



**Republic v Igembe South Sub County Adjudication Officer & 2 others;  
Maingi (Exparte Applicant); Miriti & another (Interested Parties) (Judicial  
Review E015 of 2022) [2024] KEELC 3257 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3257 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
JUDICIAL REVIEW E015 OF 2022**

**CK YANO, J  
APRIL 4, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE IGEMBE SOUTH SUB COUNTY ADJUDICATION  
OFFICER ..... 1<sup>ST</sup> RESPONDENT**

**THE MERU NORTH LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JOHN GICHUNGE MAINGI ..... EXPARTE APPLICANT**

**AND**

**SHIPRAH MUKOANJAGI MIRITI ..... INTERESTED PARTY**

**JACINTA MUKOITI MIRITI ..... INTERESTED PARTY**

**JUDGMENT**

**The Application**

1. Pursuant to leave granted by the court the ex-parte applicant filed the notice of motion dated 17<sup>th</sup> March 2023 brought under Order 53 Rule 1,2,3 and 4 of the Civil Procedure Rules 2010 and Section 8 and 9 of the [Law Reform Act](#) (Cap 26) and all enabling provisions of law seeking orders -;

1. That orders of certiorari do hereby issue to remove and bring to high court for purposes of being quashed the decision of the 1<sup>st</sup> respondent made on 17<sup>th</sup> of November, 2022.



2. That an order of prohibition do hereby issue directed to the respondents, their servants, agents any other person or authority prohibiting them from altering the duplicate adjudication register or implementing the decision of the Land Adjudication Office in accordance with the *land Adjudication Act* Cap 283 (sic) in Igembe Sub County in Meru.
  3. That the respondents and the interested party be ordered to pay costs of the motion.
2. The application is supported by the affidavit of John Gichunge, the ex-parte applicant sworn on 17<sup>th</sup> March, 2023 and is based on the following grounds:-
1. The 1<sup>st</sup> respondent heard and determined the Objection number 116 ad 117.
  2. The 1<sup>st</sup> respondent sat alone in determining the objection raised by the ex-parte applicant without the help of committee as required by the *Land Consolidation Act*. Cap 283.
  3. The Adjudication Officer ought to have considered the objection together with the committee appointed under Section 9 of the Act.
  4. The adjudication officer acted ultra vires the section 26 (1) of the *Land consolidation Act* Cap 283. He acted illegally, unreasonably and contrary to clearly stated procedure of the law.
  5. The 1<sup>st</sup> respondent did not examine the evidence or ignored the Ntune Ithatu (clan decision) that awarded the suit property to the late father of the ex-parte applicant.
  6. The 1<sup>st</sup> respondent allowed only the ex-parte applicant and the interested parties to testify on the objections and denied the ex-parte applicant a chance to call witnesses.
  7. The 1<sup>st</sup> respondent decided the objection on basis of technicality without looking at the substantive issue bearing in mind the ex-parte applicant parent have been on the land since the year 1950.
  8. The procedure of refusing to take evidence from the clan members was an agenda to arrive at pre-determined decision.
  9. The decision of the 1<sup>st</sup> respondent did not consider the decision of the clan nor did he give the reason why the same was never considered.
  10. The ex-parte applicant on behalf of the estate has suffered injustices and may completely be disinherited if the decision of the land adjudication officer is not quashed.
  11. The applicant has greatly been aggrieved by the 1<sup>st</sup> respondent's unwillingness to follow procedure in determining the objections raised by the ex-parte applicant.

### **The Exparte Applicant's Case**

3. The ex-parte applicant avers that he is the son of the late Maingi Mutanthi and the administrator of his estate. That his late father is a brother to the father of the interested parties. That the land adjudication officer heard and determined AR Objections number 116 and 117. He annexed a copy of the AR proceedings dated 17<sup>th</sup> November, 2022 marked JGM 1.
4. The ex-parte applicant averred that his late father bought the suit land from Naathu clan and that the payment of four goats, were given to one Baitumbiri as indicated on clan proceedings dated 29<sup>th</sup> September, 2009. A copy of the proceedings and ruling of the clan on the suit land has been annexed and marked JMG 2. The applicant averred that the land was not the clan land where the late father of



