



**Republic v Deputy County Commissioner Baringo Central & 7 others; Toroitich (Interested Party); Chebet (Exparte) (Environment and Land Judicial Review Case 11 of 2022) [2022] KEELC 4819 (KLR) (25 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 4819 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 11 OF 2022**

**L WAITHAKA, J**

**JULY 25, 2022**

**IN THE MATTER OF AN APPLICATION OF WILLIAM CHEPKONGA CHEBET FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT (CAP 284) LAWS OF KENYA**

**AND**

**IN THE MATTER OF PLOT NUMBERS 249 AND 240  
KOIBARAK ADJUDICATION SECTION (BARINGO**

**CENTRAL SUB-COUNTY)**

**AND**

**IN THE MATTER OF THE DECISION OF THE DEPUTY  
COUNTY COMMISSIONER, BARINGO CENTRAL SUB COUNTY**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DEPUTY COUNTY COMMISSIONER BARINGO CENTRAL .... 1<sup>ST</sup>  
RESPONDENT**

**THE CABINET SECRETARY FOR LANDS, HOUSING AND URBAN  
DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR, BARINGO LANDS REGISTRY .... 3<sup>RD</sup> RESPONDENT**

**THE COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER,  
BARINGO ..... 4<sup>TH</sup> RESPONDENT**



**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 5<sup>TH</sup>  
RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 6<sup>TH</sup> RESPONDENT**

**THE COUNTY LAND REGISTRAR, ELGEYO MARAKWET .... 7<sup>TH</sup>  
RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**STEPHEN KIPLIMO TOROITICH ..... INTERESTED PARTY**

**AND**

**WILLIAM CHEPKONGA CHEBET ..... EXPARTE**

## **JUDGMENT**

### **Introduction**

1. Pursuant to leave granted to the *ex parte* applicant on January 3, 2020 to institute Judicial Review Proceedings against the judgment delivered on June 27, 2019 by the 1<sup>st</sup> respondent in Baringo Central Sub County Appeal to the Minister No.72 of 2001, the *ex parte* applicant filed the notice of motion dated January 18, 2020 seeking an order of *Certiorari* to remove into this court and quash the proceedings and judgment delivered on June 27, 2019 by the 1<sup>st</sup> respondent in appeal to the Minister Case No.72 of 2001 in respect of land parcels numbers 249 and 240 Koibarak Adjudication Section between William Chepkonga Chebet (Appellant) and Stephen Kiplimo Arap Toroitich (Respondent); an order of prohibition to prohibit the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondent from implementing the decision and issuing title deed to the Interested Party.
2. The application is premised on the grounds that the *ex parte* applicant was not accorded opportunity to present his appeal to his satisfaction; that the 1<sup>st</sup> respondent failed to observe the rules of natural justice; that the 1<sup>st</sup> respondent harrassed, threatened and intimidated the *ex parte* applicant and his witnesses; that the 1<sup>st</sup> respondent was biased against the *ex parte* applicant, failed to evaluate all the evidence presented by the *ex parte* applicant vis a vis all the grounds of appeal presented by the *ex parte* applicant. The 1<sup>st</sup> respondent is said to have failed to record and analyze evidence presented; introduced new evidence ; acted ultra vires by making an award relating to parcel number 240 which was not a subject of the appeal. The 1<sup>st</sup> respondent is also said to have failed to appreciate that the *ex parte* applicant's appeal was on a portion of land measuring about fifteen (15) acres in plot No.249 Koibarak Adjudication Section; failed to heed the appellant's request to visit the locus in quo; was not impartial and that the *ex parte* applicant was not accorded a fair hearing. The 1<sup>st</sup> respondent is said to have failed to provide the appellant a Tugen interpreter to enable him present his case clearly and to have relied on extraneous evidence.
3. The application is opposed through the replying affidavit of John Ongalo Laku on which the deponent has inter lia deposed that the application is incurably defective, frivolous, scandalous, devoid of merits, full of falsehoods and misrepresentations tailored to win sympathy of the court; that the issue of language barrier was not raised during hearing of the appeal or even in the previous proceedings; that there is no evidence that the applicant requested for an interpreter during hearing; that the allegation



