a decision made by and/or award by the 1st respondent in respect of land parcel No. 985



Kamwimbi/ "A" Adjudication section in the Minister appeal case No. 124 of 2018 dated 13th January, 2022 between the interested party and ex-parte applicants.

- b. An order of prohibition be issued prohibiting the 2nd and 3rd respondents from implementing the decision of the 1st respondent judgment, award or decision which is dated 1st April 2022 in regard to land parcel No. 985 Kamwimbi "A" Adjudication Section in the Minister's appeal Case No. 124 of 2018.
 - c. The costs of this application be provided for.
2. The application is supported by the affidavit of Fredrick Gitonga one of ex-parte applicants and is premised on the following grounds:-
- i. That the judgment/Ruling of the Minister dated 1st April, 2022 was tainted with issues of jurisdiction on account of the fact the Deputy Commissioner of Meru South issued notice for hearing of appeal while the hearing proper was conducted by the Assistant County Commissioner of Igamba Ng'ombe Sub County and all what the Deputy County Commissioner Meru South was to endorse the judgment by signing it.
 - ii. That the judgment of the minister was against the established policy and principles in adjudicating land under [Cap 284](#) which require that a person who have the land he or she was in occupation adjudicated and recorded under that person.
 - iii. That the Deputy County Commissioner on behalf of the 1st Respondent put into consideration extraneous matters (some completely irrelevant) thereby making him to arrive at wrong decision who was unjust and unfair to the ex-parte applicant.
 - iv. That the respondent in contravention of the rules of natural justice regularized the illegal invasion of the applicant's parcel of land without proper analysis of the evidence produced
 - v. That the decision by the 1st respondent amount to an abuse of powers and authority conferred to him by any statutes.
 - vi. That the acts by respondents threaten safe and proprietary rights of the ex-parte applicants as the intended parties have already started destructive activities cutting down trees and are in the process of forcefully taking over the applicants ancestral land.
 - vii. That the hearing/ruling of the minister demonstrate bias on the part of the minister in favour of the interested party.

The Applicants' Case

3. In the supporting affidavit, Fredrick Gitonga depones inter alia, that he has the authority to swear the affidavit on his own behalf and on behalf of M'Ngereni Mathaiya. That these proceedings are in relation to the 1st respondent's ruling dated 1st April 2022 in respect of Land Parcel No. 985 Kamwimbi "A" Adjudication Section (hereinafter called the suit land) in appeal to the minister appeal No. 124 of 2018, the copies of the proceedings and decision which have been annexed. The ex-parte applicants applied for and were granted leave by the court on 9th May 2022 to file these judicial review application.
4. The ex-parte applicants' case is that the minister introduced another party as plaintiff one Dominic Mwangangi who was neither a party to the proceedings nor a plaintiff in the case which the applicants was prejudicial to them and amounted to an illegality. The Ex-parte applicants aver that the suit land was an ancestral parcel of land having originated from Bairugi who then left it to M'Njue to Kugereka who in turn left it to Maithaiya then to Ngereeni Mathaiya. The deponent avers that his family gathered



and has been utilizing the said land, adding that their grandfather Nkondi Mathaiya was buried in the said land while his brother Rukunyu was buried in parcel Kamwimbi “A” Adjudication Section No. 806. That the interested party has neither made any construction in the suit land nor does he reside thereon as he resides in Chogoria.

5. The applicants aver that at the committee stage, the suit parcel of land was awarded to their grandfather M’Ngeeni Maithaya. Copies of the committee proceedings have been annexed. That the said Dominic Mwangangi was given 14 days to appeal the decision of the committee if he had any objection, but he failed to do so. That when the time lapsed, the applicants grandfather made an application in regard to the suit land as the registered owner for sub division into 14 portions and correction of names which was allowed. A copy of the objection stage proceedings and decision are annexed.
6. The ex-parte applicants aver that upon subdivision, parcel No. 985 was subdivided into 14 portions which are parcel Nos. 2170 – 2183. That parcel no. 732 had no proceedings during the committee stage because it did not appear on the map back then. That after the application was made and no objection filed, parcels 2170 – 2183 were issued with title deeds in the year 2017 in line with the law. Copies of the title deeds for parcel Nos. 2170 and 2174 are annexed.
7. The ex-parte applicants aver that the interested party was granted days to appeal against decision for subdivision, but did not appeal. The applicants contend that equity aids the vigilant and not the indolent.
8. The ex-parte applicants’ aver that during the minister hearing, the interested party stated that the applicants had not done anything in parcel 985, yet when the minister made a ground visit, he noted that the applicants had constructed permanent houses, but the minister still awarded the parcel of land to the interested party a decision the applicants said was made in bad faith.
9. The ex-parte applicants further states that during the hearing before the minister, the interested party testified that parcel No. 804 was awarded to one Dominic Mwangangi by the Adjudication officer, yet the said Dominic Mwangangi stated that parcel 804 was ancestral land. It is the ex-parte applicants contention that the interested party’s testimony was marred by contradictions and yet the minister awarded him the land. The applicants’ allege that that amounted to an illegality and malice.
10. The ex-parte applicants further state that the minister maliciously failed to acknowledge that the applicants had constructed in parcel No. 2174 which is among the 14 portions that were subdivided from parcel No. 985 after the applicants acquired a legal claim over it by acquiring title deed after completing the adjudication process. That after being issued with title deeds, the applicants have the right to enjoy the property under Article 40 of the constitution of Kenya which they said they did by constructing houses and planting mango trees.
11. The applicants further aver that they had a land dispute in regard to parcel No.2174 vide Chuka Elc Case No. 12 of 2019 against one Albert Musyoka Muriungi where the court ruled in the applicants favour since they had established ownership and that the court made orders for forcible demolition, eviction and an injunction against the defendant in that case. A copy of the judgment has been annexed. The ex-parte applicants aver that they made the minister aware of the said case and proved that they had been issued with title deeds after adjudication process and only began construction of houses after following due process of law, yet the minister disregarded their evidence. That the minister also failed to consider the applicants’ evidence that they had made several written warnings to the interested party to vacate from parcel 985 since his actions amounted to trespass. Copies of letters from the area chief and assistant chief have been annexed. That despite the applicants tendering sufficient evidence to prove that parcel 985 belongs to them and that the parcels of land originating from its subdivision that were



done procedurally, surprisingly the minister awarded the land to the interested party and cancelled the ex-parte applicants title deeds.

