



**Republic of Kenya & another v Land Registrar, Kajiado North & another
(Environment and Land Judicial Review Miscellaneous Application
130 of 2017) [2025] KEELC 3212 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3212 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION 130 OF 2017**

MD MWANGI, J

APRIL 3, 2025

**AND IN THE MATTER OFR LAND PARCEL NO. NGONG/
NGONG/3524 IN KAJIADO NORTH CONCERNING THE SAID
PARCEL ON UNKNOWN DATE BUT AFTER 7TH FEBRUARY 2012**

AND

**IN THE MATTER OF VARIOUS MAPS BY DIRECTOR
OF SURVEY REGARDING THE SAID PARCEL OF LAND**

BETWEEN

REPUBLIC OF KENYA APPLICANT

AND

GATHECHA NG'ANG'A KIOI EXPARTE APPLICANT

AND

THE LAND REGISTRAR, KAJIADO NORTH 1ST RESPONDENT

THE DIRECTOR OF SURVEY 2ND RESPONDENT

(In respect of the application dated 28th May 2024 brought under the provisions of Article 50 and 159 of the Kenyan Constitution, Section 1A, 1B and 3A of the Civil Procedure Act and Order 45 and 51 of the Civil Procedure Rules, 2010)



RULING

Background.

1. The application under consideration is the notice of motion dated 28th May 2024 by the 1st interested party seeking for orders;
 - a. That this Honourable Court be pleased to grant an order of review of its orders of 30th October 2023 and allow the County Land Registrar to be cross-examined on the report dated 30th September 2020.
 - b. That this Honourable court be pleased to summons the land registrar Kajiado North for production of the report and cross-examination on his report dated 30/9/2020.
2. The application is based on the grounds on the face of it and on the supporting affidavit of Irene Moraa Onsumu sworn on 28th May 2024. The main ground upon which the application is grounded is that the court erred in accepting the report of the land registrar and adopting the same before its production and examination by the parties. The applicant terms the error as an error apparent on the face of the record.
3. The applicant in her supporting affidavit reiterated the grounds on the face of the application. She states that the court in its ruling delivered on 30th October 2023 allowed the report to stand as the way forward in determination of the long standing dispute.

Response to the application.

4. The application is opposed by the ex parte applicant through a replying affidavit sworn by James Karanja Gathesa the personal representative of the deceased ex parte applicant. The deponent deposes that there is no error apparent on the face of the impugned ruling and the assertion that the ruling was wrong or erroneously arrived at is not a ground for review, rather a ground of appeal.
5. The deponent further avers that the application has been made after unreasonable delay since the ruling sought to be reviewed was delivered on 30th September 2023 and the application was way over seven (7) months thereafter without any explanation.
6. The deponent asserts that the application is devoid of merit and is an outright abuse of the process of court.

Court's directions.

7. The court's directions were that the application be canvassed by way of written submissions. The applicant filed her submissions dated 26th February 2025 whereas the ex parte applicant/respondent filed submissions dated 3rd March 2025. The court has had occasion to read the submissions and consider them in making this ruling.

Issues for determination

8. The proceedings before me were commenced by way of judicial review in accordance with the provisions of order 53 of the Civil Procedure Rules and Sections 8 and 9 of the [Civil Procedure Act](#). On the face of it the application under consideration is brought under the provisions of the [Civil Procedure](#)



Act and rules. It is stated to have been brought under Section 1A, 1B and 3A of the Civil Procedure Act and Order 45 and 51 of the Civil Procedure Rules.

9. Having read the submissions by the parties, they fail to address one critical issue, upon which the fate of the application lies. The is being whether judicial review proceedings are subject to the provisions of the Civil Procedure Act and Civil Procedure Rules. Review, that is the main order sought is provided for under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules.
10. Even before delving into the merits of the case, the court must determine that issue. It is a point of law that goes into the court and may therefore be raised even by the court.....moto, as the court has done.
11. The Court of Appeal in Anacleit Musau –vs- Attorney General and 2 others (2020) eKLR, affirmed that a jurisdictional issue is fundamental and can even be raised by the court suo moto.
12. Back to the issue at hand, judicial review jurisdiction is a special jurisdiction. As Maraga Judge (as he then was) stated in the case of Republic –vs- Chairman Amagoro Land Disputes Tribunal & another ex –parte Paul Mafwabi Wanyama (2014) eKLR, judicial review proceedings are special in nature and the learned judge erred in importing provisions of the Civil Procedure Act and rules to proceedings governed by the provisions of the Law Reform Act.
13. Judicial review jurisdiction as stated by the Court of Appeal in Cortec Mining (K) Limited is special jurisdiction which is neither Civil nor Criminal and is governed by Sections 8 and 9 of the Law Reform Act which, is the substantive law while Order 53 of the Civil Procedure Rules sets out the procedural law. The Juridical Review proceedings are “Sui generis”.
14. Odunga Judge (as he then was), in Benard Muia Kiala –vs- Machakos County Government and another (2017) eKLR, had this to say on the issue.

“It follows that where there is a special jurisdiction or power conferred, or any form or procedure prescribed by or under any other law, the provisions of the Civil procedure Act are inapplicable. Accordingly, order 45 of the Civil Procedure Rules would simply not apply to these type of proceedings”.
15. The learned Judge further made reference to the decision in the case of Jotham Mulati Welamondi –vs- The Electoral Commission of Kenya (Bungoma High Court Miscellaneous Application No. 81 of 2002) (2002) KLR 486, where the Court held that Judicial Review is a special procedure and as the court is exercising neither a civil or criminal jurisdiction in the strict sense of the word, the provisions of Section 3A and Order 1, Rule 8 of the Civil Procedure Rules render the application wholly incompetent.
16. This must be the fate of the application before me.
17. Notwithstanding the above finding, this court will proceed to determine the 2nd issue as good practice demands whether the application by the interested party is merited.
18. As pointed out earlier, the interested party/applicant faults the court for adopting the report of the Land Registrar without affording the parties an opportunity to cross-examine him on the report. The interested party opine that the court erroneously and unprocedurally adopted the report.
19. The respondent in his response asserted that the alleged error is not an error apparent on the face of the record. The assertion that a ruling was wrong or was erroneously arrived at is not a ground for review rather a ground of appeal.



20. I agree with the finding of the court in the case of ...stated

“ Even if the judge was wrong or reached an erroneous conclusion of the law or facts, such is to a ground for review under Order 45 of the Civil Procedure Rules”.

21. The court cited with approval the holding in the case of Francis Origo & another –vs- Jacob Kumali Mungala (2005) eKLR, where the court stated as follows;

“ Our parting shot is that an erroneous conclusion of the law or evidence in not a ground for review but may be good ground of appeal. Once the appellants took the option of review rather than appeal, they were proceeding in the wrong direction”.

22. The interested party’s application cannot therefore succeed either way. It is hereby dismissed with costs to the ex parte applicant.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 3RD DAY OF APRIL 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

