**Republic v Attorney General & another; Mbai (Exparte Applicant); Maundu (Interested Party) (Judicial Review 4 of 2021) [2023] KEELC 19286 (KLR) (25 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19286 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITUI**

**JUDICIAL REVIEW 4 OF 2021**

**LG KIMANI, J**

**JULY 25, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE ATTORNEY GENERAL ..... 1ST RESPONDENT**

**THE PRINCIPAL SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING (THROUGH SUB-COUNTY COMMISSIONER MWINGI EAST DIRECTOR OF LAND ADJUDICATION CHIEF LAND REGISTRAR) ..... 2ND RESPONDENT**

**AND**

**MUSEMBI MBAI ..... EXPARTE APPLICANT**

**AND**

**MUI MAUNDU ..... INTERESTED PARTY**

## JUDGMENT

1. The Notice of Motion application dated 10th December 2020 by the ex parte applicant was filed pursuant to leave of the court granted on 30th November, 2020 and the same is brought under Order 53 Rule 3(1) of the Civil Procedure Rules, Sections 8 & 9 of the *Law Reform Act* seeking inter alia the following orders:

    a. An order of Mandamus directed to the 2nd Respondents agent Mwingi sub-county land registrar, Chief Land Registrar to deregister, stop Parcel No.667, 742 and 1195 Mwambiu Adjudication in the name of the Interested Party as owner, which formal notice of finalization of Ministry decision was communicated to the Applicant on 14/9/2020.

b. An order of certiorari to remove to this Honourable Court to quash proceedings of the 2nd Respondent agents culminating in Minister's Appeal No.552 of 2015 and communicated on 14/9/2020 the decision of the 2nd Respondent sub-county commissioner awarding land parcel No.667, 742 & 1195 Mwambiu Adjudication section Mwingi East sub-county of Kitui county to the interested party.

2. The application is supported by the Statement of Facts amended on 17th May 2021, verifying affidavit and a supplementary affidavit. The subject matter of the application are proceedings of the 2nd Respondent's agents in Minister's Appeal No. 552 of 2015 and the decision of the Sub-County Commissioner awarding land parcel No. 667, 742 & 1195 Mwambiu Adjudication section Mwingi East sub-county of Kitui county to the interested party

3. The Applicant claims that the suit parcels of land Nos. 667, 742 and 1195 Mwambiu Adjudication Section were the subject of land adjudication and went through all the stages of adjudication from the Committee stage, Arbitration board, Objection and to the Minister's appeal. The Applicant participated in appeal to the Minister No. 552 of 2015 relating to land parcels No 667, 772 and 1195 Mwambiu Adjudication section which was presided over by the Sub-County County Commissioner Mwingi Sub-County of Kitui County.

4. The Applicant complains that the proceedings in the Minister's appeal were flawed and conducted unfairly in disregard of decisions of competent panel and/or members who were conversant with the facts of the dispute. The Applicant further states that the 2nd Respondent exercised his powers outside the parameters of the law and abused the said powers for personal interests and did not observe impartiality. Further, that the decision being challenged was delivered in an unprocedural manner and was tainted by illegality, procedural impropriety as the verdict was not promptly read to the parties and was not dated.

5. The Applicant stated that the decision was only supplied to the parties upon request from the lands offices and that the sub-county commissioner was mean with the information relating to the verdict. He also stated that at the time the ex parte Applicant learnt of the decision, the same had already been forwarded to the Director of Land Adjudication and settlement for execution.

6. The Ex parte applicant accuses the 2nd Respondent of abuse of power and breach of natural justice and states that the decision made was ultra vires, without jurisdiction, an abuse and misuse of statutory and constitutional power, malicious, unreasonable, biased, grossly illegal and oppressive and a breach of the Ex parte Applicant's right to a fair hearing and therefore of no consequence as they are invalid, null and void.

7. He stated that the decision in the Minister's appeal was openly biased against him and that the assistant chief of Kyua sub-location colluded with the interested party to deprive him of his property. He accused the 2nd Respondent of relying heavily on the decision at the objection stage which was tainted by illegality, thus arrived at a wrong decision.

8. The Ex parte Applicant's grievance is that the provincial administration are proxies of the 2nd Respondent and other agents who were interfering with the proceedings herein and that if the decision of the appeal to the Minister is quashed, it renders the objection and arbitration proceedings a nullity due to irregularities involved.

