



**Republic v Busia Municipality Land Disputes Tribunal; Wandera
(Sued as the Legal Representative of the Estate of Ali Awala Angaro) &
another (Interested Parties) (Environment and Land Judicial Review
Case E001 of 2023) [2025] KEELC 4949 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 4949 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2023**

BN OLAO, J

JULY 3, 2025

BETWEEN

REPUBLIC APPLICANT

AND

BUSIA MUNICIPALITY LAND DISPUTES TRIBUNAL RESPONDENT

AND

**GEORGE WANDERA (SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF ALI AWALA ANGARO) INTERESTED PARTY**

BUSIA SUGAR INDUSTRY INTERESTED PARTY

JUDGMENT

1. Section 9(3) of the *Law Reform Act* provides that:

“In the case of an application for an order of Certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of it’s being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings is subject to appeal, and a time is limited by law for the bringing of the appeal, the Court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”



Order 53 Rule 2 of the Civil Procedure Rules provides that:

“Leave shall not be granted to apply for an order of Certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of it’s being quashed, unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any Act; and where the proceedings is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

Jamoco Management Committee (the 1st Applicant herein) were the first Applicant to file this Judicial Review Application on 23rd June 2011. It was then first amended on 4th July 2018 to enjoin Nelson Kibe Njoroge And Mohammed Athman Oyolo (the 2nd and 3rd Applicants respectively) and thereafter on 20th December 2019 and finally re-amended on 4th August 2022. The same is anchored under the provisions of Order 53 of the Civil Procedure Rules. The Applicants sought the following remedies:

- 2A: That leave be and is hereby granted to the Ex-parte Applicants, to apply for orders of Judicial Review in the nature of Certiorari to call into the Environment and Land Court at Busia the award of Busia Municipal Land Disputes Tribunal that was adopted as Judgment of the Court on 2nd March 2011 via Busia Chief Magistrate’s Court Land Dispute No 5 of 2011 and to quash the same and the consequent transfer of land parcel NO South Teso/Angoromo/957 from Kangethe Wanyoike (deceased) To Ali Awala Ongaroi and the subsequent sub-division of the land parcel NO South Teso/Angoromo/957 into the new parcels NO South Teso/Angoromo/13561 and South Teso/Angoromo/13562 be cancelled.
- 3A: That an order of inhibition be entered on the register of land parcel NO South Teso/Angoromo/13561 and South Teso/Angoromo/13562 to prevent dealings in them pending the hearing and final determination of the Judicial Review proceedings as commenced herein.
- 4: That the costs of this application be provided for.

Subsequently, George Wandera (the legal Representative of the Estate of Ali Awala Angoroi And The Busia Sugar Industry Ltd were enjoined as the 1st and 2nd Interested Parties respectively.

2. The fulcrum of the Applicants case, as can be summarized from the Application and the statement of facts, the grounds upon which the relief is sought and the verifying affidavit by Mohammed Athman Oyolo, the 3rd Applicant herein, is that the Busia Municipality Land Disputes Tribunal (the Respondent), heard and determined a dispute filed before it by Ali Awala Ongaroi against the 3rd Applicant over the ownership of the land parcel NO South Teso/Angoromo/957 being land Dispute NO 11 of 2009. The said Tribunal made an award in favour of Ali Awala Ongaroi dated 23rd December 2010 and which was adopted as a judgment of the Court in Busia Senior Principal Magistrates Court land case NO 5 of 2011 on 2nd March 2011. It is the Applicants’ main grievance that the said Tribunal, which is the Respondent herein, had no jurisdiction to transfer the land parcel NO South Teso/Angoromo/957.
3. The following documents are annexed to the Judicial Review Application:
1. Green Cards for the land parcels NO South Teso/Angoromo/957, 13561, 13562.
 2. Certificate of Registration for Jamoco Management Committee.
 3. Minutes of Meeting held by the Busia Jamia Mosque Committee on 20th December 2009.



