Mailu (acting as the Legal Representative of the Estate of Mailu Mulinge-Deceased) v Deputy County Commissioner, Mukaa Sub-County & 2 others; Kikole (Interested Party) (Environment and Land Court Judicial Review Application E007 of 2021) [2022] KEELC 13685 (KLR) (19 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13685 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ENVIRONMENT AND LAND COURT JUDICIAL REVIEW APPLICATION E007 OF 2021

TW MURIGI, J

OCTOBER 19, 2022

BETWEEN

MUTUA MAILU (ACTING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MAILU MULINGE-DECEASED) ..... APPLICANT

AND

DEPUTY COUNTY COMMISSIONER, MUKAA SUB-COUNTY .... 1ST RESPONDENT

DIRECTOR OF LAND ADJUDICATION NAIROBI ..... 2ND RESPONDENT

LAND REGISTRAR MAKUENI COUNTY ..... 3RD RESPONDENT

AND

JOHN MUTISO KIKOLE ..... INTERESTED PARTY

RULING

1. By a Notice of Motion application dated September 10, 2021 brought pursuant to the provisions of Order 53 Rule (1), (2) & (4) of the *Civil Procedure Rules* and Section 8 & 9 of the *Law Reform Act* the Applicant seeks for the following orders: -

    1) That the Applicant be and is hereby granted an Order of *Certiorari* quashing the decision of the 1st Respondent sitting on behalf of the 2nd Respondent that the title deeds to Plots numbers 1661, 1662, 1663 and 335 be revoked and the same be merged and be sub-divided amongst the sons of Mailu Mulinge and John Mutiso.

    2) That the Applicant be and is hereby granted an order of *Mandamus* that compels the 1st Respondent to review its decision and remits the same for reconsideration.

3) That the Applicant be and is hereby granted an Order for Prohibition restraining the 3rd Respondent, his agents or servants from acting on the decision of the 1st Respondent until the application herein has been finalized.

4) That the leave so granted to institute Judicial Review application in the nature of Certiorari, Mandamus and Prohibition do operate as an Order staying the 1st Respondent's decision made on the June 14, 2021 revoking the title deeds for plots number 1661, 1662, 1663 and 335 Kiou Adjudication Section.

5) That any other, further or alternative orders be made as the Court deems just and expedient.

6) That the cost of this application be borne by the Respondents.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of the Applicant.

The applicant's case

3. It is the Applicant's case that his late father Mailu Mulinge was allocated Plot No 335 in 1939. That on 17th of March, 2000, the Interested party, a cousin to the Applicant, filed an application before the Committee members of the Land Adjudication and Settlement Office in Kasikeu Division against the Applicant's late father and sought for the subdivision of Plot No 335. He went on to state that on 17th of April, 2000, the Committee dismissed the Plaintiff's case but upon appeal filed before the Adjudication Board, the Plaintiff was awarded a portion of Plot No 335 which resulted in the creation of Plot No 1459. That being dissatisfied with the Board's decision, John Mativo Kikole and the Applicant herein filed objection No 52 and No 80 which upon being heard were dismissed on 3rd of July, 2002.

4. The Applicant stated that the Appellant filed his appeal against the objections in 2007 and not within 60 days as required by the law. He argued that the Minister should not have entertained the appeal as it was filed out of time and hence his actions were procedurally unfair. The Applicant further averred that the Deputy County Commissioner in his decision which took several years to make and which was made without due regard to the evidence tendered in the appeal, awarded John Kikole a larger chunk of his father's land. The Applicant contends that the actions by the 1st Respondent were in breach of the principles of natural justice.

The Respondents' Case

5. The Respondents through the grounds of opposition dated April 1, 2022, opposed the application on the following grounds: -

1) That the decision made by the 1st Respondent revoking the sub-division of the suit property was arrived at lawfully and in accordance with all the laid down procedures in law.

2) That the orders of *Certiorari*, *Mandamus* and Prohibition sought by the Applicant are untenable in view of the fact that the Minister followed due process in exercising his powers. The said orders cannot therefore be granted.

3) That the Applicant has failed to demonstrate sufficient grounds to warrant issuance of the orders sought in the said application.

4) That the Applicant has failed to provide proper evidence to support his allegations against the Respondents.

5) That the Applicant's notice of the motion dated September 10, 2021 is not merited and the same should be dismissed against the Respondents.

6) The Respondents urged the Court to dismiss the application.

