



**Mbaabu v Cabinet Secretary in Charge of Lands & 5 others (Judicial Review Application E001 of 2023) [2023] KEELC 20512 (KLR) (4 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20512 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
JUDICIAL REVIEW APPLICATION E001 OF 2023**

**CK NZILI, J**

**OCTOBER 4, 2023**

**IN THE MATTER OF AN APPLICATION BY HENRY MURIIRA  
MBAABU FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS  
OF CERTIORARI, PROHIBITION AND MANDAMUS AND  
IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 LAWS OF  
KENYA AND THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE DECISION OF THE DEPUTY COUNTY  
COMMISSIONER THAT ORDERED LAND PARCEL NO. 872  
RUIRI/RWARERA BE SHARED EQUALLY BETWEEN DANIEL  
NKANATA NAITIRA AND HENRY MURIIRA MBAABU**

**BETWEEN**

**HENRY MURRIRA MBAABU ..... EXPARTE APPLICANT**

**AND**

**THE CABINET SECRETARY IN CHARGE OF LANDS ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER, BUURI EAST SUB  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY COMMISSIONER, MERU COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION IMENTI NORTH/IMENTI  
SOUTH ..... 5<sup>TH</sup> RESPONDENT**

**DANIEL NKANATA NAITIRA ..... 6<sup>TH</sup> RESPONDENT**



## JUDGMENT

1. The exparte applicant, vide leave granted on 1.2.2023 and an extension of more time to file the application made on 19.4.2023, filed a notice of motion dated 21.2.2023, seeking for:
  - a. An order of certiorari to remove into this court for quashing the decision made by the 2<sup>nd</sup> respondent acting on behalf of the 1<sup>st</sup> respondent on 8.12.2022 ordering that Parcel No. 872 Ruiiri/Rwarera be divided equally between him and the 6<sup>th</sup> respondent.
  - b. An order of prohibition prohibiting the 4<sup>th</sup> and 5<sup>th</sup> respondents from registering the suit land in line with the decision ordering the Parcel No. 872 Ruiiri/Rwarera Adjudication Section to be subdivided equally and or certifying the duplicate register as final and sending the details of alteration for further action in line with Section 29 (3) of the [Land Adjudication Act](#) (Cap 284).
  - c. An order for mandamus commanding the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to abide by the [Land Adjudication Act](#) and [the Constitution](#) of Kenya.
2. The application is based on the grounds on its face, the statutory statement dated 27.1.2023, the verifying affidavits sworn by Henry Nkanata Naitira on 27.1.2023 and annexures to it.
3. The facts are that the 6<sup>th</sup> respondent filed Objections No's 862 & 2216 over the suit land, which was disallowed by the land Adjudication officer, who directed the land measuring 10 acres remain in the name of the exparte applicant as per a ruling delivered on 27.9.2018, following cogent evidence of acquisition by way of a sale agreement. He attached the ruling and the sale agreement to the verifying affidavit as annexures marked HMM "1" and "2".
4. The exparte applicant averred that the 6<sup>th</sup> respondent appealed to the 1<sup>st</sup> respondent against the decision in Minister Appeal No. 297 of 2020, was heard and determined on 8.12.2022, allowing the appeal and ordering that parcel No.872 be subdivided between the disputants, each acquiring 5 acres. He attached a copy of the decision by the 2<sup>nd</sup> respondent as an annexure marked HMM "3".
5. The exparte application averred that the decision was unjustified and lacked legal reasons or basis since he was an innocent purchaser for value, and therefore, it amounted to denying him his constitutional right to own land. Further, the exparte applicant attached an annexure HMM "4", a consent to sue from the land adjudication officer and termed the decision by the 2<sup>nd</sup> respondent as unfair, arbitrary, unreasonable and contrary to the law, otherwise for it to stand; he shall irreparably lose a portion of his land.
6. In the grounds set under part C of the statement of facts, the exparte applicant averred that the 6<sup>th</sup> respondent appeared unaware of the exact size of the land he claimed. Further, he stated that the adjudication receipt showed that the land initially belonged to Julius Kimaita before it changed to the exparte applicant, which was supported by documentary evidence.
7. The 1<sup>st</sup> – 6<sup>th</sup> respondents opposed the application through a replying affidavit sworn by Josephine Njenga, the 2<sup>nd</sup> respondent on 25.5.2022. It is averred that a party aggrieved by an object decision under Section 29 (1) of the [Land Adjudication Act](#) has a right to file an appeal within 60 days after the determination to the 1<sup>st</sup> respondent, who, through a gazette notice could delegate his powers to hear appeals, his duties and functions to any public office by name.
8. The 6<sup>th</sup> respondent averred that the 7<sup>th</sup> respondent filed a Minister's Appeal No. 297 of 2020 over Parcel No. 572 Ruiiri Rwarera Adjudication Section, which under Section 7 (2) (b) of the [Fair Administrative](#)