that the applicant was prevented from properly participating in the proceedings and presenting his appeal is an afterthought perpetuated for selfish end; that there is no proof that the applicant was not afforded ample time to ventilate his case; that the 1<sup>st</sup> respondent's decision did not extend to plot No.240 and that mention of plot No.240 is on account of it having being mentioned during cross examination of the witnesses; that the application is an appeal against the decision of the Minister disguised as a judicial review application and that the *ex parte* applicant has not made up a case for being granted the orders sought.

4. In a rejoinder, the *ex parte* applicant filed his response to the issues raised in the respondents' replying affidavit reiterating the issues raised in his motion. In particular, the *ex parte* applicant has deposed that the application is premised on procedural law rather than substantive law hence not incompetent, defective, frivolous or scandalous as contended by the respondents; that the verifying affidavit does not contain falsehoods and that he is seeking justice as opposed to sympathy from the court; that he had no case in respect of plot No.240 but 249; that plot No.240 and 249 are not adjacent but are 10 kilometres apart; that the 15 acres awarded to the Interested party were from plot No.249 and not 240; that there was nothing like combining 15 acres to No.249; that the proceedings in the Land Adjudication Committees was done in Tugen language which he is conversant with and that all the committee members were Kalenjin of the Tugen tribe; that both plot number 240 and 249 belong to him and that it is clear from the proceedings that the same were sketchy, short and done in a hurry.
5. It is further contended that it was the duty of the "court" to ask the *ex parte* applicant whether he was comfortable with the language of the "court", and if he was not, to get for him an interpreter to enable him put forth his case properly; that from the proceedings, it is clear that the *ex parte* applicant was having difficulty putting forth his case/arguments. The observation by the "court" that the *ex parte* applicant contradicted himself on something as mundane as who was the owner of the suit property, is said to be enough proof that the *ex parte* applicant was having difficulties with the language of the court.
6. It is further contended that it is evident that the *ex parte* applicant was not accorded a fair hearing by the Minister and that the Minister was biased against him. It is reiterated that on many occasions, the Minister harassed, intimidated and threatened him.
7. It is further deposed that the authority of the 1<sup>st</sup> respondent to determine the appeal is not in question/ is not challenged in the application and asserted that the Minister's decision extended to plot No.240. The *ex parte* applicant wonders why the respondent mentioned it and captured it in his finding if it did not form part of the appeal.
8. It is reiterated that the application is not an appeal disguised as a judicial review application as contended by the respondents and that the *ex parte* applicant is not asking the court to go into the merits of the proceedings/decision of the Minister but to look at the procedural flaws in the process/proceedings.
9. Pursuant to directions given on February 20, 2020, the application was disposed of by way of written submissions.

### **Ex parte Applicant's Submissions**

10. In his submissions, the applicant has framed the following as the issues for the court's determination:-
  - i. Whether the decision by the 1<sup>st</sup> respondent was tainted by procedural improprieties;
  - ii. Whether the *ex parte* applicant's right to a fair hearing was violated?



