



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njagi v Muchiri & another (Judicial Review E006 of 2023)  
[2025] KEELC 3639 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3639 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
JUDICIAL REVIEW E006 OF 2023**

**JM MUTUNGI, J**

**MAY 8, 2025**

**BETWEEN**

**PETER NDAMBIRI NJAGI ..... APPLICANT**

**AND**

**STEPHEN M.G MUCHIRI ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KIRINYAGA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Ex-parte Applicant commenced these Judicial Review proceedings by way of a Notice of Motion dated 13<sup>th</sup> October 2023, praying for the following reliefs:
  1. That the Honourable Court do issue an order for certiorari against the 2<sup>nd</sup> Respondent quashing the proceedings on the 27<sup>th</sup> September 2023 and verdict of the Dispute Resolution Committee of [land, physical planning and urban development] dated the 4<sup>th</sup> October 2023 in respect to Plot No. 182B Wang'uru and Plot No. B302 Wanguru.
  2. Cost of this Judicial Review application as shall be assessed by the Honourable Court.
  3. Any other order or further order[s] and/or writ [s] and/or direction [s] the Honourable Court may deem fit to grant.
  4. Costs of this application be provided for.
2. The motion was based on the Supporting Affidavit of Peter Ndambiri Njagi. The Applicant deponed that he was the legitimate owner of Plot No. B182 in Wang'uru, which measured 100ft by 120ft. He averred that the measurements of the suit plot were confirmed to be 100ft by 120ft by the correspondences from the former Kirinyaga County Council [now defunct]. He averred he purchased the plot from one Nelson N. Kabangi on 15<sup>th</sup> March 2023 and took immediate possession after paying



the purchase price. The Applicant stated that a site visit conducted on 28<sup>th</sup> August 2023 confirmed the plot's existence. He stated that Nelson N. Kabangi was issued a beacon certificate on 26<sup>th</sup> October 1990 and that he[Kabangi] showed him the beacons before he purchased the plot. He averred the County Council approved a replanning of the plot B182 on 22<sup>nd</sup> July 2002 as per extract of the minute exhibited as "PNN-5".

3. The Applicant stated that months after taking possession and extensively developing the plot, he got information that the 1<sup>st</sup> Respondent was claiming ownership of Plot No. B182 in Wang'uru. The Respondent claimed that the Applicant had built on his Plot No. B302 in Wang'uru, leading the Respondent to file a complaint with the 2<sup>nd</sup> Respondent. On 27<sup>th</sup> September 2023, the Department of Lands, Physical Planning, and Urban Development convened a meeting, and a report was issued on 4<sup>th</sup> October 2023. The Applicant expressed dissatisfaction with this report, describing it as flawed and inconsistent. He highlighted several issues; that there was no record of the three individuals who it was indicated owned larger than normal-sized plots; the report lacked names of the witnesses who provided evidence; interviews of alleged witnesses were conducted without the presence of either the complainant or the Respondent, which denied them the opportunity to authenticate their statements; there was no reasonable explanation as to how the resolution committee concluded that all plots in that area measured 50 feet by 100 feet; and there was no evidence collected from the initial owner of Plot No. B182 despite him being available during the site visit.
4. The Applicant further argued that the verdict of the 2<sup>nd</sup> Respondent failed to consider all circumstances regarding the plots, deeming it irrational. The Applicant contended that it did not make sense for "a plot" to exist within his plot. He averred that he had no claim against the 1<sup>st</sup> Respondent and/or over plot No. B302 Wang'uru and urged that the 1<sup>st</sup> Respondent pursues the 2<sup>nd</sup> Respondent in regard to the plot No. B302 Wang'uru which the 1<sup>st</sup> Respondent claims ownership.
5. The 1<sup>st</sup> Respondent in response filed his Replying Affidavit on 2<sup>nd</sup> May 2024, stating that he is the registered owner of Plot No. B 302 Wang'uru, which measures 50 feet by 100 feet and borders Plot No. B 182 Wang'uru, owned by the Applicant. He averred that he acquired the plot through a purchase from a previous owner, James Njau Njogu, who had purchased it from one Peterson Mwangi Kinyu. The 1<sup>st</sup> Respondent averred that he complied with all legal requirements for the plot's transfer and that after the transfer, he assumed ownership of the plot and has continuously paid the necessary charges to the Kirinyaga County Government up to the present day. He stated that his ownership was confirmed by the Kirinyaga County Government vide the extract of the minutes dated 12<sup>th</sup> August 2020.
6. He stated that he had constructed a dwelling house on his plot but alleged that the Applicant forcefully trespassed onto the plot and demolished the same prompting him to lodge a complaint with the County Government who arranged for the Dispute Resolution Committee to meet to adjudicate the dispute. The 1<sup>st</sup> Respondent averred that during the Dispute Resolution meeting the Applicant was represented by his Advocate who participated in the deliberations. The 1<sup>st</sup> Respondent averred that the Dispute Resolution Committee made a finding that all the plots within the area measured 100ft by 50ft and consequentially held that the Applicant's plot did not measure 100ft by 100ft as he claimed. The Committee held that the Applicant had encroached into and constructed on the plot No. B302 belonging to the 1<sup>st</sup> Respondent.