9. The Ex-parte Applicant swore a supplementary affidavit explaining that prior to commencement of the adjudication process the disputed parcel of land was one whole but was in the process sub-divided into two parcels, 742 was awarded to him initially and Parcel No. 667 was awarded to the interested

party herein without considering that the land parcel 667 was the subject of litigation in Civil Case No.199 of 2007 at Mwingi Law Courts and the court granted him an order of injunction.

10. Both parties lodged complaints to the adjudication Committee and the committee made an award where the parcel 667 remained with the Interested party. The Committee further sub-divided land parcel 742 into two and gave the new resulting sub-division 1195 to the Interested Party and parcel 742 to the ex parte Applicant. This prompted the ex parte applicant to lodge a complaint before the arbitration board on land parcel 667 and No.1195 while the interested party lodged a claim on land parcel 742. The Arbitration Board awarded parcel 667 was to the Interested Party and parcels 742 and 1195 were awarded to the ex-parte applicant. The parties proceeded to the objection stage and the decision of the Land Adjudication Officer was that parcels 667 and 1195 were awarded to the Interested party while 742 remained in the ex parte applicant's name.

11. Aggrieved with the decision at the objection stage, the ex-parte applicant lodged an appeal to the Minister in respect of Land Parcel 667 and 1195 while the interested party lay claim to parcel no.742.

12. The decision at the Minister's appeal was that Parcels No.667 and 1195 were awarded to the Interested Party while 742 was to remain in the ex parte applicant's name while the interested party's appeal with respect to Land Parcel 742 was dismissed.

13. The ex parte applicant deposed that the sub-county commissioner who heard the appeal considered extraneous matters not captured in the proceedings when parties were giving evidence. He further did not call relevant witnesses. It is the ex-parte applicant's position that the 2nd Respondent relied on evidence tendered in the other stages of adjudication process, rendering his decision unlawful and irregular.

**The Interested Party's Case**

14. The Interested Party filed Grounds of Opposition dated 10th March 2021 and a replying affidavit sworn on 16th March 2021 stating that the orders sought in prayer (a) cannot be granted owing to the nature of the proceedings. He stated further that no sufficient grounds have been shown to enable the Court interfere with the decision of the Minister as no rights of the Applicant as to fair hearing have been violated.

15. Further the Interested Party claimed that no bias or denial of right to fair hearing have been occasioned and no known law or procedure has been violated and therefore the Minister's decision on facts and evidence is final.

16. He further stated that the decision in the Ministers appeal was fair and was legally and procedurally proper and justice was served to all parties. He denied that the Sub-County Commissioner Mwingi abused his discretion and powers.

**The Ex-parte Applicant's submissions**

17. Counsel for the ex parte applicant faulted the proceedings of the appeal to the Minister stating that the appeal was heard on 23rd March 2021 while the decision was not given in a procedural manner and the same was given a year after the hearing and no reason was supplied. Counsel challenged the allocation of the suit land before the Land Adjudication Committee, The Arbitration Board, and objection before the Land Adjudication Officer claiming that the different tribunals hearing the cases were unfair and biased against him and they violated his right to natural justice. He also faulted some of the decisions for not being dated and not bearing the name of the officer presiding over the proceedings.

18. He further stated that none of the proceedings considered the findings from the Court in respect of Civil Case 199 of 2007 Mui Maundu vs Musembi Mbai and that the decision in the Minister's appeal relied on the objection proceedings which according to him were flawed.

19. It was the ex parte applicant's submission that the 2nd Respondent erred in law, engaged in procedural impropriety, acted irrationally and unreasonably, rendering the decision null and void. Counsel relied on the decision in the cases of Kenya Human Rights Commission & Another vs Non-Governmental Organization Co-ordination Board & Another (2018) eKLR and Accounting Officer Kenya Ports Authority vs Pubic Procurement Administrative Review Board & 3 others (2019) eKLR.

20. Counsel further submitted that judicial review is not only concerned with the decision making process but that the court can look into the merit of the decision in the interest of fairness and justice. They relied on the case in Republic vs Kenya National Examination Council ex parte Gathenji and the case of Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd (2002) eKLR.

21. Urging the Court to quash the impugned decision in the interest of justice, counsel for the ex parte applicant attached the decision of Chuka Elc Jr E001 of 2021 Republic Vs District Land Adjudication and Settlemennt Officer Maara Sub-County & 5 Others as they requested the court to order that the matter be heard by a different land adjudication officer and competent committee.