- the interested parties could gather, but belonged to Naathu clan which were bought by the ex-parte applicant's late father.
5. The ex-parte applicant avers that the late father of the interested parties was a police officer attached to the chief's office and his duty was to escort the committee during the demarcation period. That it is through use of police power and influence that he registered the ex-parte applicant's father parcels number 1562 and 12945. That the interested party's father used his influence and power as a police officer and caused the ex-parte applicant late father's land to be registered in his name.
  6. The ex-parte applicant states that when his father found out that his land was registered in the name of the late father of the interested parties fraudulently, he reported the matter to the clan because all the land belonged to the clan. That on 29<sup>th</sup> September, 2003, a letter was written to the interested parties' late father by the assistant chief, but he refused to honour the summons. That the late father of the interested parties was further summoned by the clan but he also declined to avail himself.
  7. The ex-parte applicant states that his late father wrote a letter to the district land Adjudication Officer requesting him to summon the interested parties' late father so as to transfer the suit land to him. A copy of the letter dated 26<sup>th</sup> October, 2003 has been annexed and marked JGM 3. That the late father of the interested parties wrote a letter to the Land Adjudication Officer requesting for consent to file a suit in court of law against his son. A copy of the letter dated 3<sup>rd</sup> April 2003 has been annexed and marked JGM 4.
  8. The ex-parte applicant avers that it was on that ground that the clan permitted him to place a caution on the suit land. A copy of the letter dated 28<sup>th</sup> October, 2003 to the demarcation is annexed and marked JGM 5. That a letter was written to the Adjudication Officer on 26<sup>th</sup> October, 2003 cautioning one Samuel not to sell the land in question. That it was the applicant's late father who went to call the said Samuel and his father M'Kiria from Mwimbi to come and gather the land they now own.
  9. The ex-parte applicant states that the clan through Ntune Ithatu organized to hear both parties on 29<sup>th</sup> September, 2009. That the Ntune Ithatu elected a committee of seven members who heard both sides and delivered a decision pertaining parcel number 1562 and 12946. That the decision of the clan was that the two parcels originated from Naathu clan. That a witness called Baitumbiri gave evidence in support of his late father that he had sold the land with four goats to Antuambui at which the applicants late father had paid to the same people to reclaim his land back.
  10. The ex-parte applicant avers that it is out of illegal registration of his late father's land by the late father of the interested parties that his father sought the help of the clan thus the decision of the clan awarding his late father the suit properties. That the decision indicates that the matter was heard severally and at the clan hearing the father of the interested party was asked whether he would abide with the decision of the committee which he answered in the affirmative. That after the decision of the clan was presented to the land adjudication officer the applicant's late father was advised to wait for the AR hearing so that he can file the objection.
  11. The ex-parte applicant states that when he raised the issue that his late father's land was gathered illegally by the interested parties' late father, he was advised by the Land Adjudication Officer to wait for the AR and file the objection. That he filed objection number 116 and 117 but to his surprise the Land Adjudication did not want to hear his witnesses nor refer to the clan decision as evidenced before making the decision. That the Land Adjudication Officer heard only the applicant and the children of the late Samuel single handedly and without the help of the committee and dismissed the objection.
  12. The ex-parte applicant further states that the Land Adjudication Officer did not consider the evidence that originated from the clan proceedings and findings where the interested parties' father was a party.



- That the extended family of his late father Maingi Mutanthi live and farm on the land undisturbed except that the land is registered in the name of the late interested parties' father.
13. It is the ex-parte applicant's contention that the decision and the process leading to the decision awarding the interested parties the suit parcel is riddled with flagrant breach of the ex-parte applicant rights to fair administrative action and concomitant right under *the constitution*. That the decision made by the 1<sup>st</sup> respondent is unreasonable and anchored on wrong procedure which is not supported by any known law. That the 1<sup>st</sup> respondent conducted the hearing while being driven by prejudices, conjectures and incompatible with the *Land Adjudication Act* and the rules therein.
  14. The ex-parte applicant's contention is that the respondents' decision undermines Article 47 of *the constitution* regarding fair Administrative Action, is illegal, unlawful, unreasonable and unfair to the ex-parte applicant as the rationale, tenor and scope is devoid of legal justification and same craves for issuance of the orders prayed for herein. That he stands to suffer grave and irreparable loss if the 1<sup>st</sup> respondents' decision is implemented or sustained.
  15. The ex-parte applicant states that the 1<sup>st</sup> respondent did not examine the evidence from the clan or hear witnesses as such the procedure was flawed. That the estate of the late Maingi Mutanthi has suffered injustices and continues to suffer to date. That he therefore seeks the court to intervene and grant the orders sought.