- iii. Whether there was an error apparent on the face of the record?
  - iv. Whether cross examining of parties and their witnesses by the 1<sup>st</sup> respondent before the adverse party cross examined, amounted to an illegality and the 1<sup>st</sup> respondent entering into arena of litigation?
  - v. Whether the decision of the 1<sup>st</sup> respondent was tainted with illegality and unreasonableness; and
  - vi. Whether the Judicial Review application herein is merited?
11. On whether the decision by the 1<sup>st</sup> respondent was tainted by procedural improprieties, it is submitted that the 1<sup>st</sup> respondent while conducting the hearing of the appeal was openly biased and impartial. It is contended that he threatened the *ex parte* applicants and his witnesses that he would lock them up if they pursued a certain line of evidence. The conduct of the 1<sup>st</sup> respondent is said to be incapable of passing the test of fair minded and informed observer. It is submitted that the only reasonable deduction from the conduct of the 1<sup>st</sup> respondent is that he had a predetermined outcome of the proceedings before him. The 1<sup>st</sup> respondent is said to have failed to afford the *ex parte* applicant and his witnesses a conducive environment to adduce their evidence-environment without threats, intimidation, coercion or force to enable them present their evidence to the best of their abilities thereby failing to accord the *ex parte* applicant and his witnesses justice.
  12. It is further submitted that the conduct of the 1<sup>st</sup> respondent bordered on being biased against the *ex parte* applicant hence lacking impartiality.
  13. It is contended that the *ex parte* applicant was not accorded a fair opportunity to present his case-; the 1<sup>st</sup> respondent is said to have failed to take into account that the *ex parte* applicant was an old man (71), fluent in Tugen language but with limited knowledge of Kiswahili and English. It is lamented that the proceedings were conducted in English without taking into account the difficulty the *ex parte* applicant had communicating with the court.
  14. The determination by the 1<sup>st</sup> respondent that the *ex parte* applicant contradicted himself in his evidence is said to be evidence of the *ex parte* applicant's inability to understand the language of the court.
  15. The 1<sup>st</sup> respondent is said to have rushed the *ex parte* applicant through the proceedings and forced him on several occasions to shorten his statements with the excuse that he had so many other cases to hear and finalize.
  16. The 1<sup>st</sup> respondent is said to have grossly breached the rules of natural justice by being openly biased and partial. It is reiterated that the 1<sup>st</sup> respondent failed to give the *ex parte* applicant sufficient opportunity to present his case and defend his right to property.
  17. On whether the *ex parte* applicant's right to a fair hearing was violated, it is reiterated that the *ex parte* applicant was harrassed and threatened by the 1<sup>st</sup> respondent and denied sufficient opportunity to present his case. It is contended that the *ex parte* applicant was not conversant with the language used to conduct the appeal. The 1<sup>st</sup> respondent is faulted for failing to provide the *ex parte* applicant and his witnesses with an interpreter.
  18. Concerning the respondent's contention that the issue of language did not arise in the previous proceedings, it is submitted that the 1<sup>st</sup> respondent failed to appreciate that all committee members in the previous proceedings were Tugen speaking and that the language used there was Tugen. The 1<sup>st</sup>



respondent is said to have denied the applicant the right to fair hearing guaranteed under Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Actions Act*, 2015.