22. The Ex parte Applicant filed further submissions reiterating the position of the 2nd Respondent and further, that there is no evidence of summons to appear for hearing of the appeal to the Minister and that parties were only given 2 days' notice which was not sufficient time to prepare. He further complained that the 2nd Respondent did not visit the suit lands. for the court to find that the 2nd Respondent

**Interested Party's Submissions**

23. Counsel for the interested party submitted that from the pleadings, the ex parte applicant seems to be dissatisfied with the outcome of the decision and what he has preferred is an appeal rather than an application for judicial review.

24. Counsel for the Interested party also submits that the Minister's decision is final, and that the principles of judicial review have been settled over the years that a superior court will not interfere with an impugned Minister's decision unless it is demonstrated that there was procedural impropriety including denial of fair hearing, bias and lack of jurisdiction. They also submitted that the court does not concern itself with the merits of the decision.

25. On whether the applicant was denied a fair hearing, their submission is that the ex parte applicant does not demonstrate any breach of the rules of natural justice, nor any bias or malice in the proceedings and that there is no indication or allegation that he was prevented from giving any evidence or documents or that he was precluded from calling any witness or that the 2nd Respondent acted ultra vires or without jurisdiction.

26. Submitting on the reliefs sought, counsel for the ex-parte applicant noted that an order for mandamus is one that compels a body to do a certain thing and that it is not for the court to interfere with whom to register on the parcel of land or not. Regarding the order of certiorari, the interested party submitted that the reasons were not demonstrated and that it is not for the court to look into the merits or demerits of a decision since it is not an appeal.

27. The Interested Party submitted that no evidence was placed before the court of the allegations of breach of natural justice, ultra vires and abuse of constitutional powers as claimed by the ex parte Applicant.

**Analysis and Determination**

28. The judicial review proceedings herein challenge the decision of the 2nd Respondent in Minister's Appeal No. 552 of 2015 Mwambiu Adjudication Section over land parcels No. 667, 742 and 1195 within the adjudication area. The grounds relied on have been enumerated in detail in this judgement.

29. The Court has considered the Notice of Motion herein, amended Statement of Facts, verifying affidavit and supplementary affidavit, the replying affidavit and written submissions by Counsel for the parties. The following issues arise for determination:

    A. Whether the proceedings and decision of the 2nd Respondent were illegal, unreasonable, procedurally unfair and/or were in violation of Article 47 of *the Constitution*

    B. Whether the Applicant has met the threshold for grant of an order of Mandamus.

    C. Whether the Applicant has met the threshold for grant of an order of certiorari.

30. Judicial review of administrative action is anchored under Article 47 Constitution of *the Constitution* of Kenya 2010 which deals with fair administrative action and provides that;

> " Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair."

Article 50 of *the Constitution* provides for fair hearing stating that;

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

Under Section 23 of the Fair Administrative Actions Act (FAAA) administrative action is to be taken expeditiously, efficiently, lawfully etc

> " Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair."

31. Further to the above provisions of the law, Section 12 of the *Fair Administrative Action Act*, provides that the general principles of common law and rules of natural justice continue to apply in review of administrative actions. This was restated in the case of Suchan Investment vs. The Ministry of National Heritage and Culture (2016) eKLR where the Court of Appeal stated as follows:

> "Pursuant to Section 12 of the *Fair Administrative Action Act*, the general principles of common law and rules of natural justice continue to apply in review of administrative actions. The Section provides that the Act is in addition to and not in derogation from the general principles of common law and the rules of natural justice. This means that the common law principles on judicial review of administrative action under the heads of illegality, irrationality, procedural impropriety and proportionality are relevant and applicable in Kenya. (See the common law principles as expounded by Lord Diplock in Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374). See also the principle of reasonableness as stated in the case of Associated Provincial Picture Houses Ltd vs. Wednesbury Corp. [1948] 1 KB 223)."

