



Ndolo v Deputy County Commissioner Makueni Sub-County (Environment & Land Petition E002 of 2023) [2025] KEELC 455 (KLR) (5 February 2025) (Ruling)

Neutral citation: [2025] KEELC 455 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ENVIRONMENT & LAND PETITION E002 OF 2023

TW MURIGI, J

FEBRUARY 5, 2025

IN THE MATTER OF: ARTICLES 2, 19(2), 20(1), 22, 23(1)(3), 27,40(1)(2)(3), 47, 48, 159, 165, 258, AND 259 OF THE CONSTITUTION OF KENYA 2010 AND

IN THE MATTERS OF: CONTRAVENTION AND THREATENED CONTRAVENTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE PETITIONER UNDER ARTICLES 22, 23(1)(3), 40 & 47 OF THE CONSTITUTION OF KENYA, 2010 AND

IN THE MATTER OF: RULES 4, 23 AND 24 OF THE CONSTITUTION OF KENYA (PROTECTION OFFUNDAMENTAL RIGHTS AND FREEDOMS) PRACTICE AND PROCEDURE RULES 2013 AND

IN THE MATTER OF: SECTIONS 4, 6 AND 12 OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015 AND

IN THE MATTER OF: CONTRAVENTION OF SECTION 29 OF THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA

AND IN THE MATTER OF: CONTRAVENTION OF SECTION 80(1) OF THE LAND REGISTRATION ACT NO. 3 OF 2012

BETWEEN

MWANGANGI ILUTA NDOLO PETITIONER

AND

DEPUTY COUNTY COMMISSIONER MAKUENI SUB-COUNTY RESPONDENT



RULING

1. Before me for determination is the Notice of Motion dated 31st October 2023 brought under Sections 4, 6 and 12 of the *Fair Administrative Action Act* No.4 of 2015 in which the Applicant seeks the following orders: -
 1. Spent
 2. That this Honourable Court be pleased to issue an interim conservatory order staying the implementation of the ruling of the Deputy County Commissioner Makueni Sub-County dated 5th September 2022 (impugned ruling) and delivered in the Appeal to the Minister Case No. 262 of 1997 over land parcel No. 780 Nzuuni Adjudication Section scheduled to take place on 1st November pending the hearing and determination of the Petition.
 3. That an order of Certiorari do issue to quash the decision of the Deputy County Commissioner Makueni Sub-County in the ruling dated 5th September 2022(impugned ruling) and delivered in the Appeal to the Minister Case No. 262 of 1997 over land parcel No.780 Nzuuni Adjudication Section.
 4. That an order of Prohibition do issue to prohibit the Land Registrar Makueni County and the District Surveyor Makueni County from implementing the decision of the Deputy County Commissioner Makueni Sub County in the ruling dated 5th September 2022(impugned ruling) and delivered in Appeal to the Minister Case No. 262 of 1997 over land parcel No. 780 Nzuuni Adjudication Section.
 5. That the Officer Commanding Station(OCS) Mukuyuni Police Station to enforce these orders.
 6. That the costs of this application be provided for by the Respondent.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Mwangangi Iluta Ndolo sworn on even date.

The Applicant's Case

3. The Applicant averred that he is apprehensive that his right to property will be violated if the decision of the Minister in Appeal Case No. 262 of 1997 is implemented. He further averred that the decision of the Minister violates the provisions of Section 29 of the *Land Adjudication Act*. He contended that an appeal to the Minister ought to be filed within 60 days of the decision. The Applicant argued that the Appeal ought to have been lodged by 26th December 1997 as the objection proceedings were concluded on 26th October 1992.
4. He further contended that the Respondent lacked jurisdiction to determine the appeal as it was filed out of time and without leave. From the foregoing, the Applicant contended that the decision of the Minister is marred with procedural irregularities. According to the Applicant, the impugned decision contravenes Article 47 of the *Constitution* as read together with the Fair Administrative Actions Act. He averred that the Respondent acted ultra vires his powers because he had already been issued with a title deed for the suit property by the time the Appeal was heard and determined.



5. The Applicant contended that the Respondent did not follow the procedure laid down under the law and instead considered extraneous matters in arriving at his decision. He further contended that the decision to excise one acre from his land is a violation of his right to acquire and own property.
6. Though duly served the Respondent did not file any response to the application.
7. The application was canvassed by way of written submissions. The Applicant filed his submissions dated 5th May 2024 which I have duly considered.