12. The ex-parte applicants further aver that they tendered evidence that show that they have been cultivating parcel 985 since time immemorial since the same is ancestral land. That at the objection stage that was filed by the interested party, the applicants won and land parcel 985 was awarded to them. Copies of the objection stage proceedings have been annexed.
13. The applicants' further state that they further wrote to the DLASO complaining about the interested party's interference with parcel 985 against Dominic Mwangangi and were summoned to the Adjudication Office to address the complaint. A copy of the letter has also been annexed.
14. It is the applicant's contention that the minister's decision was bad in law and malicious when he noted that the trees on the ground belonged to the interested party, yet the applicants presented evidence that the trees belonged to Albert Musyoka. That the interested party was interested in half of parcel 985 on the ground which only extended to parcel 2170 which belongs to the applicant, yet left behind parcels 2171 – 2183. That the interested party's claim did not extend to parcels 2171 – 2183 yet the minister cancelled them which they claim was malicious and in bad faith. That the minister's decision was biased since it denied the applicants their portion of land without considering the evidence that was tendered before him. The applicants accuse the DCC of being biased by awarding the parcels of land to the interested party, yet his evidence was marred by contradictions and falsities. That if the decision by the minister is implemented, the applicants shall stand to suffer irreparable harm and urged this court to intervene and grant the orders sought to uphold the law and the constitution and to avoid injustice being occasioned to the applicants.

The Respondents' Case

15. The respondents opposed the application and filed grounds of opposition dated 16th February, 2023 as follows-;
 1. That the application is fatally defective, misconceived, and mischievous or otherwise an abuse of the court process and therefore are unsustainable in the obtaining circumstances.
 2. That the application has failed to meet the threshold for grant of the orders sought for the following reasons;
 - a. Section 29 (4) of the Adjudication Act provides notwithstanding the provisions of Section 38 (2) of the Interpretation and General Provisions Act (Cap 2) or any other written law, the minister may delegate, by notice in the Gazette his powers to hear appeals and his duties and functions under this section of any public officer by name or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the minister. Thus the hearing of the proceedings by the Deputy County Commissioner was lawful since the minister is authorized by law to delegate his duties to hear the appeals to any person holding a public office.
 - b. That Section 29 of the Land Adjudication Act the decision of the minister is final and not subject to challenge.
 - c. That Judicial review proceedings purely deal with the procedure and process of decision making and not the merits and or substance of the case. However the applicant is seeking that this Honourable court de (sic)



3. That the plaintiffs application is bad in law only meant to defeat the cause of justice hence it ought to be dismissed with costs to the respondent
4. That the application is otherwise frivolous, vexatious and an abuse of the court process.

The Interested Party's Case

16. The interested party filed a replying affidavit sworn by M'nyiri Riungu on 29th May 2023.
17. The interested party denied that the proceedings in the appeal to the minister was conducted by the Assistant County Commissioner as alleged and stated that the correct position is that the proceedings were conducted by the Deputy County Commissioner and his assistant's presence must have been merely administrative.
18. Relying on advise by his advocates on record, the interested party contends that the other complaints raised by the ex-parte applicants attack the merits of the decision of the minister which is beyond the purview of judicial review. That that contention is given credence by the insistence by the ex-parte applicants' on laying out the historical aspect of the dispute which he contends the minister failed to take into account.
19. The interested party states that the allegation that the Deputy County Commissioner introduced Dominic Mwangangi as a party in the proceedings is completely false and not supported by any evidence. That from the face of the proceedings before the Deputy County Commissioner, it can be deduced that Dominic Mwangangi is indicated as a "sponsor which loosely translates to a witness. He further states even assuming that the ex-parte applicants complaint that Dominic Mwangangi was irregularly introduced in the proceedings before the minister, then the same argument should apply to the 1st ex-parte applicant, Fredrick Gitonga Mati who shares the same status as sponsor but is now a substantive party herein.
20. That regarding the objection proceedings that resulted in the subdivision of parcel number 985 into fourteen (14) portions annexed by the ex-parte applicants' as "FG 4", it is clear that the interested party was not a party therein.
21. The interested party avers that the totality of the foregoing is that the ex-parte applicants' application is a direct challenge to the merits of the decision of the minister and hence improperly before the court. In the premises he prayed that the same be dismissed with costs.
22. On 28th March 2023, the court directed that the application be canvassed by way of written submissions. The ex-parte applicant filed his submissions dated 3rd of April 2023, the respondent filed their submissions dated 26th May 2023 and the interested party filed his dated 29th March 2023.

