Republic v Deputy County Commissioner Lower Yatta Sub-County & another; Munyao (Exparte); Muinde & another (Interested Parties) (Judicial Review 17 of 2021) [2022] KEELC 2722 (KLR) (29 June 2022) (Judgment)

Neutral citation: [2022] KEELC 2722 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITUI

JUDICIAL REVIEW 17 OF 2021

LG KIMANI, J

JUNE 29, 2022

(FORMERLY MACHAKOS MISCELLANEOUS APPLICATION NO. E10 OF 2020)

IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284

AND

IN THE MATTER OF LAND APPEAL TO THE MINISTER CASE NO. 98 OF 2001

NDUNGUNI ADJUDICATION SECTION, PARCEL NO. 2366

AND

IN THE MATTER OF TITUS KINGOTO MUNYAO THE APPELLANT VERSUS

ESTHER MALI MUINDE AND AGNES MBALU MUINDE THE RESPONDENTS

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI

AGAINST THE DECISION OF THE MINISTER FOR LANDS DATED 28.4.2020

BETWEEN

REPUBLIC .... APPLICANT

AND

DEPUTY COUNTY COMMISSIONER, LOWER YATTA SUB-COUNTY .... 1ST RESPONDENT

ATTORNEY GENERAL .... 2ND RESPONDENT

AND

TITUS KINGOTO MUNYAO .... EXPARTE

AND

AGNES MBALU MUINDE .... INTERESTED PARTY

ESTHER MALI MUINDE .... INTERESTED PARTY

JUDGMENT

1. The Ex Parte Applicant's Notice of Motion Application dated 2nd November 2020 is brought under Order 53 Rule 3(1), (2), (3), (4), 4 (1), (2) (3), 5, 6 and 7 (1) and (2) of the *Civil Procedure Rules* and Articles 165 (6) as read with (7) of *the Constitution* of Kenya seeking for Orders:

    1. That this Honourable Court be pleased to grant an order of Certorari to remove into this High Court the proceedings and the decision of the 1st Respondent dated 28.4.2020 and the same be quashed for being null and void

    2. That this Honourable Court be pleased to grant the Applicant costs of these proceedings.

The Ex parte Applicants Case and submissions

2. The Exparte Applicant commenced these proceedings by filing a chamber summons, Statement of Facts both dated 22nd October 2020 and a verifying affidavit sworn on the same date. He also filed a Supplementary affidavit sworn on 20th January 2022. The suit land is identified as P/No 2366 which was curved out of P/No. 2188 and which was curved out of the initial parcel No. 1508. The Ex parte applicant states that the dispute over the initial land parcel No. 1508 started when he and other members of the family of the Interested Party were involved in Land Case No. 4 of 1995: Titus Kingoto Munyao vs Godfrey Ngui Muinde in Kitui law court where the Court made a ruling and factual findings that the exparte applicant claims were in his favor. Soon after the said ruling, the disputed area was declared an Adjudication Section.

3. The chronology of events in the adjudication process shows that initially the land was adjudicated in favour of the Interested Parties. Being dissatisfied with the allocation of land, the ex parte applicant filed a claim to the adjudication committee case No. 41 of 1999. After hearing the claim the committee determined that the portion of land the ex parte applicant was claiming be curved out of the larger parcel No 1584 and be registered in the name of the Interested Parties and be given a new number being parcel No. 2188.

4. The Interested Parties were dissatisfied with the decision of the Committee and filed an appeal to the Arbitration Board being appeal number 24 of 2000. The Appeals Board heard the dispute and confirmed the decision of the committee awarding the parcel No. 2188 to the Ex parte Applicant.

5. When the notice of completion of the adjudication register was published under Section 26 of the *Land Adjudication Act*, the Interested parties lodged an objection to the Adjudication Officer vide objection case number 84 of 2001 claiming ownership of land parcel No. 2188. Upon hearing the parties the Land Adjudication Officer curved out a portion of land parcel No. 2188 and gave it number 2366 and awarded the said portion to the Ex parte Applicant while the Interested Parties were left with the rest of the land. The Ex parte Applicant claims that the decision of the Land Adjudication Officer was made through craft and by creating an impression that the parties had reached an agreement.

