



Republic v Land Adjudication Officer Mwele/Simakeni Adjudication Section & another; Kuduku & another (Interested Parties); Jacca (Suing on Behalf of the Estate of Charles Jacca Denje) (Exparte Applicant) (Miscellaneous Application E019 of 2023) [2025] KEELC 262 (KLR) (29 January 2025) (Judgment)

Neutral citation: [2025] KEELC 262 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS APPLICATION E019 OF 2023**

EK MAKORI, J

JANUARY 29, 2025

BETWEEN

REPUBLIC APPLICANT

AND

LAND ADJUDICATION OFFICER MWELE/SIMAKENI ADJUDICATION SECTION 1ST RESPONDENT

DIRECTOR OF LAND ADJUDICATION & SETTLEMENT . 2ND RESPONDENT

AND

IRENE ROBERT KUDUKU INTERESTED PARTY

SYDNEY ROBERT KUDUKU INTERESTED PARTY

AND

ELIZABETH DORA JACCA (SUING ON BEHALF OF THE ESTATE OF CHARLES JACCA DENJE) EXPARTE APPLICANT

JUDGMENT

1. The ex-parte applicant’s Notice of Motion seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. That the ex-parte applicant be exempted from the doctrine of exhaustion and specifically the application of the requirements of section 29 of the [Land Adjudication Act](#) and be allowed



to commence these proceedings without exhausting any dispute resolution mechanisms stipulated under the said Act.

- d. That an order of prohibition is issued, prohibiting the respondents herein, and any person acting under their behest or direction, in purported enforcement of the 1st respondent's decision as contained in its ruling dated 12th November 2021, from acting upon, or enforcing or complying with the said ruling where the 1st respondent acted outside the scope of the Constitutional and Statutory mandate and awarded a portion of the ex parte applicant's land, namely plot 60 situated in Mwele/Simakeni Adjudication Section, to the interested parties.
 - e. That an order of certiorari does issue, to bring to this Court for purposes of being quashed, and to be quashed, the 1st respondent's decision as contained in its ruling dated 12th November 2021 where the 1st respondent acted outside the scope of the Constitutional and Statutory mandate to award a portion of the ex parte applicant's land, namely plot 60 situated in Mwele/Simakeni Adjudication Section, to the interested parties.
 - f. That consequent to the grant of the prayers above, the Court be pleased to issue such further directions and orders as may be necessary to effect the foregoing orders and/or favor the cause of justice.
 - g. That costs be awarded.
2. Elizabeth Dorada Jacca's verifying affidavit supports the application, reinforcing its grounds.
 3. The respondents have opposed the application by filing a replying affidavit dated 30th November 2023, deposed by John Karanja, the Land Adjudication and Settlement Officer Kilifi.
 4. The motion was canvassed by way of written submissions.
 5. From the materials and submissions placed before me, I frame the following issues for the determination of this Court:
 - i. Should the ex-parte applicant be exempted from the exhaustion doctrine?
 - ii. Is the ex-parte applicant entitled to the orders of certiorari and prohibition?
 - iii. Who should bear the costs of these proceedings?
 6. The ex-parte applicant argues that she was never informed when the ruling of 12th November 2021 was to be delivered and was never notified after it was delivered. She only learnt about it on 9th February 2022 when she made a follow-up at the lands registry. When she discovered the ruling of 12th November 2021 on 9th February 2022, the mandatory sixty days she was supposed to file an appeal to the Minister as provided under the law had lapsed.
 7. The ex-parte applicant confirms that she did participate in the hearing of objection number 13, which led to the ruling of 12th November 2021. She complains that she was never told when the ruling would be delivered and never informed after it was delivered. The proceedings of Objection No. 13 show that the hearing was on 29th October 2021. Still, no date for the ruling was set/communicated to the parties after the hearing. The ruling was then delivered on 21st November 2021 without notice to the ex-parte applicant. She avers that she only discovered it on its delivery on 9th February 2022. The respondent and the interested parties have not attached any notice sent to the ex-parte applicant notifying her of the ruling. There is also no indication from the said proceedings whether any of the parties, especially the ex-parte applicant, was present during the delivery of the ruling and/or had been notified to attend.