Ex-parte Applicants' Submissions

23. The ex-parte applicants submitted that they were issued with title deeds in the year 2017 after no objection was filed. It is their submissions that the title issued under the provisions of the [Registration of Titles Act](#), Cap 281 Laws of Kenya (now repealed) was absolute and indefeasible pursuant to Section 23 of the [Act](#) and could not be challenged otherwise than on account of fraud or misrepresentation to which the petitioner was shown to have been a party.
24. The ex-parte applicants aver that the Minister did not follow due process in having their title deeds cancelled and submitted that the minister has no power under the law to direct the cancellation of a registered title on account of fraud and/or any other basis and further that the Registrar of Titles could not effect the cancellation of a registered title unless there had been compliance with the Provisions of



- Section 60 and 61 of the [Registration of Title Act](#) (repealed) where the court had directed cancellation of the title.
25. The ex-parte applicants submitted that in consequence the minister's actions were unlawful and illegal and violated the applicant's constitutional rights to property under Article 40 which guarantees property rights of every citizen and prohibits arbitrary deprivation of property unless the deprivation was for a public purpose and in which event prompt and just compensation would be made in full by the state.
 26. The ex-parte applicants submit that by reason of the minister's actions of cancelling their titles the ex-parte applicants have been prevented from putting their property to the intended use and have suffered loss and damage for which it holds the respondents responsible and liable.
 27. It is the ex-parte applicants submission that they challenge the act of the Minister for Lands directing the deregistration of the ex-parte applicants title to the suit property and contended that the minister's action was an affront to the provisions of the [constitution](#) in that the ex-parte applicants were through the acts of the minister arbitrarily deprived of their property.
 28. The ex-parte applicants submitted that the minister's actions were in violation of the ex-parte applicants' rights under Article 40 of the [constitution](#) regarding the right to own property anywhere in Kenya and thus contended that the Minister's action were ultra vires, unfair and consequently were a nullity and should be quashed by the Honourable court.
 29. The ex-parte applicant's emphasized that the title of the registered proprietor can only be challenged on grounds of fraud or misrepresentation in obtaining the title and in such case the registered proprietor has to be shown to have been a party to the fraudulent or illegal activities that led to him being registered as owner. In addition that rectification or cancellation of the register in regard to a registered title can only be effected if fraud is proved under Section 80 of the [Land Registration Act](#) 2012.
 30. The ex-parte applicants relied on Section 80(1) which provides thus :-
 - “80(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained made or omitted by fraud or mistake.
 - (2) The register shall not be rectified to effect the title of a proprietor who is in possession and had acquired the land lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”
 31. To buttress their argument, the ex-parte applicants relied on [R v Nairobi City county ex-parte Gurcharn Singh Siharo & 4 others](#) [2014] eKLR which held”
 - “Judicial review is not about merits or demerits of a decision, but impropriety in arriving at the decision being challenged. It was submitted that the 1st respondent acted without jurisdiction since an appeal to the minister must be preferred within 60 days after the hearing and determination of objection under Section 26 of the [Land Adjudication Act](#) Cap 284 as provided for in Section 29 (1) of the said [Act](#). The applicant argued that the appeal to the minister in this case was against the decision of DLASO dated 13th May, 2009. That whereas the interested party had 60 days from that date to lodge appeal, it was not until 2018 that



the interested party filed the appeal to the minister, approximately 9 years from the date the decision appealed against was made by DLASO. It was therefore the applicant's submissions that the appeal was made out of time and therefore the minister was time barred."

32. The ex-parte applicants submitted that the minister not only cancelled one but fifteen (15) title deeds of suit land that were already registered by the time the appeal was preferred. The ex-parte applicants submitted that the intervention of the minister had been rendered useless and inapplicable by the registration of the ex-parte applicant as the proprietor of the land Parcel Meru South Kamwimbi "A" 2174, and that any challenge to the registration could only be made to the court.

33. The applicants relied on Section 29 of the *Land Adjudication Act* which provides that;

"(1) Any person who is aggrieved by the determination of an objection under Section 26 (1) & (2) of this Act may, within sixty days after the date of the determination, appeal against the determination to the minister by-

- a. Delivering to the minister an appeal in writing specifying the grounds of appeal and
- b. Sending a copy of the appeal to the Director of Lands Adjudication and the minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.

(2) The minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar."

34. The ex-parte applicants also cited Section 80 (1) of the *Land Registration Act* No. 3 of 2012 which provides -:

"subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake."

35. The ex-parte applicants submitted that the above sections makes it clear that rectification can only be ordered by a court as defined under that Act and in their view, the 1st respondent had no power to make a decision that amounts to an order for rectification and or cancellation of a title and hence the same amounted to the DC's action to be ultra vires and acting without jurisdiction or ultra vires or contrary to the provisions of law or its principles and no doubt amounts to an illegality on the part of the minister.

36. The ex-parte applicants relied on the case of *Municipal Council of Mombasa v Republic & another* [2002] eKLR where the Court of Appeal held as follows;

"Judicial review is only concerned with the decision making process, not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account relevant matters or did take into account irrelevant matters. The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was no sufficient evidence to support the decision."



37. The ex-parte applicants also relied on the case of *Republic v Kenya National Examination Council ex-parte Gathenji* and Civil Appeal No. 266 of 1996 in which the Court of Appeal stated inter alia that:-

“it is trite law that the remedy of Judicial review is not concerned with the merits of the case but the decision making process. In order for an applicant to succeed in an application for judicial review, he must satisfy the court that a public officer has acted unprocedurally, that his decision was unreasonable and that the impugned decision was illegal.”

38. The applicants submitted that during the hearing of the appeal to the minister, the minister introduced another plaintiff who was not party to the proceedings one Dominic Mwangangi and that the introduced plaintiff was also a party to another appeal which was between the applicants and the said Dominic Mwangangi. It is the ex-parte applicants' submission that the introduction of an additional plaintiff was done by the minister with bias and malice against the applicants. That the relevant tests for determination whether or not to join a party in proceedings were restated by Nambuye J (as she then was) in the case of *Kingori v Chege & 3 others* [2002]2 KLR 243 where the learned judge stated that the guiding principles when an intending party is to be joined are as follows-;

- “ 1. 1. He must be a necessary party.
2. He must be a proper party
3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.”