19. On whether there was an error apparent on the face of the record, it is contended that the 1<sup>st</sup> respondent made a decision on two parcels of land, 240 and 249 when the dispute before him was on parcel number 249 only. It is submitted that the 1<sup>st</sup> respondent mistakenly believed that the Adjudication Board awarded the *ex parte* applicant 249 and the interested party 240. That alleged mistaken belief is said to have made the basis of the decision of the 1<sup>st</sup> respondent of upholding the decision of the Land Adjudication Board. It is pointed out that the Land Adjudication Board awarded the Interested Party 15 acres to be excised from plot No.249. The decision of the 1<sup>st</sup> respondent is said to be vitiated by the said error on the face of the record hence ultra vires. The alleged error is said to be proof that the 1<sup>st</sup> respondent made his decision hurriedly.
20. On whether cross examining of parties and their witnesses by the 1<sup>st</sup> respondent before the adverse party cross examined amounted to an illegality and the 1<sup>st</sup> respondent entering into arena of litigation, it is submitted that a microscopic look on the entire proceedings shows that the 1<sup>st</sup> respondent was the first to cross examine the *ex parte* applicant and his witnesses before allowing the adverse party to cross examine. That is said to be contrary to the laid down basic rules of procedure requiring the adverse party to cross examine witnesses first and not the trial judge or arbiter.
21. The 1<sup>st</sup> respondent is said to have taken over the complaint in the appeal hence not an impartial arbiter. The 1<sup>st</sup> respondent is further said to have descended into the arena of the conflict and engaged in excessive cross examination. By cross examining the appellant and his witnesses before the adverse party, the 1<sup>st</sup> respondent is said to have directed the interested party on the line of questions to put to the appellant. The approach taken by the 1<sup>st</sup> respondent of cross examining the appellant and his witnesses before the adverse party is said to have given the adverse party an upper hand in the litigation to the disadvantage of the appellant and his witnesses. In view of the foregoing, it is submitted that the decision of the 1<sup>st</sup> respondent is tainted with impropriety warranting it to be quashed.
22. On whether the decision of the 1<sup>st</sup> respondent was tainted with illegality and unreasonableness, it submitted that the 1<sup>st</sup> respondent didn't follow the expected procedure in reaching the impugned decision. The illegality and unreasonableness in the impugned decision of the 1<sup>st</sup> respondent is said to be manifested by:-
  - a. Failure to determine the grounds of appeal before the Minister. The 1<sup>st</sup> respondent is said to have disregarded the *ex parte* applicant's grounds of appeal;
  - b. Relying on extraneous matters when making the impugned decision. The 1<sup>st</sup> respondent is said to have failed to take into account and/or to properly analyze the evidence tendered by the *ex parte* applicant and his witnesses. For instance, the 1<sup>st</sup> respondent is said to have failed to take into account the evidence adduced before him to the effect that it is the appellant who was in use and occupation of the suit property and that the interested party had never occupied it. The 1<sup>st</sup> respondent is said to have relied on extraneous evidence that was not canvassed before him to reach his decision and the misguided belief that the Adjudication Board had awarded parcel No.240 to the *ex parte* applicant and 249 to the interested party; and that the two parcels of land border each other. It is submitted that if the 1<sup>st</sup> respondent had been prudent and visited the locus in quo he would have reached a totally different decision.
  - c. Failure to keep proper records of the proceedings before him. It submitted that the proceeding of the impugned appeal show that the appeal was done in a hurry. The proceedings are said



to be so haphazard that one can barely deduce their gist. The *ex parte* applicant contends that they cannot be used to form an informed decision.

- d. Failure to give reasons for his decisions. The 1<sup>st</sup> respondent is said to have failed to give reasons to support his findings. The *ex parte* applicant contends that the decisions seem to have been based on the 1<sup>st</sup> respondent's own thinking and wishes. There is no reason why he dismissed the appeal and upheld the decision of the Land Adjudication Board. For the foregoing reasons, the *ex parte* applicant urges the court to determine that there was procedural impropriety in the impugned decision of the 1<sup>st</sup> respondent.
23. On whether the Judicial Review application herein is merited, it is submitted that the *ex parte* applicant has demonstrated how the 1<sup>st</sup> respondent breached the rules of natural justice when he failed to accord the *ex parte* applicant a fair hearing and that his actions were marred with procedural impropriety.