8. The respondents believe that as a preliminary issue, this Court's duty is to ascertain whether it has the requisite jurisdiction. In this case, upon perusal of the Notice of Motion and the submissions, the provisions of the [Land Adjudication Act](#) come to the fore. The preamble of the Act states that it is an Act of Parliament to ascertain and record rights and interests in community land and purposes connected therewith and incidental thereto. In the instant case, the ex-parte applicant has sought an order to exempt the application of the mandatory requirements of section 29 of the [Land Adjudication Act](#).
9. The respondents contend that the ex-parte applicant is challenging the decision delivered on 12th November 2021. The annexure demonstrates that the objection was heard and that the ex-parte applicant was present. Further, it demonstrates that the ex-parte applicant was indolent in pursuing her rights by failing to file an appeal to the Minister within sixty days as provided for in the Act. Therefore, the orders sought herein are not available.
10. As submitted by the Respondents - the Doctrine of Exhaustion is defined in Blacks Law Dictionary 10th Edition as follows:
- exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary.
11. Section 9 of the [Fair Administrative Action Act](#) provides for the Doctrine of Exhaustion thus:
- “Procedure for judicial review
- (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the [Constitution](#).
- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
- (5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”
12. Section 29 of the Act, which the ex-parte applicant seeks to be exempted from, provides a mechanism of appeal to the Minister arising from the Objection Proceedings within 60 days of the decision.



As submitted by the respondent – and I agree - in the case of *Mwanzia v Rhodes* (Constitutional Petition E115 of 2022) [2023] KEHC 2688 (KLR), the Court elaborated on the exceptions that would necessitate the intervention of the Court as follows:

“As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court’s jurisdiction must be construed restrictively.”

13. The main quarrel the ex-parte applicant harbours is that no notice of the delivery of the ruling by the Objection Committee was issued to her to enable her appeal to the Minister in good time. Article 47 of the Constitution of Kenya provides in this respect as follows:

“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

14. As submitted by the Applicant, a scenario like the one occurring here arose in *Mohamed Shahid Moughal v Malindi District Land Adjudication Officer & Chief Land Registrar; Ibrahim Said Bwanamkuu* (Interested Party) [2021] KEELC 3846 (KLR) Olola J. held as follows:

“It goes without saying that in discharging the duties conferred upon it under Section 9(2) (b) of the Land Adjudication Act, the 1st Respondent was exercising a quasi-judicial function. The law required the 1st Respondent to hear and determine matters on any objection raised to the adjudication register. Section 29 of the Act permits any person aggrieved by the determination of an objection made under Section 26 of the Act, to appeal the determination within 60 days to the Minister.

37. In the circumstance presented before me, while it is true that indeed the Petitioner may have taken rather long before following up on his case, it was clear to me that the 1st Respondent’s failure to notify the Petitioner of its determination prejudiced the Petitioner’s right of appeal and thus amounted to a violation of the Petitioner’s right to fair administrative action as provided under Article 47 of the Constitution.

38. Given the dire implications of its decision, it was not proper and fair for the 1st Respondent to just wake up one day, record its decision on the proceedings and thereafter proceed to quietly file it away without any notification and/or communication being made to the concerned parties. In this respect, the law in my view, imposes an obligation on the 1st Respondent to at least take some



reasonable steps to give notice of their determination to the parties litigating before them.

39. Arising from the foregoing, I am satisfied that there is merit in the Petition dated and filed herein on 20th January 2017. Save for Prayer '6' on general damages for which I found no basis, I allow the Petition as prayed in terms of Prayers Nos. 1, 2, 3, 4 and 5.

40. The Petitioner has 60 days from today to exercise his right of appeal against the 1st Respondent's decision dated 11th December 2014."

15. It follows from the foregoing that since the ex-parte applicant did not get notice of the outcome of the decision by the Objection Committee. There being one more step under the Land Adjudication Act, the ex-parte applicant be and is hereby granted 60 days from the date of this judgment to file an appeal to the Minister as provided under section 29 of the Act. The further implementation of the ruling dated 12th November 2021 is hereby held in abeyance, awaiting the decision by the Minister.

16. Each party is to bear its own costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 29TH DAY OF JANUARY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Mulemia H/B for Mr.Nyongesa, for the Applicant

Mr. Munga, for the Respondents

Happy: Court Assistant

