Republic v Rift Valley Provincial Land Disputes Appeals Committee & another; Kiberenge & 2 others (Exparte Applicants) (Environment and Land Miscellaneous Application 1 of 2022) [2025] KEELC 4310 (KLR) (9 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4310 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 1 OF 2022

CK NZILI, J

JUNE 9, 2025

BETWEEN

REPUBLIC ..... APPLICANT

AND

RIFT VALLEY PROVINCIAL LAND DISPUTES APPEALS COMMITTEE ..... 1ST RESPONDENT

CHIEF MAGISTRATE'S COURT, KITALE ..... 2ND RESPONDENT

AND

ESTHER KIBERENGE AKA ESTHER NASAMBU ..... EXPARTE APPLICANT

LEVI WASWA MUKHWANA ..... EXPARTE APPLICANT

SIMON SIMIYU TOILI ..... EXPARTE APPLICANT

JUDGMENT

1. By a notice of motion dated 28/2/2022, the court is asked to:-

    1. Issue an order of certiorari to remove and quash the decision of the Rift Valley Provincial Appeals Committee presented and adopted as judgment, order, and decree of the Chief Magistrates Kitale in CMCC Land Case No. 42 of 2008 on 13/10/2021, ordering the eviction of the exparte applicants from parcel No. 49 Maeni Farm, measuring 6 acres.

2. The grounds are set out on the face of the application, the statutory statement of facts dated 3/2/2022, and a verifying affidavit of Esther Kiberenge, a.k.a. Esther Nasambu Ijakaa sworn on 3/2/2022. The exparte applicants aver that the Tribunal erred in awarding the 6 acres that were non-existent to the interested party and that the interested party has used the eviction orders to remove them from the

land parcel that is not related to the suit land herein, as per the area list, agreements, share certificates and photographs attached as EK-6, 7(a), (b), (c) and (d) and 8(a), (b) and (c).

3. The exparte applicants aver that the proceedings, order, decree, and eviction order issued on 28/10/2021 were made in excess of jurisdiction in view of similar other orders. The same was attached to the verifying affidavit as annexures EK-2, 3, 4, and 5. The exparte applicants aver that they were condemned unheard contrary to the principles of natural justice and the right to fair administrative action. Equally, the exparte applicants aver that the decision of the Tribunal was incapable of being implemented.

4. The 1st respondent filed a memorandum of appearance dated 13/5/2022 and opposed the notice of motion on the grounds of opposition dated 27/7/2022, inter alia that; the application was filed out of time without any extension of time. That the respondents acted within the jurisdiction as per Sections 3,4, and 7 of the Land Disputes Tribunal Act (repealed) and under the *Civil Procedure Act*. Lastly, the parties to the proceedings were accorded all their rights under the rules of natural justice with no evidence attached to the contrary.

5. The 1st interested party opposes the motion by a replying affidavit sworn by Edoani Wanyonyi Apollo on 5/5/2022. It was deposed that the 2nd and 3rd interested parties were parties in Kitale CMC Land Case No. 42 of 2008 and the Rift Valley Provincial Land Disputes Appeal No. 9 of 2009, which entered judgment against the 2nd and 3rd interested parties confirming that he was the bona fide member/ lawful owner of Plot No. 49 Maeni Farm, measuring 6 acres, as per annexure EX-EWAI1(a) and (b). The 1st interested party deposes that on 5/2/2016, the 3rd interested party misled the court into believing that the judgment made on 8/1/2009 was valid, hence was issued an eviction order against him, which prompted him to file an application dated 26/2/2021, which was allowed by the court with no opposition from the 2nd and 3rd interested parties.

6. The 1st interested party deposes that before the 2nd and 3rd interested parties were evicted from Plot No. 49 Maeni Farm, the County Surveyor had re-established the plot boundaries and confirmed that it was actually less by 1.3 acres. Therefore, the 1st interested party termed the exparte applicants as strangers to Kitale CMC Land Case No. 42 of 2008 and Nakuru Provincial Appeal Case No. 9 of 2009, for them to purport to have been aggrieved by such proceedings, decision, and the subsequent orders of eviction, which in any event were implemented against the bonafide respondents. The 1st interested party urged that the exparte applicants lack locus standi to seek the reliefs sought.

