



**Republic v Deputy County Commissioner – Tigania East Sub-County; Mamira (Interested Party); M’chokera (Ex parte Applicant) (Environment and Land Judicial Review Case E015 of 2021) [2025] KEELC 5093 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5093 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E015 OF 2021**

**BM EBOSO, J  
JULY 3, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DEPUTY COUNTY COMMISSIONER – TIGANIA EAST SUB-COUNTY ..... RESPONDENT**

**AND**

**JOHN K. MAMIRA ..... INTERESTED PARTY**

**AND**

**CIOBAIBAYA M’CHOKERA ..... EX PARTE APPLICANT**

**JUDGMENT**

1. Through a judicial review motion dated 12/4/2024, Ciobaibaya M’Chokera [ the ex-parte applicant] sought an order of certiorari quashing the decision of the respondent dismissing the ex-parte applicant’s appeal to the Minister, to wit, Appeal No. 52 of 2008 relating to parcel number 920, Buuri “A” Adjudication Section. The motion is the subject of this Judgment. The motion was canvassed through written submissions dated 3/3/2025. The key question to be answered in the Judgment is whether a proper case has been made to warrant grant an order of certiorari.
2. The case of the ex-parte applicant is that land parcel number 920 within Buuri “A” Adjudication Section [“the suit land”] was the subject of various proceedings under the Land Adjudication Act, including objection proceedings under Section 26 of this Act. She was a party to the objection proceedings because the said land belongs to her family. Dissatisfied with the decision of the Land Adjudication Officer made under Section 26 of the Act, she filed an appeal to the Minister under



- Section 29 of the Act, to wit, Appeal No. 52 of 2008. Her appeal was dismissed through a decision of the Minister dated 22/4/2021. The Minister acted through her delegatee under Section 34 of the [Land Adjudication Act](#). She adds that the interested party was the respondent in the appeal to the Minister.
3. The ex-parte applicant contends that the interested party is a son-in-law to one Samuel Ndumba M'Iking'ola, adding that Samuel Ndumba M'Ikingola is a son of her late husband's elder brother. She states that the suit land, which is located in Lii Area, was one of the parcels that belonged to her late husband's family, adding that it was given to her late husband while Samuel Ndumba M'Iking'ola was given a family parcel within Laciathuriu Area. It is her case that Samuel Ndumba M'Ikingola purported to gift the suit land to the interested party while aware that he did not have any proprietary interest in the suit land. She contends that her appeal was dismissed because the interested party is the Chief of Buuri Location working under the respondent.
  4. Through submissions filed by M/s Mwenda Mwarania, Akwalu & Co. Advocates, the ex-parte applicant faults the respondent's decision for being ambiguous and incapable of implementation. She argues that the decision does not clearly state and conclusively determine the issue of ownership of the suit land. Quoting the disposal order of the respondent verbatim, the ex-parte applicant contends that the Minister was seized of the appeal because there was a dispute within the family and faults the respondent for failing to determine the appeal. She urges the court to allow the motion.
  5. The respondent opposed the motion through a replying affidavit sworn on 24/3/2025 by Daniel Nduti, the Deputy County Commissioner for Tigania East Sub County. In addition, the respondent filed written submissions dated 25/3/2025, through Ms E Wairimu, Senior State Counsel. The case of the respondent is that Appeal Case No. 52 of 2008 was heard on 1/12/2020 in the presence of both the appellant and the respondent. Both parties presented their respective cases and were accorded cross-examination opportunities. The impugned decision was subsequently rendered on 22/4/2021, dismissing the appeal. The respondent states that due process was duly followed at the hearing, adding that the parties were given an opportunity to ventilate their respective cases. He urges the court to dismiss the motion.
  6. The interested party opposed the motion through a replying affidavit dated 1/8/2024 and written submissions dated 20/3/2025, filed by M/s Gichunge Muthuri & Co. Advocates. His case is that the decision of the Minister in an appeal under Section 29 of the [Land Adjudication Act](#) is final and one can only challenge the decision if the Minister "usurps" the powers bestowed on his office to deal with appeals. He faults the ex-parte applicant for initiating judicial review proceedings outside the 6 months limitation period set by the law, adding that because the proceedings were initiated outside the six months limitation period, an order of certiorari cannot issue.
  7. The interested party adds that because the dispute went through the various stages of ownership adjudication under the [Land Adjudication Act](#), the decision of the Adjudication Officer should be left to stand in the absence of a decision by the Minister. He adds that the suit land was owned by his father-in-law, Samuel Ndumba M'Iking'ola, as subdivision of his expansive land, parcel number 338, which he shared out to 37 people, including himself, at the inception of the adjudication process. He adds that parcel number 338 traversed both Laciathuriu Area and Lii Area which are two villages in the same adjudication section. He contends that the ex-parte applicant's appeal was dismissed for lack of evidence.
  8. The interested party argues that the motion to quash the Minister's decision is futile because the decision of the Adjudication Officer which was in his favour stands. Lastly, he contends that the respondent ruled within his mandate and there is no basis for questioning his decision. He urges the court to dismiss the motion.