### **Respondents' submissions.**

24. In their submissions, the respondents have given a brief overview of the case urged by the parties and framed three issues for determination by the court. These are:-
- i. Whether the 1<sup>st</sup> respondent had *locus standi* to hear and determine the appeal hereto;
  - ii. Whether this court has jurisdiction to determine issues in the notice of motion; and
  - iii. Whether the court should grant the reliefs sought.
25. On whether the 1<sup>st</sup> respondent had *locus standi* to hear and determine the appeal hereto, reference is made to the *ex parte* applicant's contention that the 1<sup>st</sup> respondent lacked authority to determine the appeal on behalf of the Minister and that his decision dated June 27, 2019 was a nullity *ab initio* for acting ultra vires. Concerning that contention, the respondents are said to have averred and demonstrated that the 1<sup>st</sup> respondent had jurisdiction to hear the Appeal to the Minister No.72 of 2001 having been authorized to do so by the Minister. It is submitted that the respondents proved that the 1<sup>st</sup> respondent had delegated authority from the Minister *vide* Gazette Notice No.6854 of September 13, 2014 annexed to the respondents' replying affidavit and marked JOL4. In view of the foregoing, the 1<sup>st</sup> respondent is said to have acted intra vires the provisions of the [Land Adjudication Act](#). In that regard reference is made to Section 29(4) of the [Land Adjudication Act](#) which permitted the Minister to delegate his powers to hear appeals. The section provides as follows:-

“29(4) Notwithstanding the provisions of section 38(2) of the [Interpretation and General Provisions Act](#) (Cap2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for time being holding any public office specified in such notice, and the determination, order and acts of such public officer shall be deemed for all purposes to be that of the Minister.”

26. The contention by the *ex parte* applicant that the 1<sup>st</sup> respondent acted ultra vires by making determination on parcel number 240 that was not a subject matter in the appeal is said to be misguided. It is reiterated that the 1<sup>st</sup> respondent acted within his powers and submitted that there is no error on the face of the Minister's record as contended by the *ex parte* applicant.



27. On whether the court has jurisdiction to determine the issues in the Notice of Motion, reference is made to the case of *Republic vs. Public Procurement Administrative Review Board & 2 Others Ex Parte-Sanitam Services (E.A) Limited* (2013)e KLR where Mumbi Ngugi J, (as she then was) stated:-

“Judicial Review proceedings is that the remedy of judicial review concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision making process. The purpose of the remedies availed to a party under the judicial review regime is to ensure that the individual is given fair treatment by the authority to which he has been subjected. The purpose is not to substitute the opinion of the court for that of the administrative body in which is vested statutory authority to determine the matter in question”;

and submitted that Judicial Review is predicated upon sufficient grounds being proved; that Judicial Review cannot be used to challenge the merits of the impugned decision or to seek to substitute a decision of a Tribunal with that of the court and that in the instant application, the court is being called to sit on the merits or otherwise of the 1<sup>st</sup> respondent’s decision.

28. The facts pleaded by the *ex parte* applicant are said to be beyond the scope of Judicial Review as they try to test the meritocracy of the 1<sup>st</sup> respondent’s decision. For instance, the contention by the *ex parte* applicant that the 1<sup>st</sup> respondent failed to consider all the evidence presented vis-a-vis the grounds of appeal thereby arriving at a manifestly wrong conclusion that the *ex parte* applicant had not proved his case is said to be an argument tailored to show that the 1<sup>st</sup> respondent’s decision is unmeritorious and invites for an opinion of the court on the merits of the appeal based on evidence presented in the appeal. The court is urged to find that invitation to be outside the purview of Judicial Review, for all intents and purposes.
29. The contention by the *ex parte* applicant that the 1<sup>st</sup> respondent introduced new evidence beyond that which was presented and that it was wrong for 1<sup>st</sup> respondent to introduce parcel number 240 Koibarak into the arena and to make a finding on it; it is submitted that those are matters that go to the merit of the decision. The issue of parcel number 240 is said to have arisen during cross examination and that the 1<sup>st</sup> respondent merely made a comment on it while analyzing the evidence. He did not make a decision on it.
30. Similar sentiments are expressed concerning the *ex parte* applicant’s contention that the 1<sup>st</sup> respondent’s decision is vitiated by error on the face of the record by failing to appreciate that the appeal was in respect of a portion of land measuring 15 acres in parcel number 249 Koibarak and failing to visit the suit land to establish its location, size, boundary, use and occupation. By arguing that there are errors apparent on the face of the record, the *ex parte* applicant is said to be inviting the court to review the decision of the respondent on its merits. It is further submitted that the 1<sup>st</sup> respondent was not under any statutory obligation to visit the locus in quo. The decision whether to visit the suit property is said to have been within the discretion of the 1<sup>st</sup> respondent hence cannot be a ground of review of the decision of the 1<sup>st</sup> respondent.
31. Concerning the contention that the 1<sup>st</sup> respondent descended into the scene of litigation by cross examining the parties hence not impartial, it submitted that the 1<sup>st</sup> respondent treated the parties equally; that none of the parties raised any complaint concerning the manner in which the proceedings were being conducted and that the *ex parte* applicant has not pleaded that he ever raised a complaint against the proceedings or that his complaint was overruled. It is further submitted that no witness affidavit has been filed to corroborate the allegation. The allegations by the *ex parte* applicant are said