6. The Ex parte Applicant was dissatisfied by the decision of the Land Adjudication Officer and he lodged an appeal to the Minister vide appeal number 98 of 2001. From the record, it appears that Appeal was heard by the 1st Respondent on 28th April 2020 and Findings and judgment delivered on the same date. The Ex parte Applicant claims that he prepared elaborate grounds and statement of appeal

which he adopted during the hearing and asked the 1st Respondent to review and evaluate and make a determination.

7. The Ex parte Applicant complains that the 1st Respondent did not make an analysis of the grounds of appeal, the proceedings before the Land Adjudication Officer and the decision thereof before coming to his own decision. That further, he did not give reasons why he either agreed or disagreed with the Land Adjudication Officers decision. Instead the 1st Respondent made a two line decision saying that after interrogating the proceedings in the objection case, he upheld it. The Ex parte Applicant states that he did not see the alleged interrogation of the proceedings and neither did he see the process used in that interrogation. He thus claims that as a result he cannot follow the thinking or reason that led to the rejection of his Appeal. He further claims that failure to give reasons leads to the conclusion that the 1st Respondent did not read the grounds of appeal and the objection proceedings and he made his decision based on pre-determined or set mind and prejudice.

8. The Ex parte Applicant brings this application for Judicial Review on the ground that under Article 165 (6) and (7) of *the Constitution* of Kenya this court has supervisory jurisdiction over judicial and quasi-judicial authorities and tribunals; it has the power to call or recall the impugned decision and satisfy itself whether the decision is founded on sound reasoning and examine or about its legality, correctness, propriety and soundness.

9. It is the Ex parte Applicant's contention that there is no of basis for the decision-making process followed by the 1st Respondent and an apparent error of both facts and law because its correctness, soundness, legality and propriety of the decision cannot be seen and is not supported at all. He further claims that he was not given an opportunity and a chance to speak or to table materials, facts or statements at the hearing.

10. The Ex parte Applicant filed written submissions submitting on the exercise of inherent power of courts in judicial review to interpret statutes and the conduct of administrators under the statutes. Citing the case of Republic vs Permanent Secretary to the Cabinet and Head of Public Service and another Ex Parte Kamanga Ng'ang'a and others(2006)LLR 5958 Counsel further submitted that judicial review is not concerned with reviewing the merits of a decision but the decision-making process.

11. Counsel for the Ex parte Applicant challenges the decision of the 1st Respondent on the grounds of failure to make an analysis of the evidence before him and give reasons for his decision, absence of factual basis for the decision and failure to consider the evidence adduced in the objection proceedings, arriving at a decision that was biased, unfair and contrary to rules of natural justice. He cited the case of HC Misc App. No.128 of 2004 *Republic vs the District Commissioner Kitui ex parte Wambua Mulili and others (Machakos)*. Counsel further submitted that the 1st Respondent had an obligation to consider the grounds of appeal and the proceedings before the adjudication officer. He relied on the case of Mahaja vs Khutwalo((1983) KLR 553 where Hancox J.A stated that the Deputy County Commissioner was obliged to reach a decision after considering the grounds of appeal and the proceedings before the adjudication officer.

12. Counsel relied on Section 4(3) of the *Fair Administrative Action Act* which provides that prior and adequate notice of the nature and reasons for the proposed administrative action are necessary where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person. Counsel cited the following authorities in support of the submission on requirement for giving reasons for the decision made as a principal of natural justice: *Gupta v. Union of India* 1981 Supp. SCC 87, *R v. Civil Service Appeal Board exp Cunningham* (1991) 4 All ER 310 and *R vs Crown Court at Harrow, exp Dave* (1994) 1 All ER 315.

13. It was the Ex parte Applicant's submission that a decision should not be allowed to go unexplained and that reasons must be given. He quoted the decision in *Msagha vs Chief Justice & 7 others* Nairobi HCMCA No.1062 of 2004 2 eKLR 553 where the Court held that a decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. Further, Counsel submitted that the decision is "irrational in the strict sense of the term if it is unreasoned; if it is lacking ostensible logic or comprehensive e justification".

The Respondent's Case and Submissions

14. State Counsel for the Respondents filed a Replying Affidavit sworn on.......... where the 1st Respondent averred that both parties were given a fair chance to be heard and to give submissions. Counsel submitted that judicial review is concerned with decision making process and not the merits of the decision. It is concerned with whether persons affected were heard and whether the decision maker took into account relevant matters or took into account irrelevant matters.