7. Further, the 1st interested party deposes that the exparte applicants were neither parties to the previous cases nor were they bona fide members of Maeni Farm as per the certified register in the area list, unlike annexure EK-6, which is not authenticated at all and contains fictitious members, including the exparte applicants. The 1st interested party deposes that the 1st exparte applicant is the daughter of the owner of Plot No. 56, and her name does not appear in the register.

8. Regarding annexure EK-7(a) and (b), the 1st interested party avers that they lack plot numbers, and the share certificate is fraudulent. Further, the 1st interested party avers that the 2nd and 3rd exparte applicants are fictitious members with no authentic sale agreements or share certificates with plot numbers, Plot No. 49(c) does not exist in the register and on the map, and the names of the purported buyer and shareholder do not exist in the register and on the map.

9. The 1st interested party deposes that being a shareholder and bona fide member of the Maeni Farm, it is within his knowledge that the chairman, treasurer, and secretary of Maeni Farm were but trustees who have no powers to sell any land to the exparte applicants, without express permission of the members. The 1st interested party deposes that the original register for Maeni Farm does not reflect the existence

of Plot Nos. 295, 296, and 291, as well as a share certificate in the names of the exparte applicants. In any event, the 1st interested party deposes that Plot Nos. 291, 295, and 296 were not subject to the above-mentioned cases and, therefore, cannot be a basis for granting the orders sought.

10. The 3rd interested party opposed the notice of motion by replying affidavit sworn on 5/2/2024, where it is confirmed the filing Case No. 42 of 2008 against the 1st and 2nd interested parties and obtaining a decree and eviction order, all attached as SS-1, 2, and 3. It is deposed that the 1st interested party filed Case No. 32 of 2011 against him and the 2nd interested party, which was dismissed on 4/1/2021 as per SS-3. The 3rd interested party deposes that upon dismissal, the application dated 26/2/2021 was filed against them and obtained an eviction order marked SS-4, against parties who were in the appeal case or without disclosure of the earlier proceedings in Case Nos. 32 of 2011 and 42 of 2008.

11. The 3rd interested party deposed that the court acted in excess of jurisdiction or without disclosure of and regard to an earlier ruling on 4/2/2021, more when the 1st interested party had not lodged any appeal in both instances and that the order made on 13/10/2021, is tantamount to the court, sitting on appeal of its decision, hence the court under Article 165(6) of *the Constitution* should vacate such orders, as they were illegal, filed by a party without locus standi, was res judicata and made in abuse of the court process.

12. The application was canvassed by way of written submissions. The exparte applicant relies on written submissions dated 6/12/2024. It is submitted that the court decree was recalled and altered in favor of the 1st interested party, with a view of evicting them before they were given an opportunity to be heard, contrary to the constitutional right to a fair administrative actions act. Further, it was submitted that the court acted without jurisdiction. Reliance was placed on Republic -vs- Attorney General & Others, Kihingo Village (Waridi Gardens) Management Ltd (Exparte Applicant) [2024] KEHC 14669 [KLR], where the court cited with approval Githiga & Others -vs- Kiru Tea Factory Co. Ltd, Petition 13 of 2019 [2023] KESC 41 [KLR], on the need for procedural fairness.

13. The exparte applicants submitted that the respondents issued eviction orders by reviewing an earlier decree issued by another court, hence leading to the conflicting decision. Reliance is placed on Republic -vs- Office of the Attorney General and Department of Justice (Business Registration Services) & Another, African Calling Safaris Ltd (Exparte Applicant) [2024] KEHC 12857 [KLR], citing with approval Pastoli -vs- Kabale District Local Government Council & Others [2008] 2 EA 300, on the proportion that courts can intervene on account of illegality, irrationality, and procedural impropriety.