Action Act 2015, could be reviewed by the court if mandatory or material procedures or conditions prescribed by the empowering provision were not complied with.

9. The 2<sup>nd</sup> respondent deposed that Section 29 (1) of the Land Adjudication Act empowered the 1<sup>st</sup> respondent to determine the appeal and make such orders as he thinks just and that the order shall be final. In this case, the ex parte application has not demonstrated how the administrative action or decision was taken with an ulterior motive or purpose calculated to prejudice his legal rights as required under Section 7 (2) (e) of the Fair Administrative Action Act 2015. There is no indication if the 7<sup>th</sup> respondent filed a response to the notice of motion by 6.6.2023. The court is unable to trace any such response in the court file.
10. Be that as it may, when the matter came up for hearing on 29.5.2023, counsel for the applicant was absent, while counsels for the respondents told the court that they relied entirely on the filed responses and written submissions dated 25.5.2023.
11. By written submissions dated 22.5.2023, the ex parte applicant submitted that the appeal was not heard in line with Sections 26 & 29 of the Land Adjudication Act and the Fair Administrative Action Act, on account of irrationality, unreasonableness and unlawfulness, given that there was no nexus between the information relied upon by the 2<sup>nd</sup> respondent and the decision arrived at. In other words, the ex parte applicant submitted that the premise on which the decision was based did not support the conclusion reached.
12. The ex parte applicant submitted that the applicant's case was either unheard of or not considered, thereby denying him a fair hearing. Similarly, the ex parte applicant submitted that the Minister considered irrelevant matters and failed or refused to consider relevant issues. Invoking Section 7 (2) of the Fair Administrative Action Act, the ex parte applicant urged the court to find the decision reached by the 2<sup>nd</sup> and not based on any logical reasoning, more so when the counterclaim contradicted the reasoning in it for it defied logic to proceed to allow the appeal partially at the expense of the applicant, yet he was an innocent purchaser.
13. The applicant relied on Republic vs. Public Procurement Administrative Review Board and 22 others ex parte Pelt Security Services Ltd (2018) eKLR, on the proposition that unreasonableness comprises specific errors of relevancy or purpose, reasoning illogically or irrationally, reaching a decision which lacks evidence and intelligible justification or giving disproportionate or excessive weight to some factors and insufficient weight to others.
14. To this end, the ex parte applicant submitted that the decision seemed to suggest that the person who sold the land to the applicant, Julius Kimaita, was a driver employed by the Ministry of Lands and allegedly used his influence to cancel the name of the 7<sup>th</sup> respondent and substitute his name finding which was absurd for there was no iota of proof presented that the said Kimaita was indeed an employee of the Ministry of Land who used his influence to cancel the name of the 7<sup>th</sup> respondent from the register.
15. The ex parte applicant submitted that the District County Commissioner (DCC) took the allegations as facts and relied on unsupported or unproved allegations to reach the decision, a textbook exercise of unreasonableness in considering inadequate or irrelevant factors.
16. The ex parte applicant submitted that the 2<sup>nd</sup> respondent failed to consider the letter dated 14.11.2011 and annexed as HMM 1 (b) confirming his land ownership, hence contradicting the 1<sup>st</sup> respondent, yet he was a delegate of him, without giving any cogent reasons. The ex parte applicant relied on Republic vs Public Procurement Administrative Review Board and others ex parte Rongo University (2018) eKLR where the court cited with approval Foreman J. A in Carephone (pty) Ltd vs Marcus No.