### **The Responses**

16. The application was opposed by the respondents through a replying affidavit dated 5<sup>th</sup> February, 2004 sworn by J.M Muchiri, the Land Adjudication and Settlement Officer Igembe south. It is the respondent's contention that the applicant lacks the legal capacity to institute these proceedings. Further that the application herein seeks to appeal the decision of the 1<sup>st</sup> respondent contrary to Section 26 (3) of the *Land Consolidation Act*, Cap 283.
17. The respondents further contend that the application is an attempt to prompt the court to undertake a merit review investigation into the 1<sup>st</sup> respondent's decision beyond the purview of Judicial review.
18. That the ex-parte applicant filed objection No. 116 and 117 to which summons were issued to the parties and the objection was heard and decision was delivered on 17<sup>th</sup> November, 2022. That the 1<sup>st</sup> respondent complied with the due process of law in the determination of the objection was evident in the objection proceedings produced by the ex-parte applicant. That contrary to the allegations outlined in the application, the 1<sup>st</sup> respondent afforded all parties a chance to present their case, submit evidence and call witnesses during the objection proceedings. That the 1<sup>st</sup> respondent made his determination based on the evidence produced during the objection proceedings.
19. The respondents aver that the committee members actively participated in the hearing of the objection over the suit property and is consequently erroneous for the ex-parte applicant to assert otherwise. That notwithstanding the consistent practice of Land Adjudication Officers sitting alongside the committee during the objection proceedings under the *Land Consolidation Act*, Cap 283, there is no statutory requirement mandating the formal documentation of the names of the committee members in the proceedings.
20. The respondents further aver that the final decision of the objection proceedings encompassed the views and findings of both the committee members in attendance and that of the presiding Land Adjudication Officer. That, therefore the applicant is blatantly misguiding the court that the committee did not participate in the determination of those objection solely based on the absence of their names in the proceedings.



21. The respondents contend that the applicant has failed to present any evidence substantiating that the 1<sup>st</sup> respondent's actions during the hearing of the objections were tainted with prejudices and conjectures or that they are unreasonable and in blatant violation of the ex-parte applicant's right to fair administration.
22. The application was also opposed by the interested parties through a replying affidavit sworn by Shiphirah Mukwanjagi Miriti, the 1<sup>st</sup> interested party herein on 20<sup>th</sup> February, 2023. The deponent averred that she is the sister of the 2<sup>nd</sup> interested party and the two are among the six children of Samuel Miriti Ibrahim who died in November, 2021. That their grandfather was Ibrahim M'Nkiria and their great grandfather was Mailu, all who are deceased.
23. The 1<sup>st</sup> interested party avers that the ex-parte applicant is not related to them at all. That his father was called Maingi Mutanthi and came from Naathu clan in Ntonyiri while their father comes from Antubeiga clan in Kanuni. That the ex-parte applicant's father was only employed by their great grandfather called Mailu. That after being employed, he lived there until he got married and was assimilated in Antubeiga clan.
24. The 1<sup>st</sup> interested party states that in 1971 when their clan was giving its members land, Maingi Mutanthi was also considered and given land vide parcel number 982 measuring 8.79 acres and even his son called Kobia was also given his separate land. She annexed a copy of the record book bearing the account marked SMM1. That their grandfather Ibrahim M'Nkaria was given seven acres now comprised in land parcel Nos. 1562 and 12946 each measuring 3.5 acres which is the subject matter in this suit. That the original parcel was 1562 which was subdivided when a road was created through it and its second part given number 12946. The 1<sup>st</sup> interested party avers that all that happened while Maingi Mutanthi and his father were alive before Maingi died about 10 years ago. She has annexed a copy of the map Marked SMM 2.
25. The 1<sup>st</sup> interested party avers that Maingi Mutanthi loved money and sold his share comprised in parcel 982 and measuring 8.78 acres as follows:-
  - a) 4 acres to Michel Njeru and given parcel no. 1686.
  - b) 1 acre to Moses Ntonjira and given parcel No. 1687.
  - c) 2 acres to Buuri M'Ananga and given parcel No. 1787.
  - d) 1 acre to M'rinthara M'rintari and given parcel no. 1932.
  - e) 0.89 acres balance was also sold to another person
26. The 1<sup>st</sup> interested party states that purely on humanitarian grounds after Maingi Mutanthi died, her father allowed the ex-parte applicant and his brother to till his parcel Nos. 1562 and 12946 on condition that it was temporary and only plant seasonal crops as opposed to perennial crops. That after complying for a while, the ex-parte applicant defied that and cultivated tea, miraa and also built a timber house thereon which precipitated a disagreement and the interested parties father sent demand notices dated 17<sup>th</sup> November, 1992 and 3<sup>rd</sup> December, 2015 which are annexed and marked SMM 4 and 5.
27. The interested party states that there is a quarry on the land with building stones which their father has always been using and had used to build his home. That the ex-parte applicant's father had even the guts to try to stop their father from utilizing the quarry which was thwarted and the ex-parte applicant was found to be on the wrong and later voluntarily signed an agreement to the effect that parcel No.



