



M’Thiringi v District Land Adjudication and Settlement Officer Karama Adjudication Scheme & another; Lichungi (Interested Party) (Environment and Land Judicial Review Case E011 of 2021) [2022] KEELC 2590 (KLR) (18 May 2022) (Judgment)

Neutral citation: [2022] KEELC 2590 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E011 OF 2021**

CK NZILI, J

MAY 18, 2022

BETWEEN

MARIQUETA NKONYAI M’THIRINGI APPLICANT

AND

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER KARAMA
ADJUDICATION SCHEME 1ST RESPONDENT**

THE OFFICE OF THE ATTORNEY GENERAL 2ND RESPONDENT

AND

NKUBITU LICHUNGI INTERESTED PARTY

JUDGMENT

1. By a notice of motion dated May 27, 2021 the exparte applicant seeks the court to call for and quash the decision made by the 1st respondent on November 26, 2020 in objection 3094 over Parcel No. 3094 Karama Adjudication Section. The applications is supported by a statutory statement and a verifying affidavit sworn on May 7, 2021.
2. The facts are that the exparte applicant brings this case as the legal representative of the estate of the late M’Thiringi M’Anampiu who acquired parcels No. 1136 and 7770 Karama Adjudication Section on October 16, 1969 as inheritance from his father M’Anampiu M’Lithirine as a gift. It was averred the said land was unprocedurally and irregularly recorded in the name of the interested parties. Following this the exparte applicant filed objections No. 3084 and 3086 which were heard and dismissed by the 1st respondent on November 25, 2020.
3. The exparte applicant averred the 1st respondent exercised its discretion without giving them a fair hearing or considering their evidence; purporting to superimpose new parcel of land over their land



which was unreasonable whereas they had lived on the disputed land all their lives; acting ultra vires; dispossessing them; causing them suffering, prejudice and harm.

4. The exparte applicant prays that the said decision be quashed and an order for mandamus to issue directed at the 1st respondent to supply the applicant with demarcation maps and consent thereof. The exparte applicant has attached the proceedings together with the decision, or findings, a copy of a demand letter dated April 21, 2021 seeking for the consent and sketch maps. The notice of motion was opposed by the respondents through an affidavit sworn by Earnest Langat on December 6, 2021. The basis of the opposition was that the adjudication fell under the [Land Consolidation Act](#) which provides that a land owner could be shown an alternative land or moved in the consolidation process.
5. That the applicant's objection no. 3094 against Parcel No. 3856 recorded in the name of Nkubitu Lichungi related to a displacement while his late father owned an adjacent land no. 3869.
6. That during the demarcation in 1997, the interested party was demarcated Parcel No. 3866 which he had extensively developed by carrying out subsistence farming. That the exparte applicant lost no land but was moved as was the case during the consolidation process hence the more reason the objection was dismissed. The respondents averred that the notice of motion had been brought too late contrary to Section 8 and 9 of the [Law Reform Act](#) and Orders 53 Rule 2 [Civil Procedure Rules](#) which provisions were anchored in mandatory terms and that the applicant had not invoked the provision of the Fair Administrative Act, Article 47 and [the Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013.
7. Following directions parties herein filed written submissions dated February 14, 2022 and February 11, 2022 respectively.
8. The exparte applicants submitted there will be no prejudice suffered if the application was allowed since under Section 26 of the [Land Consolidation Act](#), errors to the adjudication register were not considered before the dismissal.
9. Reliance was placed on [Joshua Mithika and another vs Kobia Kangeri & 2 others](#) (2021) eKLR, [Land Adjudication and Settlement Officers Tigania East expartes Simon Mugambi Nabea, Alexander Kanjoi \(interested party\)](#) (2021) eKLR. It was submitted that the applicants were only told that they had been moved out but were never shown where they were moved into the land number where they were moved to and the reasons why they were moved from the land they had gathered to another parcel which was and has never been shown to them.
10. The exparte applicants submitted the issue was whether in dismissing the objections due procedure was followed in line with Article 47 of [the Constitution](#) by involving the adjudication committee under Section 9 & 19(2) of the [Land Consolidation Act](#). Reliance was also placed on [Peter Kimandiu vs Land Adjudication Officer Tigania West district and 4 others](#) (2016) eKLR on the role and involvements of the adjudication committee under the [Land Consolidation Act](#).
11. Further the exparte applicants submitted that they were entitled to the judicial review orders since under Section 4 of the Fair Administrative Actions Act, the decision complained about and the proceedings thereof had to meet the constitutional test. Similarly noted with Article 35 of [the Constitution](#) as to the right of access of information relating to an adjudication and allocation of the family land on their part, the respondents submitted that Karama Adjudication Section was governed by the [Land Consolidation Act](#) where a land owner could be shown an alternative land or moved into consolidation process and that the exparte applicant had not lost any land since they were moved as per law in line with Section 21 of the [Land Consolidation Act](#). It was submitted that the objection related to displacement which is different from dispossession of a land owner.