- 1999 (3) S.A 304 (LAC) at 316 para 36. on the proposition that the role of a judge on whether an administrative action was justifiable in terms of the reasons given for it involved determining whether the outcome was rationally justifiable. In this case, the exparte applicant submitted the DCC's decision leading to the conclusion that the property be divided into two was irrational since, in property rights, it was either one was an innocent purchaser for value or not and that there cannot be "in" "between". So, the exparte applicant should not have been made to suffer the loss of half of his land, more so when the 7<sup>th</sup> respondent did not emanate from the area and could not explain how he came to claim ownership or possession of the land.
17. Relying on *Republic vs Public Procurement Administration Review Board Exparte Rongo University*, (supra), the applicant urged the court to find that review on reasonableness involves the existence of justification, transparency and intelligibility within the decision-making as well as whether the decision fell within a range of acceptable outcomes which were defensible based on facts and the law.
  18. The exparte applicant submitted that once the 2<sup>nd</sup> respondent found that he was an innocent purchase for value, she should have stopped there and let the 7<sup>th</sup> respondent pursue his property rights elsewhere; otherwise, to hold the way it did was so irrational and unreasonable that no reasonable tribunal could have reached a similar decision. Lastly, the exparte applicant submitted that the DCC considered irrelevant factors, relied on unproven allegations and failed to consider relevant factors to his detriment since there was no justification or reason given as why he was penalized by loss of a half of his land.
  19. By written submissions dated 17.5.2023, the 6<sup>th</sup> respondent submitted that the suit land was registered in the name of Daniel M'Nkanata Naitiria, who had developed it until Julius Kimaita approached him that he had acquired land and wanted him to vacate, only for him to visit the land office and established that the land had changed to the exparte applicant alleging a purchasers' interest from a fraudulent owner. The 6<sup>th</sup> respondent submitted that he wrote a complaint dated 3.3.2003, to the lands office and was advised to lodge an objection, which led to the Minister's Appeal, after the land adjudication officer dismissed it.
  20. The 6<sup>th</sup> respondent submitted there was no basis to grant the orders of mandamus since there was no demonstration by the exparte applicant that the decision by the 2<sup>nd</sup> respondent was illegal, irrational, tainted with unprocedural, impropriety or ultra vires. Reliance was placed on *Pastoli vs. Kabale District Local Government Council* and another (2018) 2 E.A 300, *Republic vs Director of Immigration Services & 2 others, exparte Olamilekan Gbenga Fasuyi & 2 others* (2018) eKLR, *Halsbury's Law of England* 4<sup>th</sup> Edition Vol. 1 (1) Paragraph 12 page 270 and *Commissioner of Lands vs Kunste Hotel Ltd* (1997) eKLR. The 6<sup>th</sup> respondent submitted that the sale between Julius Kimaita and the exparte applicant on 12.5.2010 was void ab initio for it had infringed his rights given that the seller was not the actual owner of the land and therefore had no good title to pass.
  21. The issues calling for my determination are:
    - i. Whether the decision made by the 2<sup>nd</sup> respondent on behalf of the 1<sup>st</sup> respondent passes the parameters set out under *the Constitution, Land Adjudication Act* and the *Fair Administrative Action Act*.
    - ii. If, due to the alleged unfair, arbitrary and unlawful decision, the exparte applicant was denied the constitutional right to protection to property by deprivation of half of his land.
  22. In trite law, parties are bound by their pleadings, and issues flow from them. In *Raila vs Independent Electoral and Boundaries Commission* (2017) eKLR, the Supreme Court of Kenya observed that in adversarial systems, parties drew out the pleadings and set out the issues for the court's determination and therefore, a court has to determine what has been pleaded and evidence tendered, unless in



exceptional cases as per *Odd Jobs vs Mubia* (1970) E.A 470 case, some evidence and material has been placed before it for determination which parties did not initially plead.