14. The ex-parte applicants submitted that as held in Sceneries Ltd -vs- National Land Commission, Ngengi Muigai & Kenya Reinsurance Corporation [2017] KEHC 8460 [KLR], judicial review holds public power accountable by scrutinizing the decision-making process rather than the merits of the decision. Again, the ex-parte applicants submit that they have locus standi, for they hold a legitimate interest or proprietary right to the parcels of land whose rights are threatened with the violation; hence, the court can intervene, especially since the 1st interested party flouted the law, obtained ex-parte eviction orders without appealing against the earlier decision and in total disregard of their rights to a fair hearing, natural justice, and the *Fair Administrative Action Act*.

15. The respondents relied on written submissions dated 10/2/2025 to expound their grounds of opposition. On whether the pleadings have been filed within time, the respondents, relying on Order 53 Rule 3 of the Civil Procedure Rules, submit that an application for an order of certiorari must be made within 6 months from the date of the decision and in this case, it was filed 11 years after the defunct Land Disputes Appeal Tribunal had rendered a decision on 25/5/2011, that was eventually adopted as a decree by the 2nd respondent. To this end, the respondents submitted that the notice of motion before the court was filed without leave being sought and obtained to file it out of time.

Further, the respondents submitted that there were no proper proceedings and the decision before the respondents for quashing other than annexures EK1, 2 and 3, which had already been implemented and or spent at the time of filing this motion.

16. Needless to say, the respondents submitted that the order dated 13/10/2021 was merely enforcing the award but not adopting it, which, in any event, the 1st respondent's decision of 25/5/2011 had not been challenged by way of judicial review or appeal by 5/7/2016 or until the 1st interested party sought eviction orders dated 26 February and 27 October, 2021.

17. Similarly, the respondents submitted that the exparte applicants had not told the court why it took long to move the court to challenge the award and the decree until the eviction order was issued and implemented. Further, the respondents submit that the proper proceedings have not been brought before the court for quashing, save for annexures EK 1, 2 and 3, which, in any event, were issued over 6 months before leave was sought to quash them.

18. On the jurisdiction of the court, the respondents relied on Sections 3 and 7 of the Land Disputes Tribunal Act (repealed), to submit that the 2nd respondent's role was limited merely to the adoption and the enforcement of the decision of the 1st respondent, which it executed in line with the enabling legislation and whose decree and orders were never challenged, set aside or reviewed.

19. In addition, the respondents submitted that the 2nd respondent has a mandate, which it exercised to ensure adherence to the rule of law and to make any order or decree within its jurisdiction. In this case, it is submitted that the ex-parte applicants have not demonstrated in their pleadings how the principles of natural justice were breached and at what stage of the proceedings.

20. The respondents submitted that parties are bound by their pleadings which should be sufficient enough to enable the opposite party to offer a sound response, which the ex-parte applicants have failed to do. The respondents submitted that the jurisdiction of this court is limited to the decision-making process and not to the merits of the decision. In these proceedings, it is submitted that the court cannot call for viva voce evidence to scrutinize why a party's 6 acres, which the ex-parte applicants claim are non-existent, and such issues can only be addressed on appeal. In sum, the respondents that the ex-parte applicants are in a desperate attempt to rewind a legal process and reverse the course of justice to their advantage.

21. The 1st interested party relied on written submissions dated 26/2/2024, reiterating the contents of his replying affidavit sworn on 5/5/2022. He terms the application before the court as offensive to Order 53 Rule 2 of the Civil Procedure Rules, for leave was being sought more than 10 years after the decision was made on 25/5/2011, following the adoption of the award on 8/1/2008, and the decision at the provincial level on 3/2/2009 and the adoption of the award as a decree of the court by the 2nd respondent.

22. The 1st interested party submitted that all the court did on 13/10/2021 was to issue eviction orders against the 2nd and 3rd interested parties from Plot No. 49 Maeni Farm with the OCS ordered to use reasonable force to evict the 2nd and 3rd interested parties from the said land, which execution took place on 11/11/2021. The 1st interested party submitted that under Section 8 of the Land Disputes Tribunal, Act (repealed), the decision of the appeal committee was final unless appealed against within 60 days from the date of the decision. In this case, there has been no appeal filed, the court cannot be asked over ten years after the said Act was repealed by Sections 30(1) and 31 of the *Environment and Land Court Act*, after it had been concluded on 25/11/2011.