- 1652 and 12946 entirely belonged to her father. The 1<sup>st</sup> interested party has annexed copies of two agreements dated 25<sup>th</sup> November, 1993 and 28<sup>th</sup> October, 1997 marked SMM 6 and 7 respectively.
28. The 1<sup>st</sup> interested party states that Maingi Mutanthi later made an unfounded claim that the agreement he had signed were forgeries which claim was investigated by the office of DCI and found to be untrue as the agreements were genuine and under his hand. That after that agreement, Maingi Mutanthi bought half acre of land nearby on the same block and has since been requesting for time to vacate out of the land and go to their land.
29. The interested parties aver that there have been many previous disputes/cases between their late father Samuel Miriti and the late Maingi Mutanthi over the suit land and all which were heard on merit and determined in favour of the family of the interested parties. The records are annexed and marked 8.
30. The interested parties aver that just before their father died in the month of November, 2021, there was no dispute and had in fact subdivided the subject land to his 6 children. That immediately their father died, the ex-parte applicant changed tune and during AR he filed the objection and after they were served, the interested parties attended the hearing which culminated with the decision dated 15<sup>th</sup> June 2022 where they gave the same set of facts and the land adjudication committee agreed with the interested parties and dismissed the objections That the objection was heard by the land adjudication officer assisted and in the presence of the committee members namely, David Kobia, John Mwiti, Johana Kaburu M'Mauta, John Mugo M'Mauta, Charles Gichuru, Romano Baariu, Joseph Mwithalie, Charles Gitonga and John Kobia.
31. The interested parties state that the Land Adjudication Officer and the committee members whom they knew introduced themselves and gave each side ample opportunity to give their evidence and call witnesses and also investigated the matter before making a decision.
32. The interested parties state that many members of the public attended the hearing of the case as it was manifest that the ex-parte applicant was out to take the interested parties' land after selling theirs after the death of their father.
33. It is averred that land parcel Numbers. 1562 and 12946 does not belong to the ex-parte applicant in any way. The interested parties denied that the applicant was not given a fair hearing in objection Nos. 116 and 117. They also denied that the 1<sup>st</sup> respondent, Igembe South sub county Adjudication Officer sat alone in determining objection numbers 116 and 117 without the help of the committee. That it is also not true that the 1<sup>st</sup> respondent denied any party a chance to call witnesses.
34. The interested parties denied that Maingi bought the suit land with 4 goats or has settled thereon since 1950's. That it would be unfair to give their land to the family of Maingi Mutanthi who they magnanimously accommodated in their family/clan and had given their own land which they sold off.
35. Relying on legal advice, the interested parties aver that the suit is incompetent and pray that the application be dismissed with costs.
36. The application proceeded by way of written submission. The ex-parte applicant filed his dated 4<sup>th</sup> January, 2024 through the firm of Kaibunga Kaberia & Co. advocates while the respondents filed theirs dated 6<sup>th</sup> February, 2024 through the Honourable Attorney General and the interested parties filed theirs dated 30<sup>th</sup> January, 2024 through the firm of Thurania Atheru & co. Advocates.