- to be plain hearsay allegations without any tangible evidence to buttress the allegation that the 1<sup>st</sup> respondent intimidated or harrassed him or was biased as alleged.
32. It is submitted that in the proceedings before the Minister, the rules of evidence are usually relaxed as both the administrator and parties are laymen. In the circumstances of this case, the 1<sup>st</sup> respondent is said to have exceeded expectation in according the parties fairness.
  33. On whether the *ex parte* applicant was afforded ample opportunity to present his case, it submitted that the available evidence and the proceedings show each party was afforded opportunity to present their respective case. There is no evidence that the *ex parte* applicant and his witnesses did not comprehend the language of the “court” or that the *ex parte* applicant requested for an interpreter and the request was denied.
  34. On whether the court should grant the reliefs sought, it is pointed out that the *ex parte* applicant seeks for *certiorari* and prohibition but has not sought for an order of *Mandamus* to compel the Minister to re-hear the appeal. It is the respondents’ case that if the orders sought are granted without an order to compel the Minister to re-hear the appeal, it is not known what would happen to the appeal. In the circumstances of this case, the scales of justice are said to tilt in favour of denying the orders sought. It is submitted the orders sought being discretionary in nature may be denied if the circumstances do not warrant making the orders.

### **Analysis and determination**

35. I have carefully read and considered the pleadings filed in this case, the affidavit evidence adduced in support thereof and the submissions by the respective parties and find the sole issue for the court’s determination to be whether the *ex parte* applicant has made up a case for being granted the orders sought.
36. Concerning that issue, I have carefully reviewed the many allegations of wrongdoing levelled against the 1<sup>st</sup> respondent like the allegation that he intimidated, harrassed and threatened the *ex parte* applicant and his witness. Other than making those serious allegations, the *ex parte* applicant did not provide any material before the court that can help the court determine those serious issues of fact. There was no evidence of any complaint made by the *ex parte* applicant or his witnesses concerning the alleged conduct of the 1<sup>st</sup> respondent either to the 1<sup>st</sup> respondent or any other authority. Without such evidence, I am afraid I cannot determine that the process was vitiated by such unsubstantiated allegations.
37. I have also considered the evidence adduced by the *ex parte* applicant and his grounds for asserting that the 1<sup>st</sup> respondent was biased, partial and unfair to him; I could not find any reasonable ground for holding that belief or opinion. The proceedings show that the parties were treated equally. There is no evidence that any of the parties complained to the 1<sup>st</sup> respondent or any other person or authority concerning the alleged biasness, impartiality and unfairness. The mere allegation or contention that the 1<sup>st</sup> respondent was biased, impartial and unfair to the *ex parte* applicant, without any proof or reasonable ground for holding that belief, cannot form any basis for interfering with the decision of the Minister.
38. On whether the *ex parte* applicant was denied an opportunity to present his case to his satisfaction, no evidence or reasonable ground for holding that opinion has been presented before this court to warrant making that determination. There is no evidence that the applicant was prevented from properly presenting his case by the 1<sup>st</sup> respondent as alleged. Although the issue of language barrier is a key consideration in determining whether the *ex parte* applicant and his witnesses had opportunity to