### **Submissions, Analysis and Determination**

7. Parties were directed to file their submissions. The Exparte Applicant filed his submission dated 5<sup>th</sup> December 2024. The 1<sup>st</sup> Respondent filed his submissions dated 18<sup>th</sup> December 2024.



8. The ex-parte Applicant contended that the dispute resolution process conducted by the Dispute Resolution Committee was procedurally unfair. This claim was based on the assertion that the committee reached its conclusion without allowing him a proper opportunity to be heard. He argued that although he was given the chance to present his case, the original owner of the disputed plot was deliberately excluded, preventing him from testifying about why his portion was larger than the typical 50ft by 100ft in that area. The Applicant in support of his submissions placed reliance on the Case of Republic v County Government of Nairobi, Kilimani Project Foundation & 21 Others [Interested Parties] Ex parte Cytonn Investment Partners Sixteen Lip [2020] eKLR, where the Court stated that at paragraph 44 of its Judgment as follows:-

“44. It is axiomatic that the exercise of public power is only legitimate when lawful. A body exercising public power has to act within the powers lawfully conferred upon it. The principle of legality also requires that the exercise of public power should not be arbitrary or irrational. Decision makers should not pursue ends which are outside the “objects and purposes of the statute”. It said that power should not be “exceeded” or that the purposes pursued by the decision – maker should not be “improper” “ulterior” or “extraneous” to those required by the statute in question. It is also said that “irrelevant considerations” should not be taken into account I reaching at a decision”

9. The Ex parte Applicant argued that the interview with the alleged witnesses, who provided information voluntarily and whose particulars were not given, was not properly authenticated and that he had not been given a chance to challenge its validity. Additionally, he stated that the County Surveyor did not participate in the proceedings. As a result, he claimed that he was denied a fair hearing due to how the process was conducted.
10. In response, the 1<sup>st</sup> Respondent submitted that the Judicial Review process is focused on examining the decision-making process rather than the merits of the decision itself. The 1<sup>st</sup> Respondent asserted that an order of certiorari, as sought by the Applicant, can only be issued if a decision was made unlawfully, unprocedurally and/or was unreasonable or irrational. The 1<sup>st</sup> Respondent maintained that the 2<sup>nd</sup> Respondent’s decision considered all circumstances involving the disputed plots and that all parties were involved and were given a fair hearing.
11. The 1<sup>st</sup> Respondent highlighted that the Applicant had not identified any legal provision that the 2<sup>nd</sup> Respondent failed to comply with and emphasized that the Applicant should not misuse Judicial Review proceedings to Appeal a decision with which he was dissatisfied. The 1<sup>st</sup> Respondent cited several cases to support his argument, including Republic v Kenya Revenue Authority Ex parte Yaya Towers Limited [2008] eKLR, Patoli v Kabale District Local Government Canal & Others [2008], Kenya National Examination Council v Republic Ex-parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR, and Municipal Council of Mombasa v Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001.
12. I have carefully considered the Exparte Applicant’s Notice of Motion, the Supporting Affidavit, and the 1<sup>st</sup> Respondent’s Replying Affidavit, as well as the submissions made on behalf of the parties and the issue for determination is whether there was procedural impropriety to warrant the grant of an Order of Certiorari that the exparte Applicant prays for.
13. It is trite that where discretion is donated to a particular body, the Courts should exercise restraint and not readily accede to invitations to interfere with such powers and discretion. In Municipal Council of



Mombasa v Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001 the Court of Appeal held:

“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...”

14. However, as outlined in the "Judicial Review Handbook, 6th Edition" by Michael Fordham, on page 5, Judicial Review stands as a pivotal mechanism within Administrative Law, serving to uphold the Judiciary's Constitutional duty to guard against the misuse of power by public authorities. This process is a crucial safeguard for the rule of Law, ensuring that the public interest is maintained. It monitors the adherence to limits and obligations set by Parliament, directs public bodies to act within legal boundaries, guarantees that these entities are answerable to the law and not exempt from it, and safeguards individual rights.
15. The ex-parte Applicant contends that his right to be heard was violated for two reasons. First, Mr. Nelson Kabangi, the original owner of plot B182 in Wang'uru, was denied the opportunity to present his testimony. Second, the Committee conducted site visits and gathered evidence from individuals who were not involved in the case, without allowing the ex-parte Applicant the chance to cross-examine or challenge this evidence.
16. The 1<sup>st</sup> Respondent in his submissions dated 18<sup>th</sup> December 2024 argued there was no impropriety on the part of the Dispute Resolution Committee as all the parties were given the opportunity to present their cases and produce documents in support of their cases. The 1<sup>st</sup> Respondent placed reliance on the Cases of Republic v Revenue Authority Exparte Yaya Towers Limited [2018] eKLR and Pastoli v Kabale District Local Government Council & Others [2008] 2, EA 300 to buttress his submission that the Court is not required to concern itself with the merits of the case but rather whether the decision-making process was procedurally fair. He also asserted that the Applicant had not pointed any provision of the law which the Committee had contravened.
17. The 1<sup>st</sup> Respondent further submitted that the Dispute Resolution Committee accorded each party a fair hearing, and that the Applicant was represented at the hearing by his two Advocates who presented the Applicant's case and their evidence before the Committee was captured in the Committee's report. The 1<sup>st</sup> Respondent submitted that there was no breach of Article 47 of *the Constitution* and/or Section 4[i] and [2] of the *Fair Administrative Action Act*, 2015.
18. Article 47[1] and [2] 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.
19. The provisions of Section 4[1], [2] and [3] of the *Fair Administrative Action Act* provide as follows:
  1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
  2. Every person has the right to be given written reasons for any administrative action that is taken against him.