### **The Ex-parte Applicant's Submission**

37. The ex-parte applicant gave a brief facts of the case and identified the issues for determination to be whether the land adjudication officer's decision was tainted with illegality and irrationality, whether



- the proceedings and the decision met the constitutional test, whether the ex-parte applicant has demonstrated sufficient grounds to be granted the orders sought, and who shall bear the costs of the application.
38. With regard to the first issue, it was submitted on behalf of the ex-parte applicant that both the ex-parte applicant and the interested parties are from Ntune Ithatu clans. It was submitted that as per the supporting affidavit of the ex-parte applicant and the Ntune Ithatu proceedings and ruling dated 29<sup>th</sup> September, 2009, the suit property was not Ntune Ithatu land that the clan could have registered to the interested parties' father. That the land belonged to Naathu clan and the same was bought by the ex-parte applicant's father from Naathu clan and paid four goats. That the interested parties' father did not come from Naathu clan and could not have gathered the land, but fraudulently registered himself as owner.
  39. It was submitted that the suit property is occupied by the family of Maingi Mutanthi who have been on the land since the year 1952, having constructed their homesteads and even buried their kin on the land. That currently, the ex-parte applicant and his brothers and their families are in occupation of the land which is extensively developed.
  40. It was submitted on behalf of the ex-parte applicant that looking at the gathering and the person registered as the owner while ignoring the history of the ownership as established by Ntune Ithatu clan who owned the land and had authority to distribute it among the clan members amounts to irrationality. That ignoring substantive information that was provided by Ntune Ithatu clan is tantamount to ignoring the mandate given to the clan to distribute land among clan members. That it is not proper that a case of this magnitude, where four generations would be left homeless, would be judged by a technicality. The ex-parte applicant's counsel cited Article 159 (2) (d) of *the Constitution* of Kenya and submitted that the land adjudication officer should not have ignored the fact on ownership of the suit land, and should have taken note of all the evidence provided by the clan and decided the case on its merits rather than irrationality rubber stamping illegal allocation of the land to the interested parties father. The court was urged not to uphold that decision but condemn it.
  41. It was submitted that the general principle of law is that where an action is void, it is in law a nullity, and it is not only bad but it is incurably bad, and there is no need for an order of the court to set it aside as it is automatically null and void, though it is sometimes convenient to have the court declare it to be so. The ex-parte applicant's counsel relied on the case of *Gordon Vs Metropolitan* (1910) 2 KB. It was further submitted on behalf of the ex-parte applicant that the two principles of proportionality referred to in Section 7(2) (1) of the Fair Administrative Actions Act are founded on the twin principles of Public interest and public policy that courts should not aid in perpetuation of an illegality.
  42. The ex-parte applicant submitted that the law on Judicial review of administrative Action is now to be found not exclusively in the common law but in the principles of Article 47 of *the constitution* as read with the *Fair Administrative Action Act* 2015, which establishes statutory Judicial review with jurisdictional in error in section 2 (2) as the entire piece of statutory review. That the act provides a constitutionality underpinned irreducible minimum standard of Judicial review, and the Act is built on the values of expeditious, efficient, lawful, reasonable, impartial, transparent and accountable decision making process in Article 47 and 10(2) of *the Constitution*. That the extent to which the common law principles remain relevant to administrative review will have to be developed on a case by case basis as the court interpret and apply the provisions of the *Fair Administrative Action Act* and *the Constitution*.
  43. The ex-parte applicants counsel pointed out that the nature of Judicial review was not concerned with the merits of the case, but Section 7 (2) (1) of the *Fair Administrative Action Act* provides



proportionality as a good ground for statutory Judicial Review. The applicant's counsel relied on the case of *Republic Vs Home Secretary, ex-parte Daly* (2001) 2 AC 532 and submitted that consideration of the substantive merits of a decision plays a greater role and proportionality invites the court to evaluate the merits of the decisions. It is submitted that the registering the land in the interested parties' father was illegal and failure of the 1<sup>st</sup> respondent to consider the evidence of the ex-parte applicant was irrational and not proper and the court should allow the prayers sought.