The interested party's case

7. Opposing the application, the Interested Party vide his replying affidavit sworn on December 16, 2021 averred that the application was bad in law, incompetent, an abuse of the Court process, misleading and falsehood, unmeritorious, ill-advised and urged the Court to dismiss the same with costs. With regards to the issue whether the appeal to the Minister was filed within the stipulated time, the Interested Party averred that he filed his appeal before the Minister on August 20, 2002 as evidenced by the filing fees receipt which was within the time prescribed by the law. He argued that he did not contribute to the delay in prosecuting the appeal before the Minister. He averred that the Applicant unlawfully and without any right sub-divided land No Parcel number 335 into four portions which prompted the Director of Land Adjudication and Settlement Officer to write a letter terming the Applicant's actions as irregular since he had filed an appeal to the Minister.

8. He went on to state that the appeal before the Minister was heard and determined without any bias as the parties therein were accorded an opportunity of being heard. He further averred that the Minister's decision which distributed Plot No 335 amongst the two families was informed by the fact that the land belonged to their late great grandfather and not to the Applicant's father.

The applicant's response

9. The Applicant averred that the filing fees receipt presented by the Interested Party did not indicate whether the Interested Party had pursued his appeal as required by the law. He contends that his father and not his grandfather is the owner of land parcel number 335 since his uncles, the Interested Party's father and their families had not laid any claim to a share of the property. That in addition, the letter by Chief confirmed that Plot number 335 was given to his father.

10. The application was canvassed by way of written submissions.

The applicant's submissions

11. The Applicant's submissions were filed on April 11, 2022. Counsel for the Applicant raised the following issues for the Court's determination.

    i) Whether the Appeal to the Minister filed out of time is justified.

    ii) Whether the delivery of the judgment was fair.

    iii) Whether the Appeal was procedurally fair.

    iv) Whether there was a breach of the principles of natural justice.

    v) Who is to bear the costs of the application.

12. With regards to the issue of whether the appeal to the Minister filed out of time was justified, Counsel submitted that the *Land Adjudication Act* provides that an appeal to the Minister should be filed within sixty days from the date of the decision. That in the present case, the Interested Party filed his appeal against the two objections in 2007 which was out of the time contrary to the stipulations in Section 29 of the *Land Adjudication Act*.

13. Counsel further submitted that although the Interested Party alleged that he had filed his appeal within time and attached a filing fees receipt thereto, the grounds and documents in support of the appeal were not attached to the receipt which was contrary to the Act.

14. To buttress his submission on this point, Counsel placed reliance on the following cases: -

    a) *Republic v Peter Mavindu Nguu & 6 others Ex-parte Muungu Nguu Ndongoi & Another* [2021] eKLR.

    b) *Republic v Ministry of Lands and Settlement & 3 Others Ex parte Kahareri Buri Karugu; Efureith Irima Mugo (Interested Party)* [2019] eKLR.

15. Counsel went on to submit that the 1st Respondent acted in excess of the jurisdiction conferred upon him when he sat on an appeal that had been filed out of time and thus, the decision delivered on 14th of January, 2021 ought to be quashed. Counsel placed reliance on the case of *Leakey Muthini Mulonzi & Another v Principal Secretary, Ministry of Lands, Housing and Urban Development & 4 Others* [2020] eKLR.

16. Counsel asserts that the 1st Respondent did not have jurisdiction to hear and determine the appeal.

17. With regards to the issue of whether the delay in delivering the judgment was fair, Counsel submitted that the long delay by the 1st Respondent in delivering the judgment in the appeal was contrary to the provisions of Article 47 of the Constitution which provides that administrative action should be expeditious, efficient, lawful, reasonable and procedurally fair. Reliance was placed on the case of *Republic v Land Adjudication Officer Kitui ex parte Sylvester Ndima Wambua & 5 Others* [2014] KLR.

18. Counsel contends that the actions by the 1st Respondent amounts to an abuse of power. To buttress the submissions Counsel cited case of *Keroche Industries Limited v Kenya Revenue Authority and 5 Others* [2007] eKLR.

19. With regards to the issue of whether the appeal before the Minister was conducted fairly and procedurally, Counsel submitted that the appeal to the Minister was contrary to the provisions of Section 29(1) of the *Land Adjudication Act* provides that an appeal should be filed within sixty days after the date of the determination.

20. Counsel went on to submit that the grounds of the appeal were not specified nor was a copy of the appeal sent to the Director of Land Adjudication as required. That the receipt which confirmed filing of the appeal did not specify the grounds of appeal. Counsel contends that tracing from the demarcation map of the boundaries of the land in dispute was not attached to the appeal as provided by Regulation 4(1) of the Land Adjudication Regulations.

