



**Republic v Ministry of Lands & Settlement & 2 others; Lorteale (Exparte) (Environment & Land  
Miscellaneous Case 9(B) of 2023) [2025] KEELC 1279 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1279 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND MISCELLANEOUS CASE 9(B) OF 2023**

**CK NZILI, J**

**MARCH 12, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MINISTRY OF LANDS & SETTLEMENT ..... 1<sup>ST</sup> RESPONDENT**

**PHILIP CHANGULE ..... 2<sup>ND</sup> RESPONDENT**

**FRANCIS KILEKWANG ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JAMES KUKUI LORTELE ..... EXPARTE**

**JUDGMENT**

1. Before the court is the notice of motion dated 26/2/2013, where the exparte applicant seeks an order of certiorari to bring before this court and quash the decision of the District Commissioner- West Pokot made on behalf of the 1<sup>st</sup> respondent in Ministers Appeal No. 199 of 1994, on 6/2/2013, regarding parcel No. West Pokot/Chepkono/679 for lack of jurisdiction and for refusing to supply a copy of the same. The application is supported by a statutory statement of facts dated 26/2/2013 and a verifying affidavit of James Kukui Lorteale on the even date, attaching a copy of a title deed, proceedings, and the decision marked JKI'1'.
2. The exparte applicant avers that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents could not sue him, and nor did the 1<sup>st</sup> respondent possess jurisdiction to handle a dispute on titled land, making the decision a nullity ab initio. The exparte applicant avers that it is in the best interest to grant the orders; the application was brought in good faith; there was no unreasonable delay; the result of the decision was to deprive him of his land; rules of natural justice were not observed, and the decision was illegal.



3. The record of the court shows that the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed an appearance on 28/5/2013. Leave was granted on 6/6/2013 to file a response. None had been filed by 29/5/2023. On 17/7/2024, the 1<sup>st</sup> respondent was ordered to file a response. By 30/9/2024, none had been filed. On 16/12/2024, more time was extended to the 1<sup>st</sup> respondent to comply by 4/2/2025. None was filed.
4. The ex parte applicant relies on written submissions dated 10/2/2025 isolating two issues for determination. On whether 1<sup>st</sup> respondent had jurisdiction to deal with registered land, the ex parte applicant submits that Section 3(1) of the Land Disputes Tribunal Act (repealed), did not allow the Minister to deal with land falling under the repealed Registered *Land Act*, Cap 300. In this case, the Minister sitting as the panel chair could not order for the subdivision of land already registered in the name of the applicant, hence acted ultra vires. Reliance was placed on Meru North Land Disputes Tribunal & Another Misc. Appl. No. 27 of 2009.
5. On whether the order of certiorari should be issued, the ex parte applicant submitted that a decision that is illegal, irrational, or procedurally unfair is offensive to and a violation of statutory and constitutional provisions. In this case, the decision made by the 1<sup>st</sup> respondent was beyond its authority, hence capable to be vacated through an order of certiorari.
6. An order of certiorari may be issued where a decision is made without jurisdiction or in excess of jurisdiction or where rules of natural justice are not adhered to or for any other reasonable cause. In KNEC Ex parte Gathenji & Others Civil Appeal No. 266 of 1996, the Court of Appeal held that in order for an applicant to succeed, he has to show that a public officer acted unprocedurally; his decision was unreasonable and or illegal.
7. In John Florence Maritime Service Ltd & Another -vs- Cabinet Secretary Transport & Infrastructure & Others Petition 17 of 2015 [2021] KESC 39 KLR (CIV) (6<sup>th</sup> August 2021) (Judgment), the court held that the purpose of the remedy in judicial review was concerned with reviewing not the merits of the decision, but the decision-making process itself. In Public Service Commission & Others -vs- Cheruiyot & Others Civil Appeal 119 and 139 of 2017 (consolidated) KECA 15[KLR] (8<sup>th</sup> February 2022) (Judgment), the court observed that jurisdiction as held in Owners of the Motor Vessel "Lillian's" -vs- Caltex Oil (K) Ltd [1989] KLR, is everything and a decision made without jurisdiction is a nullity ab initio, that is amenable to setting aside ex debito justitiae.
8. The ex parte applicant complains that his land was registered on 3/10/1997 and he was subsequently issued with a title deed on 10/12/1997. The proceedings and the decision to subdivide the land at the instance of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents was heard on 16/1/2013 as per the proceedings in Ministers Appeal No. 199 of 1994 regarding parcel No. 679 Chepkono Adjudication Section. The proceedings took place on 21/1/2013. The dispute touched on non-compliance with the terms and conditions of a sale agreement between the ex parte applicant and one Kulekwangi, the father of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, which was adjudicated in the name of the ex parte applicant as parcel No. 208 during the adjudication process.
9. The question for determination is whether there was a valid sale of the registered land outside the jurisdiction of the Minister. Sections 2 and 101 of the *Land Registration Act* and Sections 2 and 150 of the *Land Act* define the Environment and Land Court as the one capable of handling disputes on registered land.
10. Questions or issues revolving around sale, transfer, and registration fall within the jurisdiction of the court and not the Minister. Jurisdiction is everything as held in Bell -vs- Moi *& Another (Application No.1 of 2013)* [2013] KESC 23 [KLR]. The court cited Samuel Kamau Macharia & Another -vs- KCB & Others Supreme Court Appl. No. 2 of 2011, that jurisdiction cannot be expanded through judicial



craft or innovation and that Parliament cannot confer upon a court of law jurisdiction beyond the scope defined by *the Constitution*.