44. On whether the proceedings and decision met the constitutional test, it was submitted on behalf of the ex-parte applicant that Section 26 (1) of the *Land Consolidation Act* provides that the objection shall be heard and determined by the Land Adjudication Officer in conjunction with the Land Adjudication Committee members. That this being an administrative body or organ, it has to comply with Articles 25 & 27 of *the constitution* as read together with section 4, 5, 6 of the Fair Administrative of Action Act. That the 1<sup>st</sup> respondent is obligated to handle the objection in line with the law, and there is no indication in the proceedings if the adjudication committee members participated in the hearing and disposal of the objections. That the committee members have a central role to play as held in the case of *Peter Kimandui vs Land Adjudication Officer Tigania West District & 5 others* [2015] eKLR and cannot therefore delegate their powers to the Land Adjudication Officer. Further, that under Section 47 of the *Fair Administrative Action Act*, the court has power to look at the merits and demerits of the decision. It is submitted that the list of members of committee provided by the interested parties are people who are not part of the proceedings by the land adjudication Officer.
45. On whether the ex-parte applicant has demonstrated sufficient ground to be granted the orders sought, it was submitted that the ex-parte applicant has demonstrated that the land Adjudication Officer did not involve the committee in deciding the objections and that the decision does not provide the names of the committee. It is submitted that the decision was only made by the land adjudication officer contrary to Section 26 of the *Land Consolidation Act*. That the land Adjudication Officer ignored or did not consider the decision of the Ntune Ithatu clan and acted ultra vires and without following the laid down procedure.
46. It is the ex-parte applicant's submission that the 1<sup>st</sup> respondent's decision undermines Article 47 of *the constitution* regarding fair administrative action, is illegal, unlawful, unreasonable and unfair to the ex-parte applicant. That Judicial review court is also a court of equity and should not sanitize the land transactions which are tainted with illegality and are contrary to Article 40 of *the constitution*. The ex-parte applicant urged the court to grant the prayers sought.

### **The Respondents' Submissions**

47. The respondents gave a brief background of the case and identified the issues for determination of the case to be whether the applicant has locus standi, whether the applicant followed the due process of the law and whether the applicant is entitled to the orders sought.
48. With regard to the first issue, it is the respondents' submission that the applicant has no locus to institute these proceedings. The respondents submitted that it is evident that the applicant has no valid legal interest in the suit land and that he is suing on behalf of the estate of his late father Maingi Muthanti yet he has not produced any evidence that he is the legal representative of the estate. The respondents relied on the case of *Joseph Muriuki Kithinji Vs Peterson Ireri Mwaniki & 3 others* [2021] eKLR which affirmed the holding in *Hawo Shauko Vs Mohamed Uta Shauko* [2018] eKLR which stated inter alia that one has to first obtain a limited grant that will give him/ her the authority to file suit.



49. Regarding the second issue, the respondents submitted that they followed the due process of the law. It is the respondent's submissions that their actions were in line with the [Land Consolidation Act](#).
50. It is further submitted that whereas the applicant avers that he was not given an opportunity to call witnesses to support his case, he has failed to tender any evidence to show that indeed he was denied a chance to call his witnesses. The court was urged to treat the same as mere allegations.
51. On the applicant's claim that the 1<sup>st</sup> respondent conducted the objection hearing in the absence of the committee contrary to Section 26 of the [Land Consolidation Act](#) the respondents reiterated that the committee were in the making of the final decision despite the absence of their names in the proceedings. That any orders were from the presiding Land Adjudication Officer and the committee.
52. On whether the applicant is entitled to the orders sought, the respondents submitted that the applicant is not entitled to the orders sought as the application lacks merit. The respondents reiterated that they followed the due process of the law in the hearing of the objection and that the applicant and the interested parties were afforded a fair hearing to present their cases and submitted the applicant's delinquency in prosecuting his case should not be visited on the respondents. Based on the foregoing, the respondent submitted that the applicant has not proved illegality, irrationality, or procedural impropriety to the required threshold warranting the review and or quashing of the 1<sup>st</sup> respondent's decision. That the 1<sup>st</sup> respondents' decision was made after due consideration of the relevant information and based on the evidence produced. That there is no proof of bias or prejudice in the said decision as alleged in the application.
53. The respondents submitted that the grounds posited by the applicant in the application are geared towards challenging the merits of the 1<sup>st</sup> respondent's decision and findings which is not in the purview of the Judicial Review application. The respondents submitted that this is a kin to the applicant herein inviting the court to determine contested issues of facts without hearing evidence. Further, that the applicant seeks to circumvent the limitation set out in section 26 (3) of the [Land Consolidation Act](#) that provides that no appeal shall lie against the decision by the Adjudication Officer to dismiss an objection or order rectifying the Adjudication register.
54. The respondents submitted that the applicant is not entitled to the orders of prohibition and certiorari to quash the decision made by the 1<sup>st</sup> respondent in objection No. 116 and 117. It is the respondent's submission that the application lacks merit and should be dismissed with costs.