properly participate in the proceedings, I note that it was not raised before the 1<sup>st</sup> respondent and the Minister failed to act. The proceedings of the Appeal to the Minister show that the *ex parte* applicant and his witnesses participated in the proceedings. They answered the questions put to them by the 1<sup>st</sup> respondent and the Interested Party. The mere fact that the *ex parte* applicant contradicted himself cannot be a basis for determining that he did not understand the questions put to him on account of language barrier. To prove that the *ex parte* applicant was denied an opportunity to properly present his evidence on account of language barrier, it behooved the *ex parte* applicant to prove that he made known to the 1<sup>st</sup> respondent his incapacity to participate in the proceedings in the language of the “court” and that the 1<sup>st</sup> respondent failed to remedy the situation or that the 1<sup>st</sup> respondent knew or ought to have known that the *ex parte* applicant and his witnesses had no capacity or had limited capacity to partake in the proceedings of the “court” using the language of the court. Having failed to prove that he made known to the 1<sup>st</sup> respondent that he had no capacity or had limited capacity to participate in the proceedings of the court using the language of the “court” or that the “court” had reason to know that he had limited capacity to participate in the proceedings of the “court” using the language of the “court”, the *ex parte* applicant cannot reasonably be heard to complain that he was denied an opportunity to sufficiently participate in the proceedings.

39. As to whether the 1<sup>st</sup> respondent erred by addressing issues touching on parcel number 240 when it was not the subject matter of the appeal, I note that the 1<sup>st</sup> respondent’s final decision did not touch or affect that property. Nothing turns on mere mention of the plot. I am unable to agree with the *ex parte* applicant that the 1<sup>st</sup> respondent acted on misguided belief that the interested party was given plot number 249 and himself 240. The court’s record does not bear out that fact. In that regard see the proceedings which were as follows:-

“In the Court of the Deputy County Commissioner-Baringo Central Appeal to the Minister  
Case No.72 of 2001

Land parcel No.249 Koibarak Adj/Section

Appellant: William Chepkonga ID/No.23XXX69

Vs

Respondent: Stephen Kiplimo Arap Toroitich ID No.0XXXX63

A/Witness: Matini Kipro Maluwei ID No.2XXX144

R/Witness:

1. Peter Kibet Too ID No. 4XXXX91

2. Kapsore Kigen ID No.3XXXX04

Statement from appellant-duly sworn. States, I have come because of land case on plot No.249. We had done case on the ground with wazees and the appellant had demarcated the land to himself and it established the land belongs to the respondent. He had not utilized the land in any way.

Signed.....2XXXX69.

XX by DCC

Q. Who is currently utilizing P/No.2XX?

A. Me.



Q. How big is the land?

A. I can't tell.

Q. Is the respondent your neighbour?

A. No.

Q. How many times has the case been heard?

A. Many times.

Q. What was the verdict at objection stage?

A. I won.

Q. Then why did you file an appeal to the Minister?

A. No answer.

XX by respondent

Q. You said the land is mine in your statement, does it mean you agree the land is mine?

A. No.

Q. Why did you file a case?

A. Because the land is recorded in your name.

Statement of respondent-duly sworn. States this land belonged to my grandfather and I inherited it and demarcated it in my name.

Signed.....ID No.0337063

XX by the DCC

Q. What is your grandfather's name?

A. Toroitich Chelagat.

Q. When were you given this land by your grandfather?

A. I can't remember.

Q. Who is currently utilizing the disputed land?

A. The appellant.

Q. You have not utilized the land?

A. Yes.

XX by Appellant

Q. Why don't you utilize the land?

A. Because I bought land elsewhere.

Q. What was your grandfather's name?

A. Chelagat Toroitich.



Statement from A/Witness No.1-Peter Kibet Too duly sworn. States the disputed land belonged to the appellant given him by my grandfather. We lived there since long time ago.