21. Counsel asserts that the failure by the Respondents to adhere to the procedural laws caused injustice to the Applicant. To buttress this point, reliance was placed on *Republic v Attorney General & Another Ex parte Munyokwang Kiyer & 3 others* [2014] eKLR.

22. Counsel further submitted that the Minister did not consider the Applicant's evidence during the hearing of the appeal. Counsel contends that the procedures employed by the 1st Respondent in admitting the Interested Party's appeal filed out of time up to the delivery of the late judgment was unfair to the Applicant.

23. To buttress her submissions on this point, Counsel placed reliance on the following cases: -

    a) *Republic v Attorney General & Another Ex parte Muuyokwang Kiyer & 3 Others* (2014) eKLR.

b) *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] eKLR.

c) *Ransa Company Ltd v Manoa Francesco & 2 Others* (2015) eKLR.

24. With regards to the issue of whether there was a breach of the principles of natural justice, Counsel submitted that the Applicant was not accorded an opportunity of being heard nor was his evidence taken into consideration in arriving at the decision. Counsel maintains that it was clear from the evidence adduced by the Applicant that the Minister abused his power.

25. Counsel further submitted that the principles of natural justice were breached from the time when the appeal was heard up to the time that the judgment was delivered. To buttress her submissions on this point, Counsel placed reliance on Halsbury Laws of England and in the case of *Judicial Service Commission v Mbalu Mutava & Another* (2015) eKLR.

26. On the issue of costs, Counsel submitted that Section 27 of the *Civil Procedure* provides that costs follow do follow events and placed reliance on the following authorities: -

a. *Elite Intellogent Traffric System Ltd v HFC Limited; Hassan Zubeid & 2 Others (Interested Parties)* [2019] eKLR.

b. *Jasbir Singh Rai & Others v Tarlochan Rai & Others* (2002) eKLR.

c. Lee v Horne.

27. In conclusion, learned counsel urged this court to grant the orders sought.

The interested party's submissions

28. The Interested Party's submissions were filed on 4th of March, 2022. Counsel for the Interested Party raised the following issues for the Court's determination: -

i) Whether the Respondents exercised their statutory duties as required by the law.

ii) Whether the orders of judicial review are available herein.

iii) Who is to bear the costs of the application.

29. Counsel for the Interested Party submitted that the parameters of Judicial Review were laid down by the Court of Appeal in the case of *Municipal Council of Mombasa v Republic & Another* [2020] eKLR. Counsel submitted that the Applicant had failed to prove the allegations of bias as it was evident that the Applicant and the Interested Party participated in the proceedings before the Minister and were accorded an opportunity to adduce evidence, to call witnesses and cross examine the adverse party.

30. Counsel argued that the Applicant and the Interested Party were present when the panel visited the site which clearly demonstrates that there was no bias in the proceedings before the Minister. Counsel further submitted that the Applicant did not prove that the Respondents decision was made without or in excess of jurisdiction, breach of natural justice, whether there was an illegality, irrationality or procedural impropriety. He submitted that the Application was centered on the merits of the decision by the 1st Respondent and not the procedure before the Minister.

Analysis and determination

31. Having considered the application, the affidavits and the rival submissions, I find that the following issues arise for the Court's determination: -

    i) Whether the appeal was incompetent for having been filed out of time.

    ii) Whether the decision of the 1st Respondent was made in breach of the rules of natural justice.

    iii) Whether the Applicant is entitled to the orders sought.

    iv) Who is to bear the costs.

32. The Principles of Judicial Review were laid down by Lord Diplock in the case of *Council of Civil Service Union & Others v the Minister for Civil Service* [1985] AC 374 where the Judge held that;

> "Judicial review has, I think developed to a stage today when one can conveniently classify into three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality" the second, "irrationality", and the third procedural "impropriety". By illegality as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.... By "irrationality" I mean what can now be succinctly referred to as unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. I have described the third as "procedural impropriety", rather than failure to observe rules of natural justice or failure to act with procedural fairness towards the person affected by the decision."

33. The purpose of judicial review is not to review the decision but the decision making process. This was stipulated by the Court of Appeal in the case of *Republic v. Kenya Revenue Authority Exparte Yaya Towers Limited* [2008] eKLR, where it was held that;

> "The remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision-making process itself. It is important to remember in such case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected...."