32. The first issue for consideration by the court is whether the parties to the appeal to the Minister were notified of delivery of the 2nd Respondent's decision and If they were not not what was the legal effect of such failure. Article 47 of *the Constitution* of Kenya 2010 every person has the right to fair administrative action. The Article further states that 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. This Article has been given effect through the *Fair Administrative Action Act*, 2015 section 4(3) (d) which provides as follows:

> " Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
>
> (d) a statement of reasons pursuant to section 6;

33. Onguto, J in Kenya Human Rights Commission vs. Non-Governmental Organizations Co-Ordination Board [2016] eKLR restated what constitutes fair administrative action and stated as follows:

> " As to what constitutes fair administrative action, the court in President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1, stated:
>
> > Thus, a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as well as reasons for the adverse administrative action as provided under Article 47 (2) of *the Constitution*. Generally, one expects that all the precepts of natural justices are to be observed before a decision affecting his substantive rights or interest is reached. It is however also clear that in exercising its powers to superintend bodies and tribunals with a view to ensuring that Article 47 is promoted the court is not limited to the traditional judicial review grounds. The *Fair Administrative Action Act*, 2015 must be viewed in that light."

34. Section 6(1-2) of the Fair Administrative Act 2015 provides as follows:

> " Every person materially or adversely affected by any administrative action has a right to be supplied with such information as may be necessary to facilitate his or her application for an appeal or review in accordance with section 5.
>
> (2) The information referred to in subsection (1), may include-
>
> (a) the reasons for which the action was taken; and
>
> (b) any relevant documents relating to the matter."

35. In addition to this, Section 6(4) stated that if an administrator fails to furnish the applicant with such reasons, the decision shall be presumed to have been taken without good reason.

36. From the foregoing, the legal position is that the applicant was entitled to be given reasons for the decision in the Ministers' appeal before any action was taken to implement it. The ex parte applicant states that the parties were completely unaware that the decision had been made and the date and time the decision was made. From perusal of the two decisions attached to the applicant's affidavit, Appeal number 560 of 2015 in respect of land parcel No. 742 and Appeal No. 552 of 2015 in respect of land

parcel No. 667 and 1195 were heard on the same date, 1st March 2017. However, the decisions are not dated and do not show the date on which they were delivered. It is thus not clear the date on which the decision was made or delivered and whether the parties were aware of the delivery of the decision. The 2nd Respondent who authored the impugned decision did not file any documents in reply and the Interested Party did not address the issue of the date on which the decision was made and whether he was notified.

37. The ex parte applicant avers that the decision of the appeal was only supplied to them on 14th September 2020. The Court notes the long period of time between the date of hearing of the appeal on 1st March, 2017 and the date on which the Ex parte Applicant states he obtained the decision.

38. The facts of this case show that it is not known when the 2nd Respondent's decision was made and/or delivered. However, the Applicant did indeed receive the decision and in the courts view the Applicant did not suffer prejudice from lack of notification of the date of delivery of the decision. The reason for this conclusion is that the Applicant stated that he was given the written decision on 14th September, 2020 when the same had been forwarded to the Director of Land Adjudication for implementation. However, it is not claimed that by the time the Applicant obtained the said decision action had been taken to implement it. It was further not claimed that the Interested Party was aware of the said decision while the ex parte applicant was kept in the dark. The Applicant did not show that he had made any effort to find out if the decision had been made and obtain a copy.

39. After obtaining the 2nd Respondent's decision, the Applicant was able to come to court and challenge the decision within the timelines required by the law in that he filed his chamber summons for leave to file judicial review proceedings on 27th November 2020.

40. The other issue for consideration is whether the 2nd Respondent ought to have heard witnesses and make a site visit to the suit parcels of land which failure the Applicant claimed was unlawful unreasonable and procedurally unfair.

41. An appeal to the Minister's is an appeal like any other where the court or quasi-judicial authority considers the previous record before arriving at it's own decision. The Minister or the Deputy County Commissioner in this case had the mandate to consider the grounds of appeal, previous evidence tendered and make his own determination as he deems just and fair under Section 29 of the *Land Adjudication Act*. The said section provides for the procedure of filing an appeal and the process the appeal is to take. Section 29(1) of the *Land Adjudication Act* reads as follows:

> "Any person who is aggrieved by the determination of an objection under section 26 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 Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final."

42. The procedure for conducting an appeal to the Minister is also provided under the Land Adjudication Regulations, 1970 Regulation 4 and the same is clear that before on can appear before the Minister and call witnesses leave of the Minister must be obtained. The regulation states as follows:

> " Subject to the leave of the Minister being first obtained the appellant or any other part to an appeal may attend before the Minister either in person or by duly authorises agent, and shall be entitled to call witnesses."