15. The Respondents submitted that the Ex parte Applicant has failed to establish that the decision of the 1st Respondent was made without jurisdiction or in excess of jurisdiction, unprocedural or unreasonable or that the process followed by the 1st Respondent was fair, objective and procedural. That the role of the court in judicial review is supervisory and that it has not been shown that the impugned decision was made contrary to the law or that the rules of Natural justice were violated. They cited the case of *Pastoli vs Kabale District Local Government Council &others* (2008) 2 EA 300 and the case of Republic vs Director of Immigration Services & 2 others Ex parte Olamilekan Gbenga Fasuyi & 2 others where the court held that the role of a court in Judicial Review is supervisory and it is not an appeal.

16. Counsel submitted that Section 29 of the *Land Adjudication Act* provides that the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final and that the section does not provide any particular procedure for conducting the hearing. That the law does not require the Minister to either take evidence or refrain from taking evidence. Further counsel claims that the Ex parte Applicant did not show that the decision of the 1st Respondent was tainted with illegality, irrationality and procedural impropriety. Counsel claims that the decision was fair, objective and procedural. It is further claimed that the Ex parte Applicant has not shown that the decision is so unreasonable that it defies logic and as such the court cannot substitute its decision for that of the Respondent.

17. In addition, the Respondents cited the cases of *Ransa Company Ltd vs Manoa Francesco & 2 others* v (2015) KLR where the court held that judicial review is very restrictive in its jurisdiction and the nature of the remedies and reliefs available to the parties. They also relied on the holding in *Commissioner of Lands vs Kunste Hotel Limited* (1997) eKLR.

The Interested Parties Case and Submissions

18. The Interested parties jointly swore a Replying Affidavit on the 13th of January 2022 stating that the Court case instituted by the Ex parte Applicant resulted in a sub-division exercise and were duly sub-divided among members of their family as well as the Ex parte Applicant's family and each one got their respective shares.

19. On 30th October 1993, a letter was written to the Ex parte Applicant reminding him of the clan's decision that he had encroached onto their land and was to move and stop working on their land. They claim that about the year 1995, the Ex parte Applicant sued their son Geoffrey Ngui Muinde in the

Senior Resident Magistrates Court at Kitui vide land case no. 4 of 1995 which was later transferred to the Land Disputes Tribunal for hearing but the Ex parte Applicant did not follow up on the case.

20. It is the Interested Parties' averment that despite the cases, the Ex parte Applicant constructed his homestead on their land during the adjudication processes. They stated that the Land Adjudication Officer in the objection proceedings No.84 of 2001 noted that the land in dispute is theirs but since he is their family member, they accepted that his homestead be extracted and the same was given Plot No. 2188. The Interested Parties further stated that the Ex parte Applicant wrote a letter to the Chairman Ndunguni Adjudication Section accepting to exchange a portion of land No. 1584 and land parcel No. 1369.

21. The Interested Parties state that the Land Adjudication Officer and the 1st Respondent in the Minister's Appeal rightly analyzed the proceedings, evidence and documents presented and arrived at a just decision. That the 1st Respondent clearly confirmed that he heard the parties brief submissions and equally interrogated the proceedings in the objection stage before making his decision, they claim the decision was fair and just, in accordance with the law and laid down procedure.

22. Counsel for the Interested Parties filed written submissions and stated that the Ex-parte Applicant is seeking this court to re-examine, review and analyse the factual history of the dispute and to ostensibly review the merits of the decision, which is not within the mandate and permitted parameters of the judicial review process as set out in the cases of *Municipal Council of Mombasa vs Republic* (2001) LLR 3742 and *Republic vs. Minister of Lands & Another Ex parte Peterson Thiga Mukora* (2013) eKLR. It was held that the court should not act as a Court of Appeal which would involve going into the merits of the decision itself to determine whether there was or there was not sufficient evidence to support the decision.

23. It is the Interested Parties' submission that the Ex-parte Applicant fully participated in every stage of the proceedings and equally participated in the Minister's Appeal proceedings and was duly heard and has not shown any procedural flaws or impropriety in the proceedings. According to the Interested Parties, the proceedings, being quasi-judicial in nature were not required to comply strictly with the rules of evidence as applied in the civil courts or the Civil Procedure Rules. They relied on the holding in Republic vs Minister for Lands & Another ex-parte Peterson Thiga Mukora (2013) eKLR as well as the case *Republic v Cabinet Secretary of Lands, Housing, Physical Planning and Settlement & 4 others Ex Parte Gilbert Muchiri Ngaine* (2018) eKLR where the Court held that it is not the province of this court to substitute the decision of the Minister with its own decision.