9. The court has considered the motion together with the accompanying statement and affidavit; the responses to the motion; and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. As observed in the opening paragraph of this Judgment, the key question to be determined in the judgment is whether a proper case has been made to warrant grant of an order of certiorari quashing the decision dated 22/4/2021 rendered in Appeal Case No. 52 of 2008 by the Minister, relating to parcel number 920 Buuri "A" Adjudication Section. I will be brief in my analysis and disposal of the issue. Before I do that, I will dispose the issue of limitation which the interested party raised as a key ground of objection.
10. The interested party cited Sections 8 and 9 of the *Law Reform Act* and contended that the present judicial review proceedings were brought outside the prescribed limitation period of six (6) months. The court has considered the point. The impugned decision is dated 22/4/2021. The chamber summons application through which leave was sought and obtained was dated 21/10/2021 and was filed on the same day, 21/10/2021. Reckoned from 22/4/2021, the last day of the six months limitation period was 21/10/2021. That is the day when the judicial review proceedings were initiated through the chamber summons dated 21/10/2021. The chamber summons was therefore filed within the prescribed limitation period of six (6) months.
11. The interested party contended that the impugned decision was made on 1/12/2020. The court has not seen any decision dated 1/12/2020. The respondent filed a replying affidavit by Daniel Nduti in which the deponent stated at paragraph 8 that:
- “That the decision of the appeal case was rendered on 22/4/2021 wherein the appeal was dismissed. This decision is legal and certain”
12. Clearly, the interested party's argument was premised on a misapprehension of the date when the impugned decision was rendered. The argument is accordingly rejected. Now I turn to the key issue.
13. The ex-parte applicant invited this court to exercise judicial review jurisdiction under Sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules. She sought an order of certiorari quashing the impugned decision. The tenor of an order of certiorari and the principle upon which the order is issued were outlined by the Court of Appeal in *Kenya National Examination Council v Republic; ex-parte Geoffrey Gathenji Njoroge & 9 others* (1997) eKLR as follows:
- “Only an order of certiorari can quash a decision already made and an order of certiorari will issue or where the rules of natural justice are not complied with or for such like reasons”
14. The respondent was sized of Appeal No. 52 of 2008 as a delegatee of the Minister under Section 34 of the of *Land Adjudication Act*. He was required to determine an appeal under Section 29 of the Act. The appeal challenged the determination of the Adjudication Officer made on an objection under Section 26 of the Act.
15. Instead of the respondent discharging the Minister's statutory duty under Section 29 of the Act, he abdicated the statutory duty in the following verbatim terms'
- “Judgment
- The Appeal Case No. 52 of 2008 is dismissed in favour of further family deliberations. Right of appeal to the next level allowed if no agreement is registered.”



16. Clearly the respondent failed to determine the appeal and “dismissed it” by downing his tools and deferring to the parties’ family for further deliberations. This is not what was expected of the respondent under Section 29 of the Act. As a delegatee of the Minister, the respondent was under statutory duty to determine the appeal that was before him under Section 29 of the Act.
17. If the respondent desired to give the parties an opportunity to pursue alternative justice mechanisms, he should not have “dismissed” the appeal. By failing to pronounce himself on the merits of the appeal and by making the above ambiguous dismissal decision, the respondent failed to make a determination of the appeal that was before him. The “family” which the respondent directed the ex-parte applicant to go to for the determination of her appeal did not have statutory mandate under the Act to dispose the ex-parte applicant’s appeal under Section 29 of the Act.
18. For the above reasons, this court is satisfied that the decision dated 22/4/2021 stands to be quashed on the ground that the respondent, suo motto, abdicated his statutory mandate and failed to determine the ex-parte applicant’s appeal lodged under Section 29 of the *Land Adjudication Act*.
19. Taking into account the nature of the dispute, parties will bear their respective costs of this suit.
20. In the end, the notice of motion dated 12/4/2024 is allowed in the following terms:
  - a. The decision of the respondent made in Appeal Case No. 52 of 2018 to the Minister, relating to parcel number 920 Buuri “A” Adjudication Section, dated 22/4/2021, is hereby quashed.
  - b. The said appeal shall be heard afresh by the Minister, and should the Minister elect to appoint a delegatee under Section 34 to rehear the appeal, the said delegatee shall not be the one who rendered the quashed decision.
  - c. Parties shall bear their respective costs of the suit

**DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF JULY, 2025**

**B M EBOSO [MR]**

**JUDGE**

In the presence of

Ms Kajuju holding brief for Mr. Mwenda Mwarania for the ex-parte Applicant

Court assistant - Tupet