3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
  - a. prior and adequate notice of the nature and reasons for the proposed administrative action;
  - b. an opportunity to be heard and to make representations in that regard;
  - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - d. a statement of reasons pursuant to section 6;
  - e. notice of the right to legal representation, where applicable;
  - f. notice of the right to cross-examine or where applicable; or
  - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.
20. The minutes and resolution of the 2<sup>nd</sup> Respondent, dated 27<sup>th</sup> September 2023, outline the decision of the Dispute Resolution Committee and detail the submissions made by each party. They note that after hearing from both sides, the Committee conducted a site visit to gather additional information. However, they do not specify whether the visit occurred in the presence of the affected parties. The Applicant has asserted that he was not informed about the individuals who gave evidence during the site visit and that he was not accorded the opportunity to cross examine them on their evidence or to challenge their evidence.
21. The minutes also indicate that the Dispute Resolution Committee returned to the disputed site for a second visit. During this visit, they observed that "all plots in the area measure 50ft by 100ft" while noting that "the plot being constructed by the respondent measured 105ft by 105ft." It is clear that the site visits significantly influenced the Committee's Resolution of the dispute. Given the importance of these visits in resolving the dispute, the affected parties should have been notified and included in the site visits. They should have had the opportunity to participate and to interrogate the evidence of any witnesses who gave evidence during the site visits. The Committee's Resolution clearly indicates that one of the purposes of the two site visits was to clarify the ownership status and the precise measurements of each plot. This determination was crucial, as it significantly impacted on one of the parties involved. Therefore, it was essential for the Committee to involve the affected parties in the site visits to ensure that no one was unfairly disadvantaged. As it is the minutes do not verify whether the affected parties were included in the site visits or afforded the opportunity to be present during the visits.
22. In the Case of *Winrose Gathigia v Kenyatta University* [2008] KEHC 3907 [KLR] the Court in considering how quasi Judicial bodies ought to conduct their proceedings stated as follows:-

"I would at this stage adopt the observations made in the *Hypolito Cassiani De Souza v Chairman Members of Tanga Town Council* 1961 EA 77 where the court set down the general principles which should guide statutory domestic or administrative tribunals sitting in a quasi-judicial capacity. P 386 – the Court said;"

  1. if a statute prescribes, or statutory rules and regulations binding on the domestic tribunal prescribe, the procedure to be followed, that procedure must be observed;



2. if no procedure is laid down, there may be an obvious implication that some form of inquiry must be made such as will enable the tribunal fairly to determine the question at issue;
3. In such a case the tribunal, which should be properly constituted, must do its best to act justly and reach just ends by just means. It must act in good faith and fairly listen to both sides. It is not bound, however, to treat the question as a trial. It need not examine witnesses, and it can obtain information in any way it thinks best...
4. The person accused must know the nature of the accusation made;
5. A fair opportunity must be given to those who are parties to the controversy to correct or contradict any statement prejudicial to their view and to make any statement they may decide to bring forward;
6. The tribunal should see to it that matter that has come into existence for the purpose of the quasi-lis is made available to both sides and once the quasi-lis has started, if the tribunal receives a communication from one party or from a third party, it should give the other party an opportunity of commenting on it.”

23. In the Case of Board of Education v Rice; [1911] AC 179 Lord Loreburn LC stated as follows:

“a decision-making body should not see relevant material without giving those affected a chance to comment on it and, if they wish, to controvert it, is fundamental to the principle of law [which governs public administration as much as it does adjudication] that to act in good faith and listen fairly to both sides is ‘a duty lying upon everyone who decides anything.”

24. In this case, the Committee relied on information provided by individuals claiming that the plots in the area of the disputed land measured 50 feet by 100 feet. The ex-parte Applicant’s claim that they were not notified about the witnesses and were not given the opportunity to cross-examine them was not contested. Additionally, the Committee’s failure to include the ex-parte Applicant in the site visit and provide him with a chance to question the witnesses who gave evidence rendered the entire process improper and subject to being quashed. The process through which the Dispute Resolution Committee of the 2<sup>nd</sup> Respondent reached its decision was flawed and the decision cannot therefore stand. An Order of certiorari in terms of prayer [1] of the Notice of Motion is hereby issued.

25. Each party will bear their own cost of the application.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