24. On the issue of bias, they submitted that the Ex parte Applicant has not demonstrated presence of bias and the extent of such bias. They relied on the case of Republic v County Commissioner Mwingi East Ex parte Katu Kasina Musyoki; Kinaa Wambua (Interested Party) (2021) eKLR. In the same case it was found that under Section 29 of the *Land Adjudication Act*, the Ministers mandate is to consider the grounds of appeal and the record of the Land Adjudication Officer and then arrive at an independent decision and that the Minister need not take fresh evidence while dealing with an appeal although he may do so to seek clarification on certain issues.

Analysis and Determination

25. I have considered the Notice of Motion dated 2nd November 2020, supporting affidavit, Statement of Facts verifying affidavit and Supplementary affidavit, the Replying Affidavits by the Respondents and Interested Parties and submissions filed by all Counsels. I am of the view that the following issues arise for determination;

A. Whether the 1st Respondent failed to give reasons for the decision made on 28th April 2020 in Ministers Appeal number 98 of 2001

B. Whether the 1st Respondents decision was incorrect, irrational, unreasonable, unsound and tainted by illegality and impropriety.

A. Whether the 1st Respondent failed to give reasons for the decision made on 28th April 2020 in Ministers Appeal number 98 of 2021

26. The Findings and Judgment of the 1st Respondent dated 28th April 2020 attached to the affidavit of the Exparte Applicant is indeed a brief one contained in one sentence of two lines where he found that:

> " After hearing the brief submissions of both parties and after interrogating the proceedings in the objection stage, I am persuaded to and hereby uphold the objection decision."

27. The right to be given reasons for a decision is guaranteed under Article 47 of *the Constitution* of Kenya 2010 as a one of the rights and fundamental freedoms under Chapter four of *the constitution*. The said Article provides that;

    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.

28. The above constitutional provision is reiterated under Section 23 of the Fair Administrative Actions Act which provides that Administrative action is to be taken expeditiously, efficiently, lawfully, reasonably and with procedural fairness. Section 2 (2) repeats the constitutional provision 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.

29. The decision subject matter of this suit arises out of an Appeal to the Minister under Section 29 of the *Land Adjudication Act*. The said proceedings involve a right to land parcel number 2366 which was curved out of land parcel 2188. The said right is protected under *the Constitution* Article 40 which provides for Protection of right to property and states:-

> " Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—of any description; and in any part of Kenya."

30. It is my finding that the Ex parte applicant was entitled to a hearing that ensures his right to property is protected through fairness in the hearing of his appeal and to be given reasons for the decision by the 1st Respondent as provided under Article 47 of *the constitution* and Section 23 of the Fair Administrative Actions Act.

31. It is also a fundamental requirement of common law that reasons for judgment or ruling be given by any judicial officer. Thomas J in *Bell-Booth v. Bell-Booth* [1998] 2 NZLR 2 put it succinctly when he rendered himself as follows:-

> " Reasons for judgment are a fundamental attribute of the common law. The affinity of law and reason has been widely affirmed and Judge's reasoning -his or her reasons for the decision - is a demonstration of that close assimilation. Arbitrariness or the appearance of arbitrariness is refuted and genuine cause for lasting grievances is averted. Litigants are

assured that their case has been understood and carefully considered. If dissatisfied with the outcome, they are able to assess the wisdom and worth of exercising their rights of appeal. At the same time public confidence in the legal system and the legitimacy and dynamic of the common law is enhanced. The legal system can be seen by (sic) working and, although possibly at times imperfectly, striving to achieve justice according to law."

32. The Court of Appeal in *Suchan Investment vs. the Ministry of National Heritage and Culture* (2016) eKLR reiterated the applicability of general principles of common law and rules of natural justice in review of administrative actions. The court 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)."

33. In the case of *Philip Mururi Ndaruga v Gatemu Housing Co-operative Society Ltd* [2016] eKLR Mativo J. in setting out the rationale for giving reasons for judgments also sets out what constitutes reasons for a decision as being an explanation on how and why the decision was arrived at and may include articulation of factual and legal basis for the decision. The court stated as follows;

> " Plainly, there are a number of justifications for requiring the provision of reasons. In the case of an appeal, reasons enable an appellate court to be satisfied that the decision-maker took into account all matters that he or she was required to consider, and did not have regard to extraneous material. Reasons also enable an appellate court to determine whether any other form of jurisdictional error has been demonstrated.
>
> Reasons enable litigants to see whether any appealable or reviewable error had been committed, thereby informing the decision whether to appeal, or let the matter lie. The discipline of giving reasons could make decision-makers more careful, and rational. Finally, the provision of reasons could provide guidance for future cases. It is fair to say that the merits of giving reasons have never seriously been doubted."