11. Though the 1<sup>st</sup> respondent was given an opportunity to respond to the notice of motion, this was not done for 12 years. The facts, as pleaded by the *exparte* applicant, therefore, remain uncontroverted. Equally, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have not disputed that the land subject to the Minister's appeal had a title deed issued to the *exparte* applicant in 1997, long before the appeal was heard and determined.
12. From the proceedings and the decision, the 1<sup>st</sup> respondent knew that there was already a title deed. The *exparte* applicant attacks the proceedings and the decision based on illegality and procedural impropriety as defined in *Pastoli -vs- Kabale District Local Government Council & Others* [2008] 2EA 300. He invites the court to find the decision-making process illegal when an appeal was pending before the Minister.
13. Section 29 of the *Land Adjudication Act*, Cap 284, provides that the Minister must cause copies of the order upon determination of the appeal to be sent to the Director of Land Adjudication and the Chief Land Registrar for implementation. In the annexed proceedings and judgment, the appeal is dated 1994.
14. The *exparte* applicant has not denied that Appeal No. 199 of 1994 was in existence. He has not told the court that the appeal was filed outside the 60 days as stipulated by the law. The *exparte* applicant has not denied that the Minister was lawfully seized of the appeal. The *exparte* applicant has not attacked the Minister for inordinately delaying determining the appeal until a title deed was issued to him in 1997. In *Municipal Council of Mombasa -vs- Republic & Another* [2002] eKLR, the court said it would not act on an appeal over the decider and could only concern itself on whether or not the decision maker had the jurisdiction, if the persons affected were heard before the decision was made and if the decider took into account relevant or irrelevant matters.
15. The onus is on the *exparte* applicant to demonstrate that the decision-making process was illegal, tainted with illegalities, was irrational, and with procedural improprieties.
16. In *Pastoli -vs- Kabale* (Supra), illegality, was defined as when the decider commits errors of law, acts without jurisdiction, or acts contrary to any provisions of law or its principles.
17. It is not in dispute that the 1<sup>st</sup> respondent under Section 29 of Cap 284 has powers to hear and determine appeals of objection in accordance with the law. It could only hear an appeal lodged within 60 days. From the proceedings, the *exparte* applicant was given an opportunity to be heard. He did not attack the appeal for being filed late or being heard and determined out of time. In his testimony, the *exparte* applicant did not object to the jurisdiction of the Minister to hear and determine the appeal when a title deed was already out.
18. The *exparte* applicant did not fault the appeal on account of a dispute touching on breach or enforcement of a sale agreement on land. Though the issues may not have been raised, however, the Minister, in its decision, made directives that are alleged to offend and are ultra vires Section 80(1) of the *Land Registration Act* 2012 regarding registration, cancellation, and amendment of a title deed. The power to cancel a title deed rests with a land registrar and the Environment and Land Court and not the Minister. A decision made without authority or imprimatur of law is a nullity ab initio.
19. In *Simba & Another -vs- DLASO M'Itonga & Others* (IP) E&L JR E003 of 2022 [2022] KEELC 15050 (KLR) (23<sup>rd</sup> November 2022) (Judgment), the court observed that Section 29 of Cap 284 was the law governing Ministers' appeal's as at 27/5/2015, when the *Fair Administrative Action Act* came into operation, through Article 47 of *the Constitution* was in operation. Under Section 28 of Cap



- 284, a restriction has to be made and registered in respect of land under an appeal to endure until the determination of the appeal.
20. The 1<sup>st</sup> respondent has not told the court why it neglected, ignored, or looked the other way and issued the exparte applicant with the title deed even before the appeal was heard and determined. This obviously amounted to dereliction of statutory duty. It knew the implication of not acting on time or at all. The 1<sup>st</sup> respondent failed to take pre-emptive measures to recall or restrict the title deed issued on 10/12/1997. In *Euton Njuki Makungo -vs- Republic & Others* [2014] eKLR, the court nevertheless held that a person who is aware of a pending appeal cannot come to court and submit that because there was no restriction entered into the title register, he could deal with the land as he pleased since he who comes to court must come with clean hands.
  21. The court held that the Chief Land Registrar had no jurisdiction to issue a title deed while there was a pending appeal since the disputed land was still subject to the adjudication process; hence, the title deed was null and void.
  22. *Humphrey Irungu Macharia -vs- Ngari Kinga & Others* [2020] eKLR, the court made a finding that a title deed issued pending a Minister's appeal was irregular. The mere fact that a Minister's appeal takes long does not take away the jurisdiction of the Minister to hear and determine the appeal. Two wrongs do not make a right.
  23. In *Tenai -vs- Sidhu & others* (2025) KECA 105 (KLR), the court observed that a title to land is an end product of a process and if the process is in conflict with the law, such a title is not indefeasible.
  24. The exparte applicant knew that there was a pending appeal but processed a title deed through the 1<sup>st</sup> respondent. The exparte applicant did not raise the issues of jurisdiction at the hearing of the Minister's appeal. A court of law cannot sanction an illegality and or an irregularity. There is also no evidence that the exparte applicant sought the certified proceedings and the decision under Article 35 of *the Constitution* as read together with the *Access to Information Act* and was denied the same by the 1<sup>st</sup> respondent. See *Gladys Boss Shollei -vs- Judicial Service Commission & Another* (2018) eKLR.
  25. The upshot is that I find that to allow the notice of motion in the manner pleaded is to enable the exparte applicant to benefit from his mistakes and the breach of the law alluded to above.
  26. I find no merit in quashing the Minister's proceedings and the decision. The Notice of Motion is dismissed with no orders as to costs.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 12<sup>TH</sup> DAY OF MARCH 2025.**

**In the presence of:**

Court Assistant - Laban

Rugut for Applicant

No appearance for the Attorney General.

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