12. As regards Section 9 (3) of the [Law Reform Act](#) Cap 26 and Order 53 Rule 2 [Civil Procedure Rules](#) the respondents submitted six months had to be complied with since the application was filed after 182 days which was outside the statutory period.
13. Reliance was placed on [Republic vs Mwangi Nguyai & 3 others ex parte Harun Nguyai](#) Nairobi JR No. 89 of 2008, [Nicholas Kiptoo Salat vs IEBC & others](#) (2013) eKLR, [African Oil Turkana Ltd & 3 others vs Edward Kings Onyancha Maina and 2 others](#) (2016) eKLR. The interested parties entered appearance on December 8, 2021 but did not file any responses.
14. The issues for commending themselves for determination are:
 - i. If the notice of motion was filed in compliance with Section 8 & 9 of the [Law Reform Act](#) and Order 53 Rule 2 [Civil Procedure Rules](#).
 - ii. If the applicant has proved breach of the [Land Consolidation Act](#), Article 47 of [the Constitution](#) as read together with the [Fair Administrative Action Act](#) for the grant of judicial review orders.
15. On the first issue the ex parte applicants filed an ex parte chamber summons dated May 7, 2021 on May 7, 2021 seeking for leave under both Article 47 Sections (8),9 [Law Reform Act](#) and Order 53 [Civil Procedure Rules](#) to quash the decision dated November 25, 2020.
16. The six months rule under Section 8 & 9 [Law Reform Act](#) and Order 53 Rule 2 [Civil Procedure Rules](#) would have expired on November 25, 2021 from the date the ruling complained about had occurred
17. Judicial review are commenced not by the filing of the notice of motion but through the commencement of the process by filing the application for leave not later than six months from the date the decision, order or decree was made.
18. In this matter the ex parte chamber summons was filed within the six months. The court on May 7, 2021 granted leave and directed that the notice of motion to be filed within 21 days. In compliance with the said order, the ex parte applicant filed the notice of motion on May 27, 2021. This was in line with Order 53 Rule 3 (1) [Civil Procedure rules](#). My finding is that the notice of motion was filed within time and so was the application for leave. The cases of Rep vs Mwangi Nguyai, Nicholas Salat, African oil therefore are therefore distinguishable from the instant case.
19. Another issue raised as a preliminary one by the respondents was whether Article 47 and the [Fair Administrative Action Act](#) should be applicable as invoked to aid the applicants.
20. Following the promulgation of Constitution of Kenya 2010 Kenyans acquired a right to fair administrative action which governs quasi-judicial organs or bodies and state officers exercising such powers and or duties. Similarly under Article 23 of [the Constitution](#) some of the constitutional reliefs which can be granted now include judicial review.
21. Section 12 of the [Fair Administration Action Act](#) states the Act applies as a complement to the common law writs of Judicial Review. Therefore a party is at liberty to invoke the Fair Administration Actions Act or come Under 53 [Civil Procedure Rules](#) together with Section 8 & 9 of the [Law Reform Act](#). A party choosing the latter has to seek leave and come within the stipulated timelines of six months. When a party chooses the former he need not seek for leave to commence the proceedings.
22. In this case the applicants appear to have fused the two procedural and substantive methods. Such a party cannot therefore be penalized or blamed for choosing whatever available means to approach a court of law for relief. The notice of motion had invoked Article 47 of [the constitution](#). In my view the court has wide powers since 2010 to look at a decision or proceedings governed by Judicial Review