43. In this case the Minister's delegate did not need to call witnesses or conduct a site visit as suggested by the Ex parte Applicant. It was held in Matwanga Kilonzo v District Commissioner, Kitui & another [2021] eKLR that:

> " The Minister's mandate under Section 29 of the Act is to consider the grounds of appeal raised by any person appealing against the decision of the Land Adjudication Officer, and upon considering the record of the Land Adjudication Officer, arrive at an independent decision. Indeed, just like what happens in an appellate court, the Minister need not take fresh evidence while dealing with the appeal, although he may do so to seek clarification on certain issues. However, he must consider the grounds of appeal and the evidence that was adduced before the Land Adjudication Officer before making his decision. The said decision must give reasons as to why he agrees or disagrees with the decision of the Land Adjudication Officer..... The 1st Respondent made the above finding after hearing the parties herein, and after considering the decision of the Land Adjudication Officer. Considering that the 1st Respondent heard both parties and considered the proceedings of the Land Adjudication Officer, I am not convinced that the 1st Respondent was biased while arriving at his decision."

44. The proceedings before the 2nd Respondent show that he read the grounds of appeal to the Appellants and took further evidence from parties in the two cases before him. From the decisions themselves it is clear that the 2nd Respondent considered the proceedings before the Land Adjudication Officer before arriving at his decision. The 2nd Respondent stated in the decision in 552 of 2015 land parcel 667 and 1195 that:

> " This court observed that the witnesses for the appellant ever since these cases started are his sons who might not have enough knowledge of the disputed land and that most of them are having mere lies even to their age as per IDs."

45. The Ex parte Applicant faults the 2nd Respondent for having relied on the evidence adduced in the previous proceedings yet this indeed ought to be the proper legal procedure for hearing an appeal to the Minister as per the findings of the court in Matwanga Kilonzo case (supra).

46. The ex-parte applicant has also attacked the 2nd Respondents decision on the ground that he did not apply the decision issued in Civil Case 199 of 2007 Mui Maundu vs Musembi Mbai. Indeed, he has faulted all the decisions under the adjudication dispute resolution process for failure to implement the said decision. Section 30(4) of the *Land Adjudication Act* CAP 284 makes provision for matters that have already been concluded and final judgment entered essentially providing that a final judgement of the court entered before the area in question is declared a land adjudication area is recognized by the

*Land Adjudication Act* and the same can be enforced or executed within the land adjudication process. The said section provides that;

> " The foregoing provisions of this section do not prevent a final order or decision of a court made or given in proceedings concerning land in an adjudication section being enforced or executed, if at the time this Act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired."

47. The order of injunction referred to by the ex parte applicant is stated to have been attached to his supplementary affidavit and marked as annexture MMII. However, the said annexture contains a ruling on a preliminary objection and the said objection was dismissed by the court. The Court has looked at all the annextures to the affidavits and have not seen the order of injunction. Further, the said proceedings show that the matter came to an end on 29th April 2010 when the area under which the land is situated was declared an adjudication area as per the provisions of section 30 (2) of the *Land Adjudication Act* which provides that where court proceedings were begun before the publication of the notice declaring an adjudication section the proceedings are to be discontinued, unless the adjudication officer otherwise directs.

48. In the Courts view the order anticipated by section 30(4) of the *Land Adjudication Act* is a final order which would have been interpreted to have determined the rights and interests of the parties over the suit land. The same would have been evidenced by a formal order, judgement and/or decree of the court. This is taking into account the decision of the Court of Appeal in Timotheo Makenge v Manunga Ngochi [1979] eKLR which held that;

> " In my view, interests in land within an adjudication area previously recognised by Courts are not binding in land adjudication proceedings, and are only relevant as a factor to be taken into account. Where the interest relates to disputed clan land, the question of the over-riding interest in that land is in my view an open question."

49. The Applicant has thus failed to show that there was a final order of the court that ought to have been implemented by the 2nd Respondent. And whether any such order was binding upon the 2nd Respondent when making the final decision.

50. As part of the ex-parte applicant's claim that he was not accorded a fair hearing during the proceedings before the 2nd Respondent he stated that he was not served with summons to be heard in the Appeal and he was not given sufficient notice since he was called 2 days before the Minister's Appeal. It is noted that the Ex parte Applicant did not raise this issue as a ground for challenge and the issue was not raised in the supporting affidavit and the supplementary affidavit.

