



Taiko & another v District Land Registrar, Kajiado & 3 others (Miscellaneous Civil Application E015 of 2023) [2024] KEELC 5353 (KLR) (11 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
MISCELLANEOUS CIVIL APPLICATION E015 OF 2023
LC KOMINGOI, J
JULY 11, 2024**

BETWEEN

BENSON MBOYA TAIKO 1ST APPLICANT

AMOS TAIKO 2ND APPLICANT

AND

DISTRICT LAND REGISTRAR, KAJIADO 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

COUNTY SURVEYOR, KAJIADO 3RD RESPONDENT

DIRECTOR OF SURVEY 4TH RESPONDENT

JUDGMENT

1. Pursuant to the leave granted on 8th November 2023, the *Ex parte* Applicants, (hereinafter referred to only as “the Applicants”) by way of a Notice of Motion brought this judicial review application under Order 53 rule 1(1),(2),(4); Order 53 rule 3; Order 53 rule 4; Section 8(2) and Section 9 of the [Law Reform Act](#) seeking the following orders reproduced verbatim:
 - i. That an order of *certiorari* do issue to quash the report/ruling of the 1st Respondent dated 29th August 2023 adopting the District Surveyor, Kajiado report on the boundary lines between Kajiado/Elangata Wuas/ 17 (3083), 8, 2, 10, 11, 16, 8, 594, 574, 593, 592 (807 & 808) dated 8th August 2023 with an order that both reports above be vacated from the records.
 - ii. That an order of prohibition do issue prohibiting the Respondents from implementing the ruling/determination of the 1st Respondent dated 29th August 2023, adopting the District Surveyor, Kajiado report dated 8th August 2023 and / or from implementing the report on the Boundary lines between Kajiado/Elangata Wuas/ 17 (3083), 8, 2, 10, 11, 16, 8, 594, 574, 593, 592 (807 & 808) or at all.



- iii. That an order of *mandamus* do issue to compel the respondents in future to follow the law and afford a hearing to all the parties including the *ex parte* applicants in the matter of determination of boundary lines between Kajiado/Elangata Wuas/ 17 (3083), 8, 2, 10, 11, 16, 8, 594, 574, 593, 592 (807 & 808).
 - iv. That costs of this application be awarded in favour of the *ex parte* applicants.
2. This application is supported by the grounds on its face and in the affidavit of Benson Mboya Taiko. The Applicants who are the Administrators of the Estate of Nkoi purduwo Kiroya Maika also known as Nkoipuruduwo Kiroya Maika (deceased). The late Nkoipuruduwo was the original owner of parcel of land Kajiado/Elangata Wuas/ 17 (3083) and they are holding it in trust on behalf of twenty five (25) beneficiaries.
3. They aver that the initial boundary dispute was in regard to Kajiado/Elangata Wuas/2 but it was noted that there were other parcels of land that were not bordering Kajiado/Elangata Wuas/2 but were bordering Kajiado/Elangata Wuas/ 17 (3083). Summons were thus issued on 12th July 2023 indicating that the District Land Registrar would visit the land parcels on the 24th, 25th and 26th day of July 2023 to determine the dispute. However, the visit was only carried out on the 24th July 2023 and only two beacons were visited being beacon number E30 and E31. Parcel Kajiado/Elangata Wuas/ 17 (3083) and Beacons E38, E37, E36, E35, E40, E32 and E33 were never visited. As such, the Surveyor's findings and the Land Registrar's ruling were arrived at without credible information.
4. The applicants also claim that if the District surveyor visited the other parcels of land Kajiado/Elangata Wuas 574, 593 and 592 (807 and 808) which border Kajiado/Elangata Wuas/ 17 (3083) it was never brought to their attention, they did not attend the hearing and were thus not accorded a fair trial contrary to Article 47(1) and (2) of the [Constitution](#) and Section 4(3)(1) of the [Fair Administrative Action Act](#)
5. The Applicants added that the report and ruling are also prejudicial to the ongoing court cases ELC Case No. 18 and 15 of 2020 whose substratum affected all the parcels of land in the ruling.
6. Therefore, the Applicants were entitled to the prayers sought to halt implementation of the flawed ruling, which would be adverse to their ownership rights through loss of land.
7. The Respondents did not file any response despite evidence of service.
8. This application was heard by way of written submissions.

The Applicants' submissions

9. Counsel submitted that the Applicants right to a fair administrative action were violated because they were not given an opportunity to be heard contrary to Section 4 of the [Fair Administrative Action Act](#) and Section 87 of the [Land Registration Act](#). The Land Registrar therefore did not adhere to the provisions of Section 19 of the [Land Registration Act](#) and the decision ought to be reviewed as provided under Section 86 of the [Land Registration Act](#). Counsel noted that judicial review is concerned with the decision making process as held in [Republic v Commission of Customs Services Ex parte Imperial Bank Ltd](#) [2015] eKLR, Council for [Civil Service Unions v Minister for Civil Service](#) [1985] A.C. 374, at 401D, [Municipal Council of Mombasa v republic & Umoja Consultants Ltd](#) [2002] eKLR and [Republic v Chief Land Registrar Ex parte Stephen Karanja Kungu](#) [2014] eKLR among others.
10. Counsel submitted that the decision was therefore flawed and it would affect their rights by reducing the size of their land and cited the case of [Republic v Kenya National Examinations Council ex parte](#)



Gathenji & 9 others [1997] eKLR which articulated the issuance prohibition, mandamus and certiorari orders.