39. The ex-parte applicants submitted that the introduced party must meet the above set principles for them to be enjoined in a suit and that in this case, Dominic Mwangangi was neither a necessary party to the proceedings nor a proper party and that if the aim of the minister was to litigate upon the matter, Dominic Mwangangi could have been called as a witness not an additional plaintiff to the proceedings. The ex-parte applicants argue that the said Dominic Mwangangi is the one sponsoring the interested party herein and had another matter against the applicants which on the face of it reads malice and illegality by the minister to introduce him to the proceedings as a plaintiff against the defendants. The ex-parte applicants further submitted that the introduced plaintiff's presence was not necessary and was strongly opposed by the applicants herein, but the minister still went ahead to record his evidence against the applicants herein and that the decision by the minister was to the detriment of the applicants, malicious and illegal.

40. The ex-parte applicants also relied on the case of *Departed Asian Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 in which it was held as follows-;

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter... for a person to



be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one or two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for a avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

41. The ex-parte applicants submitted that the minister neither demonstrated how the enjoined plaintiff would help solve the matter nor take into consideration the objections of the applicants not to include another plaintiff in the matter and that the minister took into consideration the evidence by the additional plaintiff and further made a decision based on the evidence. The ex-parte applicants argue that although a discretionary power, the objective is to bring on record parties to a dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined. They submitted that this covers unique circumstances to the extent of the necessity of the party in the determination of the subject matter, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed.
42. The ex-parte applicants submitted that Dominic Mwangangi did not meet the principles set above, that his introduction to the proceedings was done by the minister with bias, malice and amounted to an illegality which warrants his decision to be quashed.
43. The ex-parte applicants relied on the case of *Civicon Limited v Kivuwatt Limited and 2 others* [2015] eKLR where the court observed as follows-;

“Again the power given under the rules is discretionary which discretion must be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined... from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principle set out in Order 1 Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, and direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit, and the interested need not be the kind that must succeed at the end of the trial.”

44. On whether the minister’s decision was unfair and biased the applicants relied on Article 47 of the *constitution* which provides-;
 - “(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.

45. The ex-parte applicants submitted that the 1st respondent was unfair in making his decision, and that the minister violated the provisions of Article 47 of the *constitution* of Kenya as the Appeal was filed 23 years later which was contrary to the provisions of Section 29(1) of the *Land Adjudication Act* and therefore that amounted to abuse of his powers.
46. The ex-parte applicants further submitted that it is only the land registrar and the court that have the powers to cancel title deeds in land and that the same power does not vest on the minister hence his decision to order the cancellation of the ex-parte applicants' title deeds was unfair and way beyond the powers given to him.
47. The ex-parte applicants pointed out that in their supporting affidavit it is stated that the appeal to the Minister was heard in 2021 while committee proceedings took place in the year 1999 and that no objection proceedings were instituted by the interested party. And being 23 years after the decision of the committee, therefore the minister lacked jurisdiction to entertain appeal that had been filed out of time. Further that the title deeds were issued in the year 2017 and the interested party waited for 5 years after the ex-parte applicants had been issued with legal land ownership documents to file his appeal.
48. The ex-parte applicants submitted that they had all the rights legally to utilize their parcels of land since they had been issued with title deeds long before the interested party herein instituted appeal proceedings and that they stated in their affidavit that in 2017, the suit property was no longer under adjudication as it was registered in the name of the ex-parte applicants.
49. The ex-parte applicants submitted that the fact that the minister cancelled the title and yet the suit property was no longer under adjudication process was ultra vires as he lacked power to entertain the appeal filed by the interested party. The ex-parte applicants relied on the case of *Keroche Industries Limited v Kenya Revenue Authority & 5 others Nairobi HCMA No. 743 of 2006 [2007] KLR 240* while citing *Reg v Secretary of State for the Environment Ex-parte Nottinghamshire Country Council [1986]AC*, and held-;

“A power which is abused should be treated as a power which has not been lawfully exercised... thus the courts role cannot be put in a straight jacket. The courts task is not to interfere or impede executive activity or interfere with policy concerns, but to reconcile and keep in balance, in the interest of fairness, the public authorities need to initiate or respond to change with the legitimate interests or expectation of citizens or strangers who have relied, and have been justified in relying on a current policy or an extant promise. As held in *ex-parte Unilever Plc (supra)* the court is there to ensure that the power to make and alter policy is not abused by unfairly frustrating legitimate individual expectations.... the unfairness and arbitrariness in the case before me is so clear and patent as to amount to abuse of power which in turn calls upon the courts intervention in Judicial review. A public authority must not be allowed by the court to get away with illogical, immoral or an act with conspicuous unfairness as has happened in this matter, and in so acting abuse its powers. In this connection Lord Scarman put the need for the courts intervention beyond doubt in the *ex-parte Preston* where he stated the principle of intervention in these terms: I must make clear my view that the principle of fairness has an important place in the law of judicial review and that in an appropriate case, it is a ground upon which the court can intervene to quash a decision made by a public officer or authority in purported exercise of a



power conferred by law. The same principle was affirmed by the same judge in the House of Lords in *Reg v Inland Revenue commissioners, ex-parte National Federation of Self-employed and small business LTD* [1982] AC 617 that a claim for judicial review may arise where the commissioners have failed to discharge their statutory duty to an individual or have abused their power or acted outside them and also that unfairness in the purported exercise of a power can be such that it is an abuse or excess of power. In other words it is unimportant whether the unfairness is analytical within or beyond the power conferred by law: on either view, judicial review must reach it. Lord Templeman reached the same decision in the same case in those helpful words “judicial review is available where a decision making authority exceeds its powers commits an error of law commits a breach of natural justice reaches a decision which no reasonable tribunal could have reached or abuse its powers.” Abuse of power includes the use of power for a collateral purpose, otherwise lawful decision, or a lawful promise or practice adopted towards a Newham London Borough Council [2001] EWCA 607, [2002] WLR 237, that failure to consider a legitimate expectation is a failure to consider a relevant consideration and this would in turn call for the courts intervention in assuming jurisdiction and giving the necessary relief.”