51. From the record, the ex-parte applicant was present during the hearing and indeed testified. He requested for the grounds of appeal to be read out to him and the same were read out and he continued to testify. The decision of the 2nd Respondent reads that:

> " the Court heard the statements of both parties and came up with the following facts...."

52. This means that both parties were allowed to present their cases and in the courts view it cannot be said that the 2nd Respondent did not conduct a fair hearing. The Court, in Pinnacle Projects Limited

vs. Presbyterian Church of East Africa, Ngong Parish & another [2018] eKLR, had the following to say on Article 50, with respect to fair trial principles in civil cases:

> " While the wording of Article 50 of *the Constitution* on the right to a fair hearing prima facie seems to focus on criminal trials it's not lost that fair trial in civil cases includes: the right of access to a Court, the right to be heard by a competent independent and impartial tribunal, the right to equality of arms, the right to adduce and challenge evidence, the right to legal representation, the right to be informed of the claim in advance before the suit is filed, the right to a public hearing, and the right to be heard within a reasonable time."

The Court went on to say:

> "... it is important that in any judicial process adjudication parties involved be given opportunity to present their case and have a fair hearing before the decision against them is made by the respective judge or magistrate. It is not lost that procedural fairness is deeply ingrained in our administration of justice system."

53. The ex-parte applicant has faulted the entire adjudication process that the suit properties went through from the initial adjudication, to the committee stage, the arbitration stage, the objection stage all the way to the Minister's Appeal. However, in his prayers, he has only directed the challenge to the 2nd Respondent.

54. Further, the applicant seems to be challenging the factual findings of the various tribunals that heard the dispute within the adjudication process seeking to challenge reasons why certain witnesses were not called and why certain evidence was not relied upon by the tribunals.

55. In the courts view the Applicant seeks review of the decision of the adjudication process that is only available on appeal. This court cannot determine rights and interests over land that is within an adjudication area. As has been restated in various court decisions, the court's role while hearing an application for judicial review is supervisory over the adjudication process. As Okongo J held in Tobias Achola Osidi & 13 Others vs. Cyprianus Otieno Ogalo & 6 others (2013) eKLR so aptly noted as follows;

> " In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. (Emphasize added). The court cannot however usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in land."

56. Has the ex parte Applicant met the threshold for the grant of orders of mandamus and certiorari? Certiorari is defined in the Black's Law Dictionary as follows:

> " An extraordinary writ issued by an appellate court, at its discretion directing a lower court to deliver a record in the case for review."

57. In the present case the court finds that the Applicant has not shown that the proceedings and decision of the 2nd Respondent were unlawful, unreasonable, flawed or conducted unfairly. He has also not shown that the same were conducted outside the parameters provided by the law. Consequently, the prayer for an order of certiorari to remove to this Honourable Court to quash proceedings and decision

of the 2nd Respondent agents culminating in Minister's Appeal No. 552 of 2015 is hereby found to be unmerited and the same is dismissed.

58. Mandamus is defined in the Black's Law Dictionary as follows:

> " A writ issued by a court to compel performance of a particular act by a lower court or a government officer or body, usually to correct a prior action or failure to act."

59. For an order of mandamus to issue it must be found that there is necessity to correct a prior act or failure to act. In the present case the court finds that the orders issued by the 2nd Respondent have not been quashed and the same are in force and the 2nd Respondents agent, Sub-County County Commissioner Mwingi Sub-County of Kitui County, the land registrar and the Chief Land Registrar cannot be compelled to deregister or stop Parcel No. 667 and 1195 Mwambiu Adjudication being registered in the name of the Interested Party.

60. The Court thus finds that the prayer for an order of mandamus directed to the 2nd Respondents agent Mwingi sub-county land registrar, Chief Land Registrar has no merit.

61. The final order of the court is that the Notice of Motion dated 10th December 2020 is hereby dismissed with costs to the Interested Party.

**DELIVERED, DATED AND SIGNED AT KITUI THIS 25TH DAY OF JULY, 2023.**

**HON. L. G. KIMANI**

**ENVIRONMENT AND LAND COURT JUDGE - KITUI**

Judgment read virtually and in open court in the presence of-

Musyoki C/A

Mutisya holding brief for Mbaluka for the Ex parte Applicant

No attendance for the Respondent

No attendance for the Interested Party