### **The Interested Parties Submissions**

55. The interested parties also gave brief facts of the application and identified the issues for determination to be whether the land adjudication officer's decision was tainted with illegality or irrationality, whether the ex-parte applicant is entitled to the prayers sought and who should bear the costs of the application.
56. Regarding the first issue, it was submitted on behalf of the interested parties that the purpose of judicial review was set out in the case of Municipal Council of Mombasa Vs Republic, Umoja consultants Ltd Civil Appeal No. 185 of 2007 [2007] eKLR. Further counsel for the interested parties submitted that the circumstances under which orders of Judicial review can be issued were elaborated by Justice Kasule in the Ugandan case of Pastoli Vs Kabale District Local Government Canal & others (2008) 2EA 300 at page 300 – 304.
57. Counsel for the interested parties submitted that it is trite law that a court in Judicial review does not look into the merits of the decision as to do so would be tantamount to sitting in appeal, which proceedings are well stipulated in the relevant statutes. That this court while approached under Judicial review, only concerns itself with the process in which the decision was made and therefore the ex-parte



applicant's submissions with regard to the origins of the suit land and who is in occupation or why the adjudication Officer ought to have found in his favour are irrelevant. The interested parties submitted that the only questions that this court should be concerned with are whether the adjudication officer followed the law, whether he acted reasonably upon addressing himself to the facts and whether the ex-parte applicant was granted a fair hearing.

58. The interested parties stated that the ex-parte applicant made objections 116 and 117. That parties were informed of the hearing date and availed themselves before the adjudicator and 9 other committee members. That the hearing was also attended by many members of the public. That both parties were heard as per annexure "JGM 5". The interested parties submitted that during the proceedings the ex-parte applicant did not complain or raise alarm that he was denied any opportunity to be heard. It is submitted that upon hearing both parties, a determination was made that the ex-parte applicant's father was alive during the stage of record of existing Rights (R.E.R) and he never filed any objection as regards the suit land. That it was also noted that the ex-parte applicant was born in 1967 after gathering had commenced in Amungenti "A" where the suit land is located.
59. Learned counsel for the interested parties cited the provisions of Section 17 of the [Land Consolidation Act](#) which provides for the lodging of an objection to the executive officer of the committee concerned where a person named in or affected by part 1 of the record of existing rights within sixty days of the date upon which the notice mentioned in section 16 of the said Act is published, stating in what respect the record is alleged to be inaccurate or incomplete. It is submitted that the Land Adjudication Officer determined that the objections filed by the ex-parte applicant challenging the Records of Existing rights were improper and illegal as they were out of the required statutory period and that the ex-parte applicant's father had every opportunity to challenge the interested parties' father proprietary right with regard to the suit land, but did not do so.
60. It is submitted that the ex-parte applicant has provided no evidence that the decision of the adjudication officer was illegal or beyond his powers or confines of the law. That the ex-parte applicant has also not provided any evidence that he was denied any opportunity to be heard or provide evidence. That he has also not provided evidence of any procedural impropriety with regard to how the objection was heard and determined by the committee and adjudication officer. It is the interested parties' submissions that by all accounts, the decision of the Land Adjudication Officer was legal, reasonable and arrived at by following due process.
61. On whether the ex-parte applicant is entitled to the prayers sought, counsel for the interested parties relied on the case of *Esther Victoria Wanjiru Mahoro V Mary Wambui Githinji & 3 others* [2021] eKLR and *Kenya national Examination council Vs Republic ex-parte Geoffrey Gathinji & 9 others*, Nairobi Civil Appeal No. 266 of 1996 and submitted that the ex-parte applicant has not demonstrated any grounds to warrant issue of orders of certiorari and prohibition. That the decision of the Land Adjudication was legal, reasonable and procedurally sound.
62. The interested parties submitted that the notice of motion by the ex-parte applicant lacks merit and should be dismissed with costs as he has failed to substantiate any grounds to warrant the issuance of the orders prayed for.