50. The ex-parte applicants submitted that the act by the minister to entertain proceedings that were time barred, cancel title deeds already issued which he already knew was unprocedural, malicious, biased and out of the scope of the authority conferred to him hence ultra vires and urged the Honourable court to proceed and quash his decision. The ex-parte applicants relied on the case of *Republic v The minister of Lands and Settlement*, Kisumu High Court civil application Number 2700 of 2004[2010] where the court granted an order of certiorari to quash the decision of the minister on grounds that the appeal before him was filed out of statutory time.
51. The ex-parte applicants also raised the issue of jurisdiction on who heard the matter and it is their submission that the matter was heard by one Fred Masinjira who is the Assistant County Commissioner.
52. The ex-parte applicants submitted that it has been held time and again that jurisdiction of a court or a tribunal to entertain a claim is of paramount importance for without it a court has to down its tools.
53. The ex-parte applicants relied on the case The Supreme Court *in the matter of Interim Independent Electoral Commission* [2011] eKLR which held as follows-;

“ 1 Jurisdiction

- (29) Assumption of jurisdiction by courts in Kenya is a subject regulated by the *constitution* , by statute law and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in *Owners of Motor vessel “Lilian S” v Caltex Oil (Kenya) Limited* [1989] eKLR 1 which bears the following passage (Nyarangi J.A at P 14)

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court sized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step.”

- (30) The *Lilian “S” case* establishes that jurisdiction flows from the law and the recipient court is to apply the same, without any limitation embodied therein. Such a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavors to



discern or interpret the intentions of parliament, where the wording of legislation is clear and there is no ambiguity.”

54. The ex-parte applicants submitted that they appealed the decision of the Arbitration Board to the minister in charge of Land pursuant to S. 29 (1) of the [Land Adjudication Act](#). That Section 29 (1) (b) provides that once an appeal is filed to the minister, the minister shall determine the appeal and make such orders thereon as he thinks just and the order shall be final.
55. The ex-parte applicants submitted that the minister may hear and determine the appeal by himself or he may delegate in accordance with Section 29 (4) of [Land Adjudication Act](#), which provides -:
- “Notwithstanding the provisions of Section 38 (2) of the [Interpretations and General Provisions Act](#) or any other written law, the minister may delegate, by notice in the Gazette, his power to any public officer by name, or to the person for the time being holding any public office specified in such notice, and the determination order and acts of any such Public Officer shall be deemed for all purposes to be that of the minister.”
56. The ex-parte applicants submitted that from the provisions of the above section it is clear that the person to whom the powers and functions are delegated must-;
- i. Be gazetted.
 - ii. Named in the notice
 - iii. Or a holder of public office specified in the notice in the gazette.
57. The ex-parte applicants contended that practice has been that the minister would delegate the powers and functions to the holders of the office of the District Commissioner, now referred to as Deputy County Commissioner (D.C.C.) That the District Commissioners are in-charge of districts.
58. The ex-parte applicants submitted that in this particular case, the appeal was heard by another person other than the District Commissioner, that is one Mr. Fred Masinjira, who is a District Officer (Now Assistant County Commissioner) and that he purported to hear and determine the appeal for and on behalf of the District Commissioner and that the decision by the minister was only endorsed by the Deputy County commissioner, one Mr. Ndaduda M. Hiribae, who never took part in the hearing of the proceedings as the same was heard by the said Assistant County commissioner, Mr. Fred Masinjila, who lacked the jurisdiction to hear the matter and they submitted that the same should be held null and void.
59. The ex-parte applicants submitted that it is not in dispute that the minister can delegate his duties and functions to any public office specified in the Gazette Notice and argued that in this case, the minister delegated his duties and functions to the office of the Deputy County Commissioner (formerly District Commissioner) and not to the office of the Assistant County Commissioner (District Officer) and that the law is very clear that the minister has the power to name any public officer to perform his duties and functions under [Land Adjudication Act](#) and such name must be gazetted and that it is clear that the Minister had not by Gazette Notice named Fred Masinjira as the person he had delegated his duties and functions to.
60. The ex-parte applicants cited Section 109 of the [Evidence Act](#) which provides that the burden of proof in a suit or proceedings lies on the person who would fail if no evidence at all were given on either side.



61. The ex-parte applicants relied on the case of *Mbita Ntiro v Mbae Mwirichia & another* [2018] eKRL. Where it was held that;
- “ the burden of proof as to any particular fact lies in the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of fact shall lie on any particular person.”
62. The ex-parte applicants submitted that the respondents have not proved that the Assistant County Commissioner had the mandate to hear and determine the adjudication matter on behalf of the minister and that that amounted to an illegality to the whole appeal case and that the Gazette notice 6854, the minister delegated the mandate to all Deputy County Commissioners except Nairobi County and not to the Assistant County Commissioners.
63. The ex-parte applicants relied on the Supreme Court decision in the case of Samuel Kamau Macharia wherein it was held that jurisdiction must be predicated upon the *constitution* or statutory law and therefore cannot be contravened or pretended. It is the applicants submissions that the District Commissioner has no legal authority to further delegate the powers and functions of the minister donated by Section 29 of the *Land Adjudication Act* to a District Officer working in his office and that the District Officer is not gazetted by name by the minister nor is he a holder of the office of the District Commissioner. For those reasons, the applicants urged the court to find that Mr. Fred Masinjira had no jurisdiction to hear and determined the appeal and therefore his orders should be declared null and void and should be quashed.
64. The ex-parte applicants urged the court to grant the orders of certiorari quashing the decision of the respondents and an order of prohibition against the implementation of the decision of the minister and reinstate the title deeds that had already been issued to the ex-parte applicants as well as the order issued by the minister for cancellation of the 15 title deeds to be null and void and that the same be cancelled for lack of jurisdiction so as to remain in the names of the parties issued to.

The Respondents Submissions.

55.