Whether the appeal was incompetent for being filed out of time

34. The ex parte applicant is seeking for orders that the appeal to the Minister be quashed on the basis that it was filed out of time.

35. The Applicant argued that the Minister had no jurisdiction to hear and determine the appeal as it was filed in 2007 contrary to the provisions of Section 29 of the *Land Adjudication Act*. The Applicant argued that even though the Interested Party had filed a receipt to demonstrate that he had filed his appeal within the stipulated time, the grounds of appeal and the documents in support thereof were not attached to the receipt as required by the law. The Interested party, on the other hand averred that being aggrieved by the decision made on July 3, 2002 in Objection number 52 and 80, he immediately lodged an appeal with the Minister on August 20, 2002. In this regard, he produced a filing fees receipt dated August 20, 2002.

36. Section 29 of the *Land Adjudication Act* provides as follows;

(1) Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by: -

(a) Delivering to the Minister an appeal in writing specifying the grounds of appeal; and

(b) Sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.

(2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.

37. In the case of *Municipal Council of Mombasa v and Umoja Consultants Ltd* Civil Appeal No 185 of 2001 the Court held that;

> "Judicial review is concerned with the decision making process, not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters... The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself – such as whether there was or there was not sufficient evidence to support the decision....."

38. The Court has considered the material on record on this issue. From the averments and proceedings attached to the Applicant's affidavit, it is clear that on 17th of March, 2000 the Interested Party filed an application against the Applicant's late father before the Committee Members of the Land Adjudication and Settlement Office in Kasikeu Division where he sought for the sub-division of Plot No 335. The Committee dismissed the case on 17th of April, 2000. It is also clear that the Interested Party filed an appeal against the Committee's decision to the Adjudication Board. On appeal, the Board in its decision awarded the Interested Party a portion of Plot Number 335 which resulted in the creation of plot No 1459.

39. The Applicants did not place any documentary evidence before Court to demonstrate that the appeal was actually filed out of time. The Applicant did not exhibit a copy of the relevant appeals register to demonstrate that the appeal was filed in 2007 and not on August 20, 2002. The Court is unable to accept the Applicants' argument as sound in law.

40. The Interested Party on the other hand produced a filing fee receipt dated August 20, 2002 to demonstrate that he filed the appeal within the stipulated time. To support the receipt, the Interested Party produced a letter dated July 27, 2006 by the Director of Land Adjudication and Settlement Officer Makueni, which states as follows in part;

> "Again Mr Mutua Mailu had filed objection No 52 against P/No1459 of John Mutiso Kikole who had been awarded the same (P/No 1459) by arbitration board having been curved off from P/No 335. These two objections (No 52 and 80) were dismissed. Since the whole P/No 335 was being claimed for by Mr John Mutiso Kikole who has already filed an appeal., it was irregular to allow the creation of the new numbers now in your names."

41. It is crystal clear from the above letter that the Interested Party had filed an appeal with the Minister within the stipulated time. The receipt and the letter by the Director of Land Adjudication and Settlement Officer clearly demonstrates that the appeal to the Minister was not filed out of time. The Applicant did not dispute the receipt. His major concern was that the receipt did not contain the grounds of the appeal or the documents in support of the appeal as stipulated by the law. However, the Applicant did not demonstrate to this Court that the Interested Party filed the Appeal before the Minister contrary to the provisions of the *Land Adjudication Act*.

42. Even if the Court were to find that the appeal was filed out of time an issue would arise as to the legal consequence of such late filing of the appeal.

43. In the Court of Appeal decision in *Watuku Mutsiemi Watuku & Another v Republic & 5 Others* [2018] eKLR, the Appellant had challenged the decision of the Minister on appeal on various grounds which included the fact that the appeal had been filed out of time.

44. In dismissing the appeal, the Court held, inter alia, that an objection as to jurisdiction ought to have been raised at the earliest opportunity and that the Appellant had not suffered any prejudice. Accordingly, this Court is not satisfied that the appeal was filed out of time or that the Minister had no jurisdiction to entertain the appeal.

45. The Court is not satisfied that the appeal was incompetent or that the Minister had no jurisdiction to entertain it.

Whether the decision of the 1st respondent violated the rules of natural justice

46. The ex-parte Applicant seeks orders to quash the decision in Minister in Case No 30 of 2007 on the grounds that the decision reached was against the rules of natural justice. The Applicant submitted that he was not accorded an opportunity of being heard in the proceedings before the Minister. He stated that the 1st Respondent did not consider his evidence while making its decision. The Interested Party on the other hand averred that both parties were accorded an opportunity to adduce evidence, to call witnesses and to cross examine the adverse party.