Signed .....4544091

XX by DDC-NIL

XX by the Respondent

Q. Are you aware that this is our family land?

A. No.

Q. Are you aware the land was demarcated to me?

A. I do not know by whom.

Appellant Witness No. 2-Kigen Kapsore-duly sworn. States, this land was awarded to the appellant by wazees long time ago.

Signed.....LTP of Kapsore Kigen.

XX by DCC

Q. Who is currently utilizing the land?

A. The appellant.

Q. Has the respondent ever utilized the land?

A. No.

Statement from respondent's witness-Matini K. Maluei-Duly sworn. States, I know this land because we were neighbours and I used to cultivate this land and my father had asked me to respect the boundary between us. The appellant wants to forcefully acquire the land. The land has had many cases and the wazee who did the case are now deceased and all through Stephen has won.

XX by DCC

Q. You said the land has had many cases, what was the verdict?

A. The land belongs to Stephen.

Q. Who is currently utilizing the disputed land?

A. Appellant.

XX by appellant

Q. What force have I used to access the land?

A. Because you have cultivated.

Q. You say you lived in that area, where was your house?

A. We were neighbouring each other on our parcels.

Q. Which year was then.

A. You were a small boy.

Findings



The appellant started off by contradicting himself because he clearly stated that wazees established that the disputed land belongs to the respondent. He further contradicted himself during cross examination by starting that the land in question has many cases which he won but went ahead and made an appeal to the Minister Case. The respondent on the other hand says that he is rightfully acquired this parcel of land through inheritance. The land had been previously subjected to a land committee and A/Board case. The A/Board gave the respondent a portion recorded as P/No.249 and the appellant got Plot No.240 which borders this parcel of land. The objection case upheld the A/Board decision.

Decision

Appeal to the Minister Case No.72 of 2001 on Parcel No.249 is dismissed. Land to remain as recorded to Stephen Kiplimo Toroitich.

Signed..... .27/6/2019.

Reuben Ratemo

Deputy County Commissioner

Baringo Central”

40. It is clear from the proceedings that the issue of plot No.240 features in the Court’s findings only, otherwise put, it is merely a statement of fact. The fact may be true or false. What is important in the circumstances of this case, is that the record categorically shows that the Appeal was in respect of Plot No.249 and the decision of the court was purely on the subject matter of the Appeal namely Plot No.249. I am not convinced that mention of plot No.240 in the proceedings as a statement of fact, had any bearing on the decision of the Court.
41. As to whether the Court gave reasons for its decision, I find that the reasons for the decision are apparent in the findings of the court. The Court found the case of the appellant contradictory and that of the respondent credible, supported by various other previous decisions. For those reasons the Court upheld the decision of Land Adjudication Board.
42. The record also answers the question of alleged bias, impartiality and lack of fairness on the part of the 1<sup>st</sup> respondent. The record shows that both parties were accorded similar treatment. In both instances, the case of appellant and that of the respondent, the DCC was the first to cross examine. The record does not bear out the alleged bias, impartiality or lack of fairness against the appellant.
43. The record further shows that the parties and their witnesses adequately participated in the proceedings. There is nothing in the court record to show or suggest that the *ex parte* applicant and/or his witnesses had difficulty understanding the language of the court or the alleged interference with the proceedings by the 1<sup>st</sup> respondent by threatening, harrasing or intimidating the ex parte applicant and his witnesses.
44. I need not say anything more to demonstrate that the ex parte applicant has not made up a case for being granted the orders sought.
45. The upshot of the foregoing is that the notice of motion hereto has no merit. Consequently, I dismiss it with costs to the respondents.
46. Orders accordingly.

**DATED, SIGNED AND DELIVERED, AT ITEN THIS 25<sup>TH</sup> DAY OF JULY 2022.**

**L. N. WAITHAKA**



**JUDGE**