### **Analysis And Determination**

63. I have considered the application, the responses, the legal and statutory authorities and the written submissions filed. The issue for determination are whether the ex-parte applicant has locus standi to institute these proceedings and if the answer is in the affirmative, whether the ex-parte applicant is entitled to the orders sought.



64. In this case, the respondents have challenged the ex-parte applicant's locus standi to bring this suit. It is the respondents' submission that the applicant has no locus standi to institute these proceedings since it is evident that he is suing on behalf of the estate of his late father and has not produced any evidence that he is the legal representative of the estate of the deceased.
65. In the affidavit in support of the application, the ex-parte applicant has deposed that he is "duly competent and with authority to swear the affidavit on behalf of his late father's estate." The ex-parte applicant states that he is the son of the late Maingi Mutanthi and the administrator of his estate. It is clear from these depositions, that the ex-parte applicant instituted the suit on behalf of the estate of his deceased father.
66. Section 82 of the *Law of Succession Act* gives the personal representatives of a deceased person's estate the power to "enforce, by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arising out of his death, to his personal representative". It is trite law that the estate of a deceased person is vested in the legal representative. (see the case of *Isaya Masira Momanyi Vs Daniel Omwoyo & another* [2017] ECLR, *Joshua Nyokwoy Buti vs Walter Rasagu Omariba* (suing through his Attorney Bentah Onsumu Rasuga and 2 others [2011] eCLR and *Troustik Union International and another Vs Jane Mbeya and another* (1993) eCLR. Therefore, one can only institute or enforce a suit on behalf of a deceased person once he/she has been appointed a personal representative to such estate. Such appointment under the *Law of Succession Act* can only be by way of obtaining a full grant or a grant limited for purposes of instituting a suit and prosecuting it which would be an Ad litem.
67. I have perused the documents filed herein. The ex-parte applicant has not exhibited any grant of Letters of Administration over the estate of the late Maingi Mutanthi to demonstrate that he has the authority to sue on behalf of the estate of the deceased. In the case of *Julian Adoyo Ongunga & another – Vs Francis Kiberenge Bondeva* (suing as the Administrator of the Estate of Fanuel Evans Amudavi (deceased) eCLR Mrima J. described a party filing a suit without an Ad Litem as follows;
- “... simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain the suit even where a valid cause of action exists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings noting that the issue of locus standi become such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties...”
68. Further in the case of *Hawo Shanko Vs Mohamed Uta Shanko* ( Supra) it was observed that
- “... The general consensus is that a party lacks the Locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the plaintiff or applicant has not been formally authorized by the court by way of a grant limited for that purpose, then it will be difficult to control the flow of court cases by those entitled to benefit from the estate. If each beneficiary is allowed to file a suit touching on a deceased's estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the Limited grant which gives the plaintiff the locus to stand before the court and argue the case. It does not matter whether the suit involves a claim of intermeddling or the estate or the preservation of the same. One has to first obtain a limited grant that will give him/her the authority to file the suit...”



69. The court in the above case further stated-;

“... if any relationship with the deceased does exist whether son, daughter, wife, widow is not sufficient. That relationship does not give the locus standi to any relative to sustain suit before obtaining limited grant. One’s relationship to the deceased does not clothe such a party with the locus standi. It is the Limited Grant which does.”

70. In the case of Virginia Edith Wamboi Otieno Vs Joash Ochieng Ougo & another CA 31 of 1987, the Court of Appeal held thus-;

“But an administrator is not entitled to bring an action... before he has taken out letters of administration. If he does, the action is incompetent from the date of inception.”

71. In the instant application there is no evidence to show that the ex-parte applicant is a legal representative of the estate of his deceased father, the late Maingi Mutanthi. To that end, the applicant lacked standi ab initio to institute these proceedings. Thus, the orders sought in the application are not available in the circumstances.

72. Accordingly, I am inclined to strike out the notice of motion dated 17<sup>th</sup> March 2023 in its entirety.

73. Costs of the application are awarded to the respondents and the interested parties.

74. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 4<sup>TH</sup> DAY OF APRIL 2024**

In the presence of

Court Assistant – Tuppet

Ms Kaimenyi for interested parties

Kaberia for ex-parte applicants

No appearance for A.G for respondents.

**C.K YANO**

**JUDGE**