47. In *Onyango Oloo v Attorney General* [1986-1989] EA 456 the Court of Appeal expressed itself as follows;

> " The rules of natural justice apply to administrative action in so far as it affects the rights of the appellant and the appellant's legitimate expectation to benefit from the remission by a release...The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...To consider" is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... "Consider" implies looking at the whole matter before reaching a conclusion...A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of

decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings or of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void ab initio."

48. I have perused the proceedings and findings in appeal Case No 30 of 2017 conducted before the Deputy County Commissioner Mukaa Sub County. The Applicant was the Respondent, while the Interested Party was the Appellant. The parties and their witnesses were recorded as having been sworn and gave evidence. It is evident that both parties participated in the proceedings by giving evidence, cross examination and calling witnesses. There is similarly no evidence on record, or material from which it may reasonably be inferred, that the Respondent was biased or unfair towards the Applicant.

49. The Applicant gave his testimony, he was allowed to cross-examine witnesses and fully participated in the proceedings. The Deputy County Commissioner who was hearing the appeal even took time and visited the site on October 23, 2018 in order to appreciate the nature of the dispute better. The Court finds absolutely no evidence of bias or unfair treatment.

50. There is no evidence to demonstrate that the Minister took into account irrelevant considerations or that he failed to take into account relevant considerations in the appeal. The Court is satisfied that the Applicant actively participated in the said proceedings and even cross-examined witnesses. The Court would hardly intervene unless it is clearly demonstrated that the decision maker acted upon no evidence, or that he took into account irrelevant considerations and omitted the relevant factors. The Applicant has not demonstrated that such was case in the instant application.

51. Accordingly, the Court finds that there was no violation of the rules of natural justice.

Whether the applicant is entitled to the orders sought

52. The Applicant contends that 1st Respondent delayed in delivering the judgment in the appeal and by extension denied him justice.

53. It is evident from the proceedings before the Minister that, the appeal was heard on February 7, 2018. Judgment was delivered on March 18, 2021. The Applicant averred that the delay in delivering the judgment caused him injustice as Article 47 provides that the process should be expeditious. The Interested Party maintains that the delay cannot be attributed on his part.

54. In the case of *Municipal Council of Mombasa v Republic & Umoja Consultant Limited* [2002] eKLR which was cited by the Applicant, it was held, inter alia, that:

> " The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at" Did those who made the decision have the power, ie the

jurisdiction to make it" Were the persons affected by the decision heard before it was made" In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters" These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review."

55. Similarly, in *Republic v Secretary of the Firearms Licensing Board & 2 Others Ex parte Senator Johnstone Muthama* [2018] eKLR it was held, *inter alia*, that:

> " The purpose of the remedy of judicial review is therefore to ensure that an individual is given fair treatment by the authority to which he or she has been subjected, and it is not part of that purpose to substitute the opinion of an individual judge for that of the authority constituted by law to decide the matter in question. As was held in Republic v. Kenya Revenue Authority Ex parte Yaya Towers Limited, (2008) eKLR, the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself."

56. In my view, when the complaints of the Applicant are considered as a whole, it would appear that the Applicant is in reality aggrieved by the merits of the decision of the 1st Respondent. They have nothing to do with the decision making process. This was, in effect, an appeal disguised as a judicial review application. He was aggrieved because the 1st Respondent overturned the earlier decisions which were in his favour. The Court is of the opinion that the Applicant is challenging the merits of the Minister's decision in the appeal.

57. In my opinion, a judicial review remedy would not be available in those circumstances.

58. The final issue relates to costs. Although the costs of an action are at the discretion of the court, the general and well established rule is that costs follow the event. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co Ltd* [1967] EA 287. So, a successful party should be awarded costs, unless, for good reason, the Court orders otherwise as provided for under section 27 (1) of the *Civil Procedure Act* (cap 21).

59. The upshot of the foregoing is that the Court does not find merit in the Application for judicial review. Accordingly, the Notice of Motion dated December 18, 2019 is hereby dismissed. Each party shall bear its own costs.

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HON. T. MURIGI

JUDGE

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 19TH DAY OF OCTOBER, 2022.

IN THE PRESENCE OF: -

Court Assistant – Mr. Kwemboi

Ms Ongong'a for the Applicant