34. Looking at the 1st Respondents decision, the question arises as to whether any reason for the decision can be gleaned from the statement that constitutes the decision "after interrogating the proceedings in the objection stage, I am persuaded to and hereby uphold the objection decision." In my view the decision of the 1st Respondent does not contain any reasons.

B. Whether the 1st Respondents decision was incorrect, irrational, unreasonable, unsound and tainted by illegality and impropriety

35. It is my finding that the decision of the 1st Respondent was tainted with illegality for the reason that it denied the Ex parte Applicant a fundamental right and contravenes the provisions of Article 47 (2) of *the Constitution* and Section 23 of the Fair Administrative Actions Act for failure to give to the applicant reasons for the decision made while being aware that his constitutional right to land was likely to be adversely affected by the administrative action.

36. In the case of Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300 the Ugandan High Court defined the terms tainted with illegality, irrationality and procedural impropriety as follows:

> "It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission…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 a failure to act fairly on the part of the decision-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 to be 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 exercises jurisdiction to make a decision."

37. Further, I am of the considered view that the decision of the 1st Respondent was irrational on the ground that the said decision was unreasoned. In De Smith's Judicial Review (sixth edition) states at page 559 that:

> "Although the terms irrationality and unreasonableness are these days used interchangeably, irrationality is only one facet of unreasonableness. A decision is irrational in the strict sense of that term if it is unreasoned; if it is lacking ostensible logic or comprehensible justification."

38. In the present case the decision maker did not show that he called to his own attention the matters which he was bound to consider or that he excluded from his consideration matters which are irrelevant to what he has to consider in arriving at his decision and for that reason his decision is deemed to have been unreasonable.

39. In *Associated Provincial Picture Houses vs. Wednesbury Corporation* [1948] 1 KB 223 it was held:

> "It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably."

40. In *Bwire v Wayo & Sailoki* (Civil Appeal 032 of 2021) [2022] KEHC 7 (KLR) (24 January 2022) (Judgment) the Court underscored the legal obligation for giving reasons for decisions and gave the purpose for which reasons for judgments are given;

> "The giving of reasons for a judicial decision serves at least three purposes. First, it enables the parties to see the extent to which their arguments have been understood and accepted as well as the basis of the court decision. Thus, the articulation of reasons provides the foundation for the acceptability of the decision by the parties and by the public. Second, the giving

of reasons furthers judicial accountability. As Professor Shapiro said: -See McHugh JA in *Soulemezis v Dudley Holdings*"... A requirement that judges give reasons for their decisions — grounds of decision that can be debated, attacked, and defended — serves a vital function in constraining the judiciary's exercise of power. In Defence of Judicial Candor (1987) 100 Harv L Rev 731 at 737

Third, under the common law system of adjudication, courts not only resolve disputes — they formulate rules for application in future cases.[57] Hence, the giving of reasons enables practitioners, legislators and members of the public to ascertain the basis upon which like cases will probably be decided in the future."

41. From the foregoing it is clear that the benefits of giving reasons cannot be gainsaid as the said reasons provide acceptability of the decision, furthers judicial accountability provides guidance for future cases. What about sufficiency of reasons given? The expectation would be that there must be some process of reasoning set out in the decision which enables one to see the path by which the conclusion was reached. I agree with Counsel for the Ex parte applicant that failure to give reasons casts doubt on the 1st Respondents fairness and led to a breach of the rules of natural justice.

42. In the present case the Ex parte Applicant complains that the 1st Respondent failed to consider the elaborate grounds of appeal he had presented to court. Save for the general statement that the grounds of appeal had been considered the Ex parte Applicant is left to guess which grounds of appeal succeeded or failed and the grounds for failure or success. It is my view that the 1st Respondent's decision does not give the applicant the opportunity to see the extent to which his arguments had been understood and accepted or rejected and the grounds on which such acceptance or non acceptance are based on. Further, such failure renders the decision maker unaccountable for his decision and for the exercise of his power.