Analysis and Determination

11. I have considered the Notice of Motion, the Affidavit in support, the written submissions and the authorities cite. The issues for determination are;
 - i. Whether the *Exparte* Applicants are entitled to the reliefs sought?
 - ii. Who should bear costs?
12. The Applicants claim that they were not given a fair hearing in determining the boundary dispute between their land and others mentioned herein. They thus seek that orders of certiorari be issued quashing the ruling dated 29th August which adopted the surveyor's report dated 8th August 2023; prohibition from implementing the said ruling and mandamus order compelling the Respondents to grant them a fair hearing. The Applicants also decried the decision on grounds that it was prejudicial to the ongoing court cases ELC E018 and E015 of 2020.
13. From the affidavit evidence, I note that on 6th June 2023 the District Land registrar issued summons to notify the persons indicated on the list of a pre-trial hearing slated for the 25th July 2023 regarding properties Kajiado/Elangata Wuas/2, 8, 3083, 16, 591, 11, 5994. This letter is addressed to Ben Taiko, Lemono Taiko, Lekina Taiko among twelve others. In the certificate of confirmation of grant issued on 18th February 2020, I am cognisant of the fact that these are the listed persons holding property Kajiado/Elangata Wuas/17 in trust for the other beneficiaries. It is thus clear that the Applicants were informed of the hearing. And they did not contest that they did not attend the hearing. Had they neither been informed nor present at the hearing, then the issue of not been given a fair trial would be valid.
14. Section 87(2) of the Land registration Act provides: (2) If a person or an advocate or other agent on the person's behalf attends before the Registrar concerning a matter on which the person is entitled to be heard, or fails to attend pursuant to such a notice, the Registrar may, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, hear that person at any time.
15. The Applicants did not contest being present in this hearing. They contested the days the hearing was undertaken and that the Surveyor only visited two beacons. Beacons E30 and E31 and that the rest of the beacons were not visited. And if the other beacons were visited, then this was done in their absence.
16. The Surveyor's report dated 8th August 2023 which makes reference to report on Kajiado/Elangata Wuas/2 v 17 and others reads that among the people present were owners of Kajiado/Elangata Wuas/17. And the aim was to determine boundary dispute between parcels Kajiado/Elangata Wuas/2, Kajiado/Elangata Wuas/17 and the neighbouring parcels.
17. This report indicates that boundary points E18, E20, E31, E95 and E39 which were undisputed points were used as the control points. The report states that the land owners confessed that they did not know their boundary extents. I also note that the report indicates that point E29 was shown by number 17. Isn't number 17 the parcel of land belonging to the Applicants? The ruling dated 29th August 2023 also shows that Wilson Letema owner of parcel Kajiado/Elangata Wuas/ 17 was present and his testimony among others was taken. If they were present at the hearing, their evidence taken and even helped in pointing out beacon points, how then are they claiming that they were not accorded a fair hearing?
18. The Applicants have claimed that beacons E38, E37, E36, E35, E40, E32 and E33 were never visited. The report shows that the status of points E32, E33, E35, E36 and E37 was theoretical and goes on to



outline how the surveyor arrived at the findings: “In the presence of all the concerned parties, picking of the known existing boundary points was carried out as shown by the land owners. Plotting was done using AutoCAD software. The RIM was scanned, georeferenced and digitised. Google earth satellite image was also used for visualisation. Dimensions and acreages were generated automatically. The pickings of the known existing boundary points were used as controls for the digitised RIM. Analysis was then done and placing the data derived...”

19. As submitted, it has been settled that Judicial review proceedings are to analyse and review the lawfulness of a decision making authority and whether the process and procedures set in place were followed and not considering the merits of the case. This was the holding of the Court of Appeal in *Municipal Council of Mombasa v Republic & another* [2002] eKLR:

... as the Court has repeatedly said, judicial review is concerned with the decision -making process, not with the merits of the decision itself... The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review.

20. It is clear that the Applicants or some of their representatives were present during the boundary dispute meetings/ hearings. How the surveyor arrived at his decision has also been clearly articulated in the report. I do not find that these findings or the ruling was arrived at unprocedurally or generated whimsically as claimed by the Applicants. I also find that whether the hearing took one day, three days or a few hours is not pertinent as long as the decision was not arrived at illegally, irrationally, unreasonably or without jurisdiction.
21. On the issue that the report/ ruling is prejudicial to the pending court cases, the pleadings were not annexed in the application so that this court cannot acquaint itself with the issue in question. Nonetheless, Section 18 of the *Land Registration Act*, 2012 mandates the Land Registrar to resolve boundary disputes and if aggrieved, there is a right of appeal.
22. I am hence not convinced that the Applicants were not accorded a fair trial as alleged or that the ruling was unfairly arrived at.
23. The application is consequently unmerited and is hereby dismissed with no orders to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11TH DAY OF JULY, 2024.

L. KOMINGOI

JUDGE.

In The Presence Of:

Ms. Martin for Mr. Arusei for the Exparte Applicants.

N/A for the Respondents.

Court Assistant - Mutisya