4. Certificate of death for Mohamed Juma.
 5. Limited Grant of Letters of Administration issued on 25th May 2017 to Mohammed Athman Oyolo in respect to the Estate of Mohammed Juma.
 6. Authority to plead issued to Mohammed Athman Oyolo to swear affidavits on behalf of Nelson Kibe Njoroge.
 7. Certificate of death for Kangethe Wanyoike.
 8. Limited Grant of Letters of Administration issued on 25th May 2017 to Nelson Kibe Njoroge in respect to the Estate of Kangethe Wanyoike.
 9. Proceedings and Award dated 23rd December 2010 by the Busia Municipality Land Disputes Tribunal in respect to the land parcel NO South Teso/Angoromo/957 between Ali Awala Ongaroi -v- Mohamed Juma & Kangethe Wanyoike.
 10. Order dated 2nd March 2011 issued in Busia Senior Principal Magistrate's Court land case NO 5 of 2011 adopting the Tribunal's Award.
 11. Various orders issued in Busia Senior Principal Magistrate's Court land case NO 5 of 2011.
 12. Certificate of Official Search for the land parcel NO South Teso/Angoromo/957.
The Principal State Counsel on behalf of the Attorney General entered appearance for the Respondent but filed no response.
4. The 1st Interested Party filed a replying affidavit dated 6th October 2023 in which he deposed, inter alia, that the Tribunal proceedings were conducted against deceased persons namely Mohamed Juma And Kangethe Wanyoike when their Estates had not been succeeded.
 5. The firm of Ipapu P. Jackah & Company Advocates filed a Preliminary Objection dated 9th October 2023 raising the following issues on behalf of the 2nd Interested Party:
 1. The Applicants lack the locus standi to commence these Judicial Review proceedings.
 2. That the Application has been filed by unqualified persons.

The said Preliminary Objection is signed as having been filed by the said firm on behalf of the Respondents but that must be an error because the firm of Ipapu P. Jackah & Company entered appearance for the 2nd Interested Party and even filed submissions dated 18th January 2024 on their behalf.
 6. In response to the 2nd Interested Party's Preliminary Objection, Mohammed Athman Oyolo on behalf of the 1st Applicant filed a replying affidavit dated 8th February 2024 in which he deposed, inter alia, that the Preliminary Objection has not quoted any pure points of law and that the issues raised therein require to be proved through evidence. He also deposed to other issues which I need not highlight since they too deal with matters of evidence.
 7. The following documents are annexed to the said replying affidavit:
 1. Proceedings and Award of the Busia Municipality Land Disputes Tribunal in case NO 11 of 2009 dated 23rd December 2010.
 2. Copies of Limited Grant of Letters of Administration Ad Litem issued to Nelson Kibe Njoroge And Mohammed Athman Oyolo.



3. Copy of ruling delivered on 11th July 2023 granting the Applicants leave to file this Judicial Review Application.

When this matter came up for directions on 4th July 2024, I directed that I would consider both the Preliminary Objection by the 2nd Interested Party and the substantive Judicial Review Application simultaneously in the judgment. Parties were directed to file and serve their submissions on both. However, only Mr Wanyama instructed by the firm of Wanyama & Company Advocates for the Applicants and Mr Ipapu instructed by the firm of Ipapu Jackah & Company Advocates for the 2nd Interested Party filed submissions.

8. I have considered the Judicial Review Application, the responses thereto, the Preliminary Objection and the submissions by counsel.
9. I shall start with the Preliminary Objection by the 2nd Interested Party because if I up-hold it, then there will be no need to delve into the substantive Judicial Review Application.
10. A Preliminary Objection, as is now well settled, must raise pure points of law which are argued on the presumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained by way of evidence – Mukisa Biscuit Manufacturing Company -v- West End Distributors LTD 1969 E.A. 696. The issues raised in the Preliminary Objection by the 2nd Interested Party touch on:
 1. The Applicants’ locus standi to file this Application;
 2. That counsel for the Applicants has been inactive for the past three (3) years not having taken out a Practising Certificate.

Applicants’ Locus Standi

11. On the issue of the Applicants’ locus standi to commence these proceedings, it is the submissions by counsel for the 2nd Interested Party that it is the 3rd Applicant herein who has sworn an affidavit on behalf of the 1st and 2nd Applicants purportedly on the authority of the 2nd Applicant who has not donated any Power of Attorney to him (the 3rd Applicant) to do so. Further, that the 2nd Applicant has not sworn any affidavit in support of these proceedings yet he is the only one with registerable proprietary interests in the land which is the subject of these proceedings.
12. I do not consider this to be a proper issue to be raised as a Preliminary Objection since the Court would require to go into the evidence to confirm whether or not such authority or Power of Attorney was donated. Those are issues of facts and not pure points of law. This ground is dismissed.