23. Further, the 1st interested party submitted that the annexures by the exparte applicants to show ownership of the parcel are invalid and have no nexus with Plot No. 49 Maeni Farm from where the 2nd

and 3rd respondents were evicted from and should have sued the person who sold them the land. The 1st interested party submitted that the eviction orders were lawfully issued as per the Tribunal ruling dated 25/5/2011, which decision still stands and cannot be challenged, and that the only remedy available to the exparte applicant is to file a suit against those who sold them the land, by way of an ordinary suit, where the court can interrogate the documents on the claims, intent of seeking to reopen a concluded matter, way back in 2007 and 2008.

24. The 1st interested party submitted that the decision of the Tribunal was implemented on 10/12/2021 and 17/1/2022 when the 2nd and 3rd interested parties were evicted, and he took over the land, hence making the application frivolous, vexatious and malicious, bad in law and lacking merits.

25. On the other hand, the 3rd interested party relied on written submissions dated 14/11/2024. It is submitted that the 1st interested party was the primary beneficiary of the exparte orders, yet he has not shown that, indeed, the exparte applicants and the 3rd interested party were parties before obtaining the orders in issue; otherwise, judicial review deals with the process of making decisions and how they affect the parties involved. The 3rd interested party submitted that the 1st respondent had no jurisdiction to revisit the issue unless on appeal, and even if it had, all its parties likely to be affected by the decision should have been involved before the order was issued on 13/10/2021.

26. What the court is asked to issue an order of certiorari to call for and quash an adoption of a judgment, order, and decree of the court in Kitale CMC Land Case No. 42 of 2008, and the issuance of an eviction order dated 13/10/2021, which the 1st interested party says was actually implemented against the 2nd and 3rd interested parties, by the OCS on 10/12/2021 and 17/1/2022. The 2nd and 3rd interested parties have not denied that the decision or orders sought to be quashed were effected long before the court granted leave to act as a stay of the decision on 7/2/2022. The eviction orders attached indicate that the 1st interested party had been served with a notice to show cause why he should not be evicted from Plot No. 49 belonging to the 2nd and 3rd interested parties and had failed to give vacant possession, thus continuing to disobey a lawful court decree or order.

27. The eviction order issued was directed at the 2nd and 3rd interested parties, their family, servants, agents, and any other person bound by the order. The 1st interested party had sought the order through an application dated 2/5/2021, supported by an affidavit sworn on 26/2/2021. Eventually, it appears the OCS had sought the authentication of the order by a letter dated 3/11/2021. Unfortunately, the certified proceedings leading to the judgment, order, decree, and eviction order attached as annexures EK1,2, and three have not been supplied to this court in line with Order 53 Rule 7 of the Civil Procedure Rules.

28. Order 53 thereof provides in mandatory terms that, the validity of any order, warrant, conviction, inquiry, or record cannot be challenged or questioned unless a party before the hearing of the motion has lodged, a copy thereof, verified by an affidavit of the registrar to the satisfaction of the court. I, therefore, totally agree with the respondents' submissions that there is nothing before this court to quash in the absence of certified impugned proceedings and the decisions the exparte applicants are aggrieved of.

29. The exparte applicants complain that they were condemned unheard and their rights to fair hearing and fair administrative action were violated. What was before the 2nd respondent in October 2021 was post-judgment execution proceedings, which fall under Section 34 of the *Civil Procedure Act* and Order 22 of the Civil Procedure Rules. The exparte applicants are alleging that the 2nd respondent acted ultra vires in adopting the award, issuing a decree, enforcing and executing the same through an eviction order dated 5/6/2016, 26th and 13 October 2021.

30. No certified copies of the trial court proceedings have been attached to the application by the applicants to demonstrate how, when, and the manner in which the 2nd respondent exercised its statutory and constitutional mandate, disregarded and condemned the exparte applicants unheard contrary to their rights to fair administrative action under Articles 47 and 50 of *the Constitution*.