The respondents identified the following issues for determination:-

- i. Whether the impugned decision was arrived at in the manner envisaged by the law; and
 - ii. Whether the judicial review remedies of certiorari and prohibition are available to the applicant.
65. The respondents submitted that as concerns the order of certiorari, it is now well established that the said order only issue if the decision being challenged was made without or in excess of jurisdiction or where the rules of natural justice were not complied with and relied on *Kenya National Examination Council v Republic ex-parte Geoffrey Gathenji & 9 others* Nairobi Civil Appeal No. 266 of 1996.
66. The respondents further submitted that it is necessary to examine whether in the delivery of its impugned ruling, the respondents acted within the authority granted to it by the *Land Adjudication Act*, Cap 284 and observed the rules of natural justice or not.



67. The respondents stated that it is not in dispute that the *Land Adjudication Act*, Cap 284 provides for the delegation of power by the Cabinet Secretary in-charge of lands to hear and determine appeal and cited Section 29 (4) which stipulates:
- “ ... the minister may delegate, by notice in the Gazette, his powers to hear appeal and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the minister”.
68. The respondents further submitted that it is equally not in contention that pursuant to the above referenced provision, the norm has been that the minister in charge of lands would delegate his powers and functions to hear appeals to the holders of the office of the Deputy County Commissioner (henceforth, “the DCC”) as seen in the case of *Republic v Cabinet Secretary, Ministry of Lands and Settlement & 2 others ex-parte Gerald Mbuuri Kabugu* [2018] eKLR.
69. The respondents submitted that in the instant, the DCC heard the appeal with the Assistant County Commissioner Igamba Ng’ombe being in attendance as seen in the proceedings and that nothing in law prohibits the DCC from hearing of appeals in the presence of the Assistant County Commissioner and further that the applicants have not demonstrated how the attendance of the Assistant County Commissioner Igamba Ng’ombe affected fair hearing of the appeal and or ousted the Jurisdiction of the Deputy County Commissioner to hear and determine the appeal.
70. The respondents submitted that the applicants cannot be allowed to mislead this Honourable court by stating that the appeal was not heard by the Deputy County Commissioner when they have annexed proceedings which show the persons in attendance included the Assistant County Commissioner, Igamba Ng’ombe among others.
71. On the allegation by the ex-parte applicants that the impugned decision was marred by illegality and procedural impropriety, the respondents submitted that the Adjudication Section that is subject of this suit – Kamwimbi ‘a’adjudication Section– underwent all the adjudication process in accordance with the provisions of the *Land Adjudication Act* and the foregoing includes the publication of Kamwimbi “a”adjudication Section and the subsequent objection and appeals to said objection in instances where affected persons unsatisfied with the decisions.
72. The respondents submitted that the Land Adjudication Officer pursuant to Section 26 heard and determined the objection and ordered that parcel No.985, land subject of this suit to revert back to its original status.
73. The respondents further submitted that the ex-parte applicants, being dissatisfied with this decision, were afforded opportunity to challenge it which they did through Minister Case No. 124 of 2018. The respondents contended that the appeal process was undertaken lawfully.
74. It is the respondents’ further submission that the impugned decision in the appeal to the Minister’s case was arrived at after due consideration of evidence tabled before the decision makers and as such, they submitted that the DCC was statutorily mandated to hear and determine the issues in the impugned decision which was legal and procedurally proper.
75. Regarding the issue of whether the rules of natural justice were observed, the respondent make reference to the case of *Republic v County Director of Education Nairobi & 4 others ex-parte Abdukadir Elmi Robleh* [2018] eKLR, where the court cited with approval the case of *Msagha v Chief Justice & 7*



others Nairobi HCMCA No. 1062 of 2004 (Lessit, Wendo & Emukule JJ on (3/11/06) HCK [2006] 2 KLR 553. In the latter case, the ingredients of natural justice were discussed and stated thus:-

“The ingredients of fairness or natural justice that must guide all administrative decisions are firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision maker, secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision, and thirdly, that an administrative decision must be based upon logical proof or evidence material.”

76. The respondents contended that the impugned ruling was compliant with the above stated rules and argued that the ex-parte applicants were given an opportunity to participate in the appeal proceedings and that a cursory look at the copy of the minister appeal proceedings will reveal that the ex-parte applicants as the plaintiff, participated in the appeal process on the 26th October, 2021.

77. The respondents further submitted that in the present application, no evidence was brought by the ex-parte applicants of any interest, conduct or association of the respondents as the primary decision maker, which would lead to a likelihood or apprehension of bias in favour of the interested parties.

It is also the respondents' submission that the impugned decision was based on the evidence material. The respondents urged the court to find that the rules of natural justice were adhered to and as such the ex-parte applicants' right to fair hearing was never controverted. The respondents invited the court to find that the impugned decision was arrived in a lawful and legal manner.

78. On the issue whether the judicial review remedies of certiorari and prohibition are available to the applicants, the respondents submits that judicial review proceedings purely deal with the procedure and process of decision making and not with the merits and or substance of the case. The respondents relied on the case of *Republic v Director of Immigration Services & 2 others Ex-parte Olamilekan Gbenga Fasuyi & 2 others* [2018] eKLR where it was held that-;

“... It is common ground that the prayers sought are judicial review remedies and the rules governing grant of Judicial review orders do apply. Judicial Review is about the decision making process, not the decision itself. The role of the court in judicial review is supervisory. It is not an appeal and the court should not attempt to adopt the forbidden appellate approach. Judicial review is the review by a judge of the High Court of a decision, or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction – reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised. Judicial review is a means to hold those who exercise public power accountable for the manner of its exercise. The primary role of the courts is to uphold the fundamental and enduring values that constitute the rule of law. Judicial review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. As long as the process followed by the decision maker are proper, and the decision is within the confines of the law, a court will not interfere.”