- beyond the process. Under the *Fair Administrative Action Act*, the court has the mandate to not only look at the decision making process but also the merits and demerits of the decision. The court post 2010 is no longer looking at the decision making process as held in *Municipal Council of Mombasa vs Umoja Consultants* (2002) eKLR.
23. Therefore the proceedings and the decision complained about must be looked at from the spectrum on whether it met the constitutional test as regards to Fair Administrative Action.
 24. The applicants major complaint was the objection proceedings were heard without giving them a fair hearing in that they were only told that they had been moved out but were not shown the land parcel number they were moved into, and the reasons they were being moved from their own land. Further the exparte applicants averred the role of the land committee members as mandatorily required was overlooked.
 25. The exparte applicants also averred request for vital documents vide a letter dated February 21, 2021 was not complied with contrary to Article 35 of *the Constitution*.
 26. In an attempt to answer to the averments the respondents averred that the law allowed for a land owner to be shown an alternative land or be moved in the consolidation process. Further it was averred the applicants were not dispossessed from their land, the interested party had extensively developed the portion and carried extensive subsistence farming. Additionally the respondents averred that the applicant lost no land but were moved hence the reason the objection was dismissed.
 27. Section 26 of *Land Consolidation Act* required the involvement of the committee in any A/R objections. The central role of the land committee in the implementation of the *Land Consolidation Act* was emphasized by the court in *Peter Kimandiu vs Land Adjudication Officer Tigania West district* (2016) eKLR. The court held the land adjudication officer could make the decision on its own without the involvement and participation of the committee.
 28. In this matter, the list of the ten names of the land adjudication committee was indicated. The proceedings show there was a scene visit on November 19, 2020. The findings were indicated as those of the Land Adjudication Officer. The decision was also signed by the Land Adjudication Officer.
 29. The scene visit proceedings, the observations and the persons present at the scene visit were not indicated or included. There was no indication if the committee members were also present during the scene visit, the making of the findings and the delivery of the decision.
 30. Again there was no indication if the committee members owned up the observations, findings and the decision itself.
 31. Similarly if at all the exparte applicants were only moved and not disposed of their land, there was no indication if the committee and the Land Adjudication Officer visited the other parcel of land which the exparte applicants were alleged compensated with or moved into in line with the *Land Consolidation Act* to make a finding that the objection were unmeritorious.
 32. Concerning the request for the sketch maps of the parcels of land as per the letter dated April 21, 2021, the 1st respondent at has offered no explanation or justification why he failed to responded to or supply the documents on time or at all. In line with Section 4, 6 & 11 of *Fair Administrative Actions Act*, the presumption of no good reason has not been rebutted, hence I find the respondents offended *the Constitution* requirement. In *Gladys Shollei vs JSC* (2022) eKLR the Supreme Court held that once a demand letter has been made, a state organ must supply the reasons within 30 days upon receipt of the demand letter.



33. In my view therefore, the respondent's action offend *the constitution*. The decision dated November 25, 2020 by the 1st respondent dismissing objection No's 3084 and 3086 Karama Adjudication Section Parcel No's 11136 and 7770 is hereby brought before this court and quashed for falling short of the both statutory and constitutional test.
34. In line with Article 47 of *the constitution* and Section 11(3) of the *Fair Administrative Actions Act* the respondents are hereby directed to rehear the objections afresh before another land committee within 6 months from the date hereof. Costs to the exparte applicants.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 18TH DAY OF MAY, 2022

In presence of:

Aketch for applicant

Kieti for respondents

Ms. Kinyanjui for interested party

HON. C.K. NZILI

ELC JUDGE