31. The award and the decree are said to have been made in 2008 and on 8/1/2009. It was long before *the Constitution* of Kenya 2010 gave birth to Articles 47 and 50 and, subsequently, the *Fair Administrative Action Act* 2015 came into force. The right to a fair hearing and natural justice were also enshrined in the retired Constitution 1963. Article 47, as held in Martin Nyaga Wambora -vs- Speaker of the Senate [2014] eKLR and in JSC -vs- Mbalu Mutava [2015] eKLR, elevates natural justice and the duty to act reasonably in administrative, judicial, and quasi-judicial proceedings, into a constitutional right capable of enforcement by an aggrieved party.

32. A party alleging a breach of its fundamental rights before a court of law must demonstrate such a breach, violation, and infringement through tangible evidence. The burden of proof to show how the proceedings, rulings, decrees, and orders by the 2nd respondent were in flagrant disregard of the ex-parte applicants' constitutional rights and freedoms was upon the applicant to discharge. The duty to avail the certified proceedings and judgment, ruling, and orders before this court was on the ex-parte applicants under Order 53 of the Civil Procedure Rules.

33. Judicial review is concerned more with the decision-making process as held in the Municipal Council of Mombasa -vs- Republic & Umoja Consultants Ltd [2002] eKLR. In Pastoli -vs- Kabale (Supra), illegality and procedural impropriety were defined as not affording a party an opportunity to be heard and acting without jurisdiction. The 2nd respondent had a statutory mandate to adopt a decision or an award of the 1st respondent under the defunct Land Disputes Tribunal Act 1990, the *Judicature Act*, the Magistrate Jurisdiction Act (repealed), and the retired Constitution of Kenya 1963. It cannot, therefore, be true that as of 2008 and 2009, the 2nd respondent had no jurisdiction to adopt the award and make it a decree of the court. The ex-parte applicants have not demonstrated how the adoption, issuance of the decree, and the subsequent execution process was illegal and or unprocedural.

34. An aggrieved party, by the adoption of the award and issuance of the decree had the right to lodge an appeal or seek judicial review before the High Court. None of the aggrieved parties to the award, decision, or decree, some of whom are the interested parties herein, exercised the right of appeal, review, and or otherwise challenged the same within the constitutional and statutory procedures or timelines in existence at the time.

35. Order 53 Rule 2 of the Civil Procedure Rules has a time limit of 6 months from the date of the judgment, decree, order, or other proceedings. The last order sought to be quashed is the eviction order said to have been issued on 13/10/2021. The date of the filing of these proceedings is 28/2/2022. The application was, therefore, filed outside the period of 6 months as stipulated in Sections 8 and 9 of the *Law Reform Act*. In Wilson Osolo -vs- John Odhiambo Ochola & Another [1996] eKLR, the court observed that there is no provision in law for a court to grant leave for an extension of the 6 months under the *Law Reform Act* and in the Law of *Limitation of Actions Act*. In the Republic -vs- Chairman Amagoro Land Disputes Tribunal ex-parte Paul Mafwabi Wanyama [2014] eKLR, the court observed that it had no jurisdiction to enlarge time on the proceedings governed by Order 53 of the Civil Procedure Rules. In Republic -vs- KenHa & Another ex-parte Amira Business Solutions Ltd [2016] eKLR, the court said the six-month period applies to specific formal orders and that other proceedings should be construed to mean analogies to judgment, order, or decree. To this extent, I find the application by the ex-parte applicants statute barred.

36. As to the merits of the application, the 2nd and 3rd interested parties' representatives have admitted that they were evicted from the suit land. The 2nd and 3rd interested parties have conceded that they never challenged the award, decree, order, or judgment by way of an appeal and review in any other proceedings or elsewhere out which the award, decree, or eviction order was set aside, vacated, or quashed. The nexus between the 2nd and 3rd interested parties and the basis why they are supporting the alleged rights of the exparte applicants is not clear to this court. The only inference is that the exparte applicant is trying to advance the rights of the 2nd and 3rd interested parties through proxy.