Counsel For The Applicants Had No Practising Certificate

13. Again, this cannot be a matter of pure law. Counsel for the 2nd Interested Party has made the following submissions on that issue in the penultimate paragraph of his submissions;

“On the second ground of the Preliminary Objection, it is our contention that counsel for the Ex-Parte Applicants status is in active for the past three (3) years having not taken out a Practising Certificate for the said period. That being the position, this proceedings are filed in breach of the *Advocates Act* Cap 16 Laws of Kenya Section 9. We rely on the authority of; Barbara Georgina Khaemba -v- Central Bank Of Kenya And Two Others 2019 eKLR”.



In response to that submission, counsel for the Applicants has submitted as follows in paragraph 5 of his submissions:

- 5: “The ex-parte Applicants’ Advocate is a fully paid up member of the Law Society. The 2nd Interested Party has failed to provide any evidential material from the Law Society to support their contested assertions.”

As is clearly self-evident, the issue as to whether or not counsel for the Applicants is a paid up member of the Law Society of Kenya cannot, by any stretch of imagination, be canvassed as a proper Preliminary Objection since it is an issue that can only be established through evidence. Other than the case of MUKISA Biscuit Manufacturing Company Ltd -v- West End Distributors Ltd (supra), this Court will also be guided by the words of Ojwang J (as he then was) in the case of George Oraro -v- Barak Eston Mbaja Civil Case No 85 of 1992 NBI [2005 eKLR] where he said:

“A Preliminary Objection correctly understood, is now well identified as, and decided to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection, and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication, is not, as a matter of legal practice, a true Preliminary Objection which the Court should allow to proceed.”

Clearly, whether or not Mr Wanyama had a valid practicing certificate when he filed these proceedings is not only a matter of fact to be proved by evidence but it is also contested. And as is also clear from the Supreme Court’s decision in the case of National Bank Of Kenya Ltd -v- Anaj Warehousing Ltd Petition NO 36 of 2014 [2015 eKLR], even if Mr Wanyama had no practicing certificate, that alone would not invalidate this Application.

14. The 2nd Interested’s Preliminary Objection is for dismissal.
15. Having said so, it is clear from the proceedings that when this Judicial Review Application was first filed on 23rd June 2011 in Busia Elc Misc Application No 109 of 2011, the only Applicant was Jamoco Management Committee which is now the 1st Applicant. The 2nd and 3rd Applicants, as I have already stated at the commencement of this judgment, were only enjoined vide a ruling delivered by Kaniaru J on 12th September 2019 following their Notice of Motion dated 4th July 2019 seeking to be enjoined herein. The result of all the above is that when the application for leave to institute this Judicial Review Application was first filed on 23rd June 2011 in Busia Elc Misc Application No 109 of 2011, the only Applicant was the 1st Applicant. The substantive remedy sought in this Judicial Review Application, as already stated above, relates to the quashing of the award of the Tribunal dated 23rd December 2010 and adopted by the Busia Senior Principal Magistrate’s Court on 2nd March 2011. That award resulted in the transfer of the land parcel NO South Teso/Angoromo/957 from Kangethe Wanyoike to the name of Ali Awala Ongaroi and subsequently to its sub-division to create the land parcels NO South Teso/Angoromo/13561 and 13562. As is clear from the Green Card of the land parcel NO South Teso/Angoromo/957, it was first registered in the name of Mohamed Juma on 3rd December 1975. The subsequent sub-division being land parcels NO South Teso/Angoromo/13561 and 13562 were all registered in the name of Ali Awala Ongaroi on 9th January 2019 before the latter was registered in the name of the 2nd Interested Party on 17th January 2019. At no time was the original land parcel NO South Teso/Angoromo/957 nor the resultant sub-divisions being land parcels NO South Teso/Angoromo/13561 and 13562 registered in the names of the 1st Applicant which was the first to move to this Court seeking leave to file this Application on 23rd June 2011 and which was within the six (6) months period provided for in Order 53 Rule 2 of the Civil Procedure Rules and Section 9 (3)