79. The respondents contended that the ex-parte applicants being aggrieved with the decision of the Deputy County Commissioner, through these judicial review proceedings, intended that the honourable delves into the substance of the appeal proceedings and review the evidence. The respondents argued that although the application purports to call into question the process adhered to in arriving at the decision, the same is a disguised attempt to revisit the merit of the decision and that the applicants are also inviting the court to review the evidence presented before the 1st and 2nd



respondents. It is the respondents' submission that all parties, including the ex-parte applicants, were afforded an opportunity by the respondents to present their respective cases.

80. The respondents further argued that owing to the serious nature of judicial review orders, it is not enough for the ex-parte applicants to claim that the Deputy County Commissioner acted illegally, unreasonably or in breach of rules of natural justice. The respondents submitted that the actual sins by the impugned office must be exhibited for judicial review remedies to be granted as demonstrated in the case of [Republic v Kenya Power & Lighting Company Limited & Another](#) [2013] eKLR.
81. The respondents further relied on the *East African Community v Railways African Union (Kenya) and others* (No. 2) Civil appeal No. 41 of 1974 [1974] EA 425 wherein it was held that the onus lies on a person seeking the grant of a prerogative order to establish that it is essential for it to issue since these are not orders that are lightly made. It is the respondent's submissions that Judicial review or prerogative writs as they were known in the past, it has been held are orders of serious nature and cannot and should not be granted lightly and they should only be granted where there are concrete grounds for their issuance and it is not enough to simply state that grounds exist for their issuance exist, that there is a need to lay basis for alleging that there exist grounds which justify the grant of the said orders.
82. The respondents urged the Honourable court, in the exercise of its discretion, to find that the ex-parte applicants have not provided sufficient grounds to warrant an award of judicial review remedies of certiorari and prohibition and in view of the foregoing, they submitted that the ex-parte applicants' application does not satisfy the requisite threshold to warrant the Honourable Court's exercise of its discretion in favour of the applicants.
83. The respondents urged the court to find that the applicant's claim is a challenge on the merits of the decision of the 1st and 2nd respondents concealed as one against the procedure adopted and as consequence, they submitted that the court entreat to find that the instant application lacks merit and dismiss it with costs to the respondents.

Interested Party's Submissions

84. It is the interested party's submission that the court, in exercising its judicial review jurisdiction, it is bound by the following grounds as espoused in the case of *Pastoli v Kabale District Local Government Council and others* [2008] 2 EA 300 as cited with approval in [Republic v Law Society of Kenya Disciplinary Tribunal & another ex-parte Muema Kitulu](#) [2018] eKLR to the effect that:

“In order to succeed in an application the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complainant. Acting without jurisdiction or ultra vires or contrary to the provisions of law or its principle are instances of illegality.

Irrationality is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety is when there is failure to act fairly on the part of the decisions 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 of the 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 excise jurisdiction to make a decision.”

85. The interested party submitted that in the instance case, the ex-parte applicants have premised their complaints on the following broad grounds.
- a. Jurisdiction.
 - b. Contravention of established policy and principles as pronounced in the [Land Adjudication Act](#)
 - c. Consideration of extraneous matters.
 - d. Rules of natural justice
 - e. Abuse of power and authority
 - f. Bias.
86. On the issue of jurisdiction, the interested party contended that the ex-parte applicants contended that the impugned proceedings were conducted by the Assistant County Commissioner and submitted a perusal of the decision of the minister demonstrates that the same was heard and delivered by the Deputy County Commissioner and that the Assistant Deputy County Commissioner is indicated as having been present but the same does not negate the powers of the Deputy County Commissioner. The interested party pointed out that at paragraph 34 of the affidavit in support of the motion, the ex-parte applicants acknowledges that it is the Deputy County Commissioner who conducted the hearing and further, that there is no demonstration in the same affidavit on what role the Assistant County Commissioner played in the proceedings to oust what is obvious from the body of the judgment.
87. On the issue on established policy and principles the interested party submitted that the ex-parte applicants have not made any effort to demonstrate what constitutes “established policy and Principles” under the provisions of the [Land Adjudication Act](#) to enable the court determine the extent of departure by the Minister and in their view the complaint is an attack on the merits of the decision and not on the procedure adopted in the conduct of the proceedings. The interested party argued that adherence to policy and principle of statute would in his view only be a factor in the pronouncement of the final decision and not a consideration to be taken into account in the course of hearing the parties.
88. The interested party relied on the case of [Republic v the Land Adjudication and Settlement Officer Maara Sub-County & 3 others, ex parte M’Nyiri Ragwa & others](#) [eKLR] 2021 which cited the following passage from the English case of *North Wales Police v Evans* [1982] 1 WLR.
- “Judicial review is concerned, not with the decision but with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power ... Judicial review, as words imply is not an appeal from a decision but a review of the manner in which the decision was made.”
89. Regarding the issue on extraneous matters, the interested party submitted that it has not been demonstrated with any amount of specificity the irrelevant matters that the Deputy County Commissioner may have put into consideration when arriving at the impugned decision. That conversely, it is the ex-parte applicants who have introduced extraneous issues of fact in their application. The interested party referred to paragraph 10 of the ex-parte applicants supporting affidavit which related to parcel Numbers 804 and 803 and not number 985, the subject of these proceedings.



90. Regarding the rules of natural justice, the interested party submitted that it is an established principle of law that rules of natural justice envisage the right to be heard and argued that in the present case, it has not been alleged that the ex-parte applicants were denied audience. Further, that there is no direction by the DCC allowing the interested party to invade the suit land.
91. On the issue of abuse of power and authority, the interested party submitted that the same has the characteristics of an appeal rather than judicial review. The interested party submitted that the ex-parte applicants' application did not satisfy the threshold for a grant of any relief in judicial review and relied on *Republic v County Commissioner, Elgeyo Marakwet & 3 others, ex-parte Isaac Kibir Chelawa & 2 others* [2022] eKLR and urged the court to dismiss the application.