37. In Republic -vs- County Government of Embu, exparte Peterson Kamau Mati T/A Embu Medical & Dental Clinic & Others [2022] eKLR, the court observed that where the decision or act complained of has been implemented, then the court needs to consider the completeness or continuing nature of such implementation and the appropriateness of suspending it.

38. The exparte applicants have not told this court that where the eviction order was effected was outside the decreed plot No. 49 such that it affected or interfered with other plots not contemplated in the decree or order of the court. In such a case, the exparte applicant, under Order 22 of the Civil Procedure Rules, would have filed objection proceedings to the execution. Equally, the exparte applicants, if an illegal eviction aggrieved them, could have invoked Section 152A-(1) of the *Land Act* to have their substantive occupation rights and interests safeguarded and determined through a substantive suit.

39. The court has already made a finding that the 1st and 2nd respondents acted within their statutory mandate. There is no evidence that the decisions by the 1st and 2nd respondents were made outside the context and scope of the then-existing enabling legislation. Again, there is no evidence that the 1st and 2nd respondents acted outside the four corners of the cited statutory framework at the time. The illegalities, irrationality, and procedural improprieties of the decisions, orders, and decision-making process have not been substantiated by way of tangible evidence.

40. Written submissions cannot replace pleadings and evidence, as held in Daniel Toroitich Arap Moi -vs- Mwangi Stephen Muriithi & another [2014] eKLR. The judicial review looks into the legality of the process. The ownership of the suit land by the exparte applicants was not brought by way of known pleadings before the 1st and 2nd respondents. The award was adopted and made a decree of the court that was perfected through lawful execution proceedings. The court, by way of judicial review, is being called only to quash unattached trial court proceedings, decrees, and orders without a substantive suit where the alleged proprietary rights of the exparte applicants have been defined, determined, and or registered.

41. Other than the sale agreements and share certificate, the exparte applicants have failed to display any letters of offer, discharge of charge, or letters of transfer and title deeds that are superior to the decreed land by a competent court held by the owner of the Plot No. 49 Maeni Farm.

42. In Republic -vs- Attorney General & 4 others ex-parte Diamond Hashim Lalji [2014] KEHC 2238 (KLR), the court held that where a party brings judicial review proceedings with a view to determining contested matters of s and, in effect, urges the court to determine the merits of two or more different versions presented by the parties, the jurisdiction of the court to determine such a matter is improperly invoked, and the parties must be directed to resort to the regular forums where such matters ought to be resolved.

43. In Republic -vs- Registrar of Societies & Others Ex-parte Lydia Cherubet & Others 2016] KEHC 8055 (KLR), the court lamented the practice of seeking a court on judicial review to embark on an exercise that calls for determination to be made on merits that require evidence to be taken to decide the issues of facts, on a balance of probabilities. Again, in Speaker of National Assembly -vs- Njenga Karume [2008]

1KLR 425, court observed that where there is an alternative forum to seek a review, judicial review should be an exception. I agree with the respondents that the exparte applicants have come to agitate for their interests or rights based on contested facts and on an unauthenticated ownership document(s), which may not be handled through judicial review proceedings. Equally, the locus standi by the exparte applicants is in doubt since they were not parties to the proceedings before the respondents and did not seek to be enjoined to them as interested parties or objectors to the decree, orders, or their enforcement against the 2nd and 3rd interested parties.

44. I have said enough to show that the exparte applicants have failed to substantiate the manner in which the respondents were guilty of illegality, irrationality, and procedural improprieties in the judgment, decree, and eviction order complained about, even if the judicial review application had been brought on time. The upshot is that I dismiss the notice of motion dated 28/2/2022 with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 9TH DAY OF JUNE 2025.

In the presence of:

Court Assistant Laban

Keya for the Exparte Applicant present

Nyakundi for the 1st Interested party present

Chelagat for Respondents present

IP present

HON. C.K. NZILI

JUDGE, ELC KITALE.