of the Law Reform Act which I cited at the commencement of this judgment. That means that by the time the 2nd and 3rd Applicants were being enjoined in these proceedings on 12th September 2019 seeking leave to file this Application for orders of Certiorari to quash the decision of the Tribunal dated 23rd December 2010 and which ordered for the transfer of the land parcel NO South Teso/Angoromo/957 from Kangethe Wanyoike To Ali Awala Ongaroi, that was some nine (9) years from the time when the Tribunal had made it's awards. That was well after the statutory period provided for in the Civil Procedure Rules or Law Reform Act. It is worth noting that the Applicants did not anchor the Application on any provisions of the Constitution 2010 or the Fair Administrative Action Act. The 1st Applicant was not representing the 2nd and 3rd Applicants when it first moved to this Court. If anything, it is clear from the application for leave filed in Busia Elc Misc Case No 109 of 2011 that the 1st Applicant was infact seeking to protect its own interest as against the interest of Ali Awala Ongaroi the current registered proprietor of the land parcel NO South Teso/Angoromo/13561. This is how the Chamber Application for ex-parte leave filed on 23rd June 2011 in Busia Elc Misc Application No 109 of 2011 was framed in prayer NO 2.

2: “That leave be and is hereby granted to Jamoco Management Committee to institute by way of Judicial Review for an order of Certiorari to issue to remove (sic) the Honourable Court and be quashed the decision of the Busia Municipality Land Dispute Tribunal dated 23.12.2010 awarding Ali Awala Ongaroi land ownership of plot South Teso/Angoromo/957 and requesting the District Land Registrar to withdraw and amend the said parcel of land known as South Teso/Angoromo/957 in favour of Ali Awala Ongaroi together with the judgment in Busia PMCC NO 5 of 2011 adopting the said award as judgment.”

There is no explanation why the 2nd Applicant and who represents the Estate of Kangethe Wanyoike or the 3rd Applicant who represent the Estate of Mohammed Juma the original proprietor of the land parcel NO South Teso/Angoromo/957 did not seek leave to institute these proceedings in the time set out in the law bearing in mind that Kangethe Wanyoike died way back on 17th August 2002 while Mohammed Juma died way back on 6th August 1999. The bottom line is that the 2nd and 3rd Applicants moved to this Court late and with regard to the 1st Applicant, although it filed the Application within the six (6) months period, it did not do so as a representative of the 2nd and 3rd Applicants. Further, the 1st Applicant was not even a party in the Tribunal proceedings and its interest in the land parcels NO South Teso/Angoromo/957, 13561 and 13562 is not even clear. It must also be remembered that the order of Certiorari is a discretionary remedy which the Court is not bound to grant R -V- University Of Nairobi Ex-parte Jackan M. Mwasi 2018 eKLR. The Court will consider all the circumstances obtaining in each case before making a decision whether or not to grant it.

16. When the 1st Applicant first moved to this Court on 23rd June 2011, the basis of its claim as contained in the supporting affidavit of Mohammed Athman Oyolo, now the 3rd Applicant, at paragraphs *para_2* 2 and *para_3* 3 was as follows:

2: “That the Applicant bought parcel of land known as South Teso/Angoromo/957 from Kangethe Wanyoike”

3: “That the Applicant has been in open and quiet peaceful occupation of the said land since 1945.”

And in paragraphs 2 and 3 of the facts relied upon when the 1st Applicant filed the Application on 23rd June 2011, it was stated thus:



- 2: “The Applicant bought the said parcel of land known as South Teso/Angoromo/957 from one Mr Kangethe Wanyoike and at the time there were no encumbrance at all on the title from any third party.
- 3: “The sale between the Applicant and Kangethe Wanyoike was successfully completed and the Applicant obtained the ownership of the said parcel.”

Given those averments in which the 1st Applicant is happy to have acquired the land parcel NO South Teso/Angoromo/957, it is difficult to comprehend what it’s grievance is in this Application. It is clear to this Court that this Application can only be for dismissal.

17. With regard to costs, only the 1st and 2nd Interested Parties filed responses to the same. They are entitled to costs.
18. The up-shot of the above is that having considered the Application herein, this Court makes the following disposal orders:
 1. The amended Judicial Review Application herein is devoid of merit. It is accordingly dismissed.
 2. Costs to the 1st and 2nd Interested Parties.

JUDGMENT DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 3RD DAY OF JULY 2025.

BOAZ N. OLAO

JUDGE

3RD JULY 2025

Right of Appeal.