Analysis and Determination

92. The court has carefully considered the application before me, the responses and the submissions of counsel as well as the authorities that were cited. Having considered the foregoing, it is clear that all the parties are in agreement that judicial review proceedings is concerned with the decision making process, not the merits of the decision itself. I will therefore not dwell with the merits of the decision, but the process.
93. In the case of Municipal Council of *Mombasa v Republic & Umoja Consultants Ltd* Civil Appeal No. 185 of 2001 [2002] eKLR it was held:

“Judicial Review is only concerned with the decision making process, not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account relevant matters or did take into account irrelevant matters.... The court should not act as a Court of Appeal over the decider which would involve going into the merit of the decision itself such as whether there was or there was not sufficient evidence to support the decision.”
94. The purview of judicial review was clearly set out by Lord Diplock in the case of *Civil Service* (1985 AC 375 at 4010 when he stated that:-

“Judicial review has I think developed to a stage today when one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality, and the third “procedural impropriety... By illegality as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.... By irrationality,” I mean what can now be succinctly referred to as *Wednesbury unreasonableness*” It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it... I have described the third head as *Procedural impropriety*” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”
95. That the decision taken by the 1st respondent was an administrative action is not in dispute. The respondents were therefore under a duty to ensure that their action was lawful, reasonable and procedurally fair. Procedural fairness necessarily requires that persons who are likely to be affected by the decision be afforded an opportunity of being heard before the decision is taken. Further, an action made without jurisdiction is without doubt ultra vires.



96. It was held by the Court of Appeal in *Republic v Kenya National Examination Council Ex-parte Geoffrey Gathenji & 9 others* that-;
- “The remedies of certiorari and prohibition are tools that this court uses to supervise public bodies and inferior tribunals to ensure that they do not make decisions or undertake activities which are ultra vires their statutory mandate or which are irrational or otherwise illegal. They are meant to keep public authorities in check to prevent them from abusing their statutory powers or subjecting citizens to unfair treatments.”
97. Therefore where the law exhaustively provides the jurisdiction of an administrative body or authority, the body or authority must operate within those limits and ought not to expand its jurisdiction through administrative craft or innovation.
98. In this case, the issues for determination are whether the respondents exercised their statutory duties as envisaged by the law, whether their actions were ultra vires or not and whether the orders of judicial review are applicable.
99. The ex-parte applicants have raised the issue of jurisdiction that the judgment/ruling of the minister dated 1st April 2022 was heard by the Assistant County Commissioner of Igamba Ng’ombe Sub County instead of the Deputy County Commissioner Meru South who was delegated the power and function by the minister. The [Land Adjudication Act](#) provides for the delegation of powers by the Cabinet Secretary in charge of Lands to hear appeals. Section 29 (4) provides that the minister may delegate by notice in the Gazette, his powers to hear appeals and his duties and functions to any public office by name or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the minister. In this case, it is not in dispute that the minister delegated his powers to the Deputy County Commissioner. I have perused the proceedings and the decision. I note that the same was heard by the Deputy County Commissioner who made the ruling and appended his signature on it. There is no iota of evidence that the Assistant County Commissioner is the one who heard the appeal even though he is indicated to have been in attendance. Therefore the ex-parte applicants’ argument in that regard cannot be true and I reject it.
100. However, in the impugned decision, the 1st respondent cancelled the ex-parte applicants’ title for parcel No. 985, the suit land, among others. The question that arises is whether the Deputy County Commissioner acting pursuant to the delegated powers given him by the 1st respondent under the [Land Adjudication Act](#) Cap 284 had jurisdiction to order for cancellation of registered land.
101. Pursuant to Section 26 of the [Land Registration Act](#), 2012, protection of title can be removed and title impeached if it is procured through fraud or misrepresentation, to which the person is proved to be party, or where it is procured illegally, unprocedurally, or through a corrupt scheme. The import of this provision is to remove protection from an innocent purchaser or innocent title holder. On the issue of jurisdiction, statute has provided clarity on the exercise of jurisdiction by the courts in matters concerning cancellation of title.
102. Section 9 of the [Magistrates’ Court Act](#) provides inter alia, that the Court may deal with claims related to Land and Environment in the exercise of the jurisdiction conferred upon it by Section 26 of the [Environment and Land Court Act](#) and subject to the pecuniary limits under Section 7 (1). Section 80 of the [Land Registration Act](#) Cap 12 A provides for the rectification of the register by order of court. Therefore the court may order the rectification of the register by directing any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake



and the register will not be rectified to affect the title of a property unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or cause such omission, fraud or mistake or substantially contributed to it by any act, neglect or default. Section 2 of the *Land Registration Act* defines the court to mean the Environment and Land Court and other courts having jurisdiction to hear and determine Environment and Land matters.

103. On the basis of sections 2 and 80 of the *Land Registration Act*, in my view, the courts referred to include other courts with jurisdiction on matters relating to land which include the Magistrates' court and this court. The jurisdiction referred to hereabove in my humble view did not extend to public bodies or authority such as the respondents herein. Therefore it is clear that the 1st respondent had not power to make a decision that amounts to an order for rectification and or cancellation of a title and acted without jurisdiction hence his action is ultra vires and amounts to an illegality as it was made contrary to the clear provisions of the law. The 1st respondent's powers and functions are limited to those given under Cap 284. By purporting to cancel the ex-parte applicants' title, the 1st respondent no doubt acted in excess of power and without jurisdiction.
104. Consequently, I find merit in the notice of motion dated 16th June 2022 and grant the orders as prayed. The ex-parte applicants will have the costs of these proceedings.
105. It is so ordered.

DATED, SIGNED AND DELIVERED AT CHUKA this 26th day of July 2023

IN THE PRESENCE OF:-

Court Assistant – Martha

Ms. Musyimi for Ex-parte Applicant

Ms. Kendi for Respondents

N/A for Interested Party

C. K. YANO

JUDGE