43. In Msagha vs. Chief Justice & 7 Others Nairobi HCMCA No. 1062 of 2004 [2006] 2 KLR 553 the High Court expressed itself as follows:

> " If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision."

44. I further find that the mere statement in the judgment by the 1st Respondent that he heard the parties' submissions did not satisfy the requirement to consider the grounds of appeal. I agree with the findings in the case of *Republic v Attorney General & 2 others Exparte Emmanuel Poghisio* [2018] eKLR where it was stated that;

> " If the grounds of appeal were not considered it naturally follows that the decision of the District Commissioner may have been based on reasons other than those that he would have given had he dealt with the grounds, or which would have naturally flowed from those grounds. I have examined the record and there are no reasons given for the decision. In the instant case the reasons this court would consider have to be reasons that sprint from an analysis of each of the grounds of appeal, and not any other matters outside the grounds. The merits of those reasons would not matter. However, I do not find any reasons on the record."

45. In the case of *Republic vs. Special District Commissioner & another* [2006] eKLR the court set out the process and procedure of hearing of appeals to the Minister are to be conducted emphasizing the need to consider the grounds of appeal. The court stated as follows:

> " It is expected therefore that the District Commissioner receives the lower tribunal records which will include the written grounds of appeal of the aggrieved party, and these are the documents which form the lower…court record that will assist him to, "…determine the appeal and make such order thereon as he thinks just …." It is fashionable in this kind of applications, for Interested Parties to argue that the District Commissioner has a free hand to conduct the appeal in any manner he wishes. That the Act has not specified a procedure for him to follow in determining the appeal so long as he finally makes such orders thereon as he thinks just. That might be so but only to a point, in my view. With great respect, it might be time to reexamine Section 29 (1) aforesaid more closely. If the provision requires that the aggrieved party who wishes to appeal to the minister, will file a statement of written grounds of appeal, then the method of appeal is in that way, defined. It is also provided that the Minister shall determine the appeal and make such order on the appeal as he thinks just. My understanding of the method of determining the appeal then, is receiving the written grounds of appeal and perusing them before determining it by making such an order on it as he thinks just. This means to me that the District Commissioner (Minister) has to examine the written grounds of appeal along with the Land Adjudication Officer's proceedings, judgment, ruling or award, and from it, he will, make a just order or judgment. Can the District Commissioner refuse to read the substance of the evidence and the decision of the Land Adjudication Officer from whom the appeal came" Should he on the other hand have totally disregarded the grounds of appeal of the aggrieved party." In my view, he should not have ignored the Land Adjudication Officer's lower tribunal's record of evidence and decision. He could however have considered the Land Adjudication Officer's decision and have accepted it or rejected it. But it was improper to have ignored the written grounds of appeal since without them there was seriously no appeal before him as envisaged by Section 29(1) (a) of the *Land Adjudication Act*. Nor can it be seriously argued that the appellant's appeal was effectively put before that tribunal or argued before it, contrary to the cardinal rule of fairness that an appellant like any party before the court, has a right to put his case before the court, squarely."

46. For the foregoing reasons it is my finding that the 1st Respondent failed to give reasons for the decision made on 28th April 2020 in Ministers Appeal number 98 of 2001. I further find that failure by the 1st Respondent to give reasons for his decision rendered the said decision irrational, unreasonable, and unsound and further the said decision was tainted by illegality and impropriety. For the said reasons I find that the Notice of Motion application dated 2nd November 2020 has merit.

Final Order

1. I therefore allow the Ex parte applicants Notice of Motion application dated 2nd November 2020 and hereby grant an order of Certiorari to remove into this Court the proceedings and the decision of the 1st Respondent dated 28.4.2020 and the same be and are hereby quashed for being null and void.

2. The Appeal to the Minister Case No. 98 of 2001 Ndunguni Adjudication Section, Parcel No. 2366 be referred back with directions that the same be heard and determined in accordance with the law.

3. The costs of this suit are hereby awarded to the Ex Parte Applicant by the 1st Respondent.

DELIVERED, DATED AND SIGNED AT KITUI THIS 29TH DAY OF JUNE 2022

HON. L. G. KIMANI

ENVIRONMENT AND LAND COURT JUDGE

Judgement read in open court in the presence of-

C. Nzioka Court Assistant

............................Advocate for the Ex Parte Applicant

.... Advocate for the Respondents

..............................Advocate for the Interested Parties