Analysis And Determination

8. Having considered the application and the submissions by the Applicant, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.
9. It is not in dispute that the Respondent has the mandate under Section 29 of the [Land Adjudication Act](#) to hear and determine appeals arising from objections within the adjudication areas under the act.
10. Article 23 of the [Constitution](#) provides as follows:-
‘In any proceedings brought under Article 22, a court may grant appropriate relief including-
 - a. a declaration of rights;
 - b. an injunction;
 - c. a conservatory order;
 - d. a declaration of invalidity of any law that denies, violates or threatens a right or a fundamental freedom in the bill of rights and is not justified under Article 24;
 - e. an order of compensation; and
 - f. an order of judicial review.
11. Article 47 of the [Constitution](#) provides as follows;
 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
12. The above provision is echoed in Article 50(1) of the [Constitution](#) and Section 4(3)(b) of the [Fair Administrative Action Act](#). It is clear from the above provisions that the tribunal or authority entrusted with the mandate of making decisions must act in a fair manner. Procedural fairness is a Constitutional requirement in administrative actions.
13. The Applicant is aggrieved by the decision of the Minister in Appeal No. 262 of 1997 on the grounds that the Respondent lacked jurisdiction determine the Appeal. He lamented that the Appeal was filed out of time and without leave. He further lamented that the Respondent’s conduct of the Appeal was marred with procedural irregularities and added that the Minister considered extraneous matters in arriving at his decision. The Applicant contended that the decision of the Minister violates his right to acquire and own property. From the foregoing it is crystal clear that the Petitioner is aggrieved with the decision-making process and the legality of the decision.



14. I have perused the proceedings and findings in Appeal to the Minister Case No. 262 of 1997 conducted before the Deputy County Commissioner, Makueni Sub County. In the Appeal before the Minister, the Petitioner was the Respondent and was represented by Dominic Kiendi Mwangi and Onesmus Mwau Mwangangi while the Appellant was Malia Mutisya Kasuni represented by Francis Mustisya Kasuni and John Kyameti Mutisya.
15. The proceedings before the Minister show that the parties therein participated by giving evidence, cross examination and calling witnesses.
16. On 05/09/2022, the Minister allowed the Appeal in the following terms:-
- “A portion amounting to one acre (1 acre) to be extracted from disputed land No.780 to be issued with a number then registered in the name Malia Mutisya Kasuni.”
17. The Petitioner is seeking to stay the implementation of the decision dated 05/09/2022 on the grounds that the proceedings by the Minister are marred with procedural irregularities.
18. Section 7 of the *Fair Administrative Action Act* provides that;
- “1. Any person aggrieved by an administrative action or decision may apply for review of the administrative action to: -
- a. a court in accordance with Section 8; or
- b. a tribunal in exercise of its jurisdiction conferred in that regard under any written law.”
19. It is clear from the above provisions that there is a procedure that offers redress for the grievance that the Petitioner has raised. The Minister’s decision being an administrative action the Applicant could only approach the court by way of judicial review.
20. In so finding, I am guided by the case of *Speaker of the National Assembly v James Njenga Karume* (1992) eKLR where the court of Appeal held that:-
- “In our view, there is considerable merit in the submission that where there is a clear procedure for redress of any particular grievance prescribed by the constitution or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that Order 53 of the *Civil Procedure Rules* cannot oust clear constitutional and statutory provisions.
21. Similarly, in the case of *East Africa Gas Co Ltd and Another v National Land Commission & 3 Others* (2013) eKLR the court held that;
- “.....where the constitution and any law not inconsistent with the constitution provides a procedure for the resolution of disputes, the procedure ought to be followed, adhered to and applied in the resolution of disputes to which such law or constitution prescribe.”
22. I am in agreement with the holding in the case of *Onesmus Daniel Masumbuko & Others v Augustino Baya Thotbo* (2019) where the court held that;
- “...That being the case and the minister’s decision being an administrative action, the appellant could only come to this court if there was sufficient reason therefore by way of



judicial review. Otherwise in the circumstances before me the appeal herein is misconceived and without any foundation.”

23. From the foregoing the Petitioner ought to have sought for judicial review of the decision rendered by the Minister. The Petitioner’s claim though based on Constitutional provisions is for judicial review as it seeks to challenge the process in arriving at the Minister’s decision. (see the case of *Anarita Karimi Njeru v R*).The Petitioner cannot bypass the provisions of the Fair Administrative Actions Act to litigate under a Constitutional Petition. He must follow that procedure.
24. Accordingly, the application dated 31st October 2023 is hereby dismissed with no orders as to costs.

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 5TH DAY OF FEBRUARY, 2025.

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HON. T. MURIGI

JUDGE

In The Presence Of: -

Court assistant – Mr. Ahmed

Ms. Kitenge for the Petitioner