23. In this matter, the *exparte* applicant set out his claim in the statement dated 27.1.2023, grounds 1-12. His averment was that the decision dated 8.12.2022 was unlawful, unreasonable and unprocedurally fair. The basis of pleading was that the 7<sup>th</sup> respondent, unlike him, could not explain how he acquired the land for lack of supporting documents from the adjudication records. Secondly, the *exparte* applicant pleaded that the reasons and the justification informing the decision by the 2<sup>nd</sup> respondent were missing.
24. Given the decision-making process, the *exparte* applicant urged this court to find the same amenable to intervention through judicial review.
25. In answer to the notice of motion dated 21.2.2023, the 1<sup>st</sup> – 6<sup>th</sup> respondents filed a replying affidavit by Josephine Njenga sworn on 25.5.2023, stating that the decision-making process followed the provisions of sections 26, 29 (1) (4) of the [Land Adjudication Act](#) and Section 7 (2) (b) of the [Fair Administrative Action Act](#) 2015. Further, the 1<sup>st</sup> – 6<sup>th</sup> respondents averred that the *exparte* applicant was party to the appeal, which was handled and determined in accordance with the law. Additionally, the 1<sup>st</sup> – 6<sup>th</sup> respondents averred that the *exparte* applicant had failed in these proceedings to demonstrate how the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice his legal rights as required under Sections 7(2)(e) of the [Fair Administrative Action Act](#) 2015.
26. On the part of the 7<sup>th</sup> respondent, he believed the decision was lawfully made given that the *exparte* applicant had fraudulently acquired the land from a seller who had no better title to pass to. Further, the 7<sup>th</sup> respondent averred that the *exparte* applicant had failed to demonstrate with sufficient clarity the nature of the erroneous information the 1<sup>st</sup> and 2<sup>nd</sup> respondents relied on for the sale agreement was void ab initio, which had infringed on his rights to own the land, since 1984 which he had even developed until the *exparte* applicant invaded into it with no clear explanation on how he cancelled his names from the Adjudication Register.
27. [The Constitution](#) of Kenya 2010 revolutionised how administrative actions have to be undertaken. It also elevated an order of judicial review as one of the reliefs the High Court can grant as it upholds and enforces the Bill of Rights, since the right to fair administrative action is one of the constitutional rights and freedoms under the Bill of Rights.
28. The traditional common law writs of certiorari, mandamus and prohibition had hitherto been relegated to the [Law Reform Act](#) and Order 53 of the Civil Procedure Rules and the [Judicature Act](#); both the substantive and procedural law found its place in [the Constitution](#). This is not to say that the Fair Administrative Actions Act repealed the procedural law existing on 27.8.2010. On the contrary, the two procedures of approaching court for redress remained, and therefore, parties are at liberty to choose whichever way they may approach court for redress. To this end, the [Law Reform Act](#), Orders 53 of the Civil Procedure Rules and the [Fair Administrative Action Act](#) must be read within [the Constitution](#).
29. The starting point is Article 47 of [the Constitution](#). It provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Sub-section (2) states that if a right or fundamental freedom of a person has been or is likely to be adversely affected by an administrative action, the person has the right to be given a written reason for the action. The [Fair Administrative Action Act](#) covers the review of an administrative action in its effort to promote an efficient administrative process since any administrative action must, of essence, muster the five constitutional parameters, and more so, for it to pass the ultimate constitutional test.



30. To this end, the way I understand the *exparte* applicant to be saying is that the decision that the 2<sup>nd</sup> respondent made led to the deprivation of half of his land; his right to ownership of the whole of the suit land was unfairly, unjustly and unprocedurally taken, yet the 2<sup>nd</sup> respondent did not justify and or give written reasons for the same as required under Article 47 (2) of *the Constitution*.
31. On the other hand, the 1<sup>st</sup> – 6<sup>th</sup> respondents in paragraphs 8 & 9 of the replying affidavit dated 25.5.2023, averred that the decision was just final and that the *exparte* applicant failed under Section 7 (2) (e) of the Fair Administrative Action & Act to demonstrate how the administrative action or decision was taken with an ulterior motive or purpose calculated to prejudice his legal rights.
32. Section 7 of the Fair Administrative Action grants the court powers to review an administrative action if an unauthorized person made it; was ultra vires, contravened any law, was biased, denied a party right to participate in the proceedings, failed to comply with material procedure or condition; was erroneous in law; was taken with ulterior motive or purpose to prejudice a party; did not take into account specific considerations, was influenced; was in bad faith; was irrational; abused discretion; was unreasonable; violated legitimate expectation of a party and lastly; was unfair and was taken in abuse of power.
33. In *Commissioner of Lands vs Kunste Hotel Ltd (supra)*, the court held that the purpose of judicial review is to ensure that an individual receives fair treatment and that the authority, after according him appropriate treatment, reaches a decision which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of law".
34. In *P.V Society of State for Education & Science Exparte Avon County Council (1991) 1 ALL ER 292*, the court observed that judicial review tackles errors of law and unlawfulness, procedural impropriety, irrationality, abuse of power and human rights. In *Meshack Agengo Omondi vs Eldoret Municipal Council & another (2012) eKLR*, the court observed that after 2010, compensatory and declaratory remedies could be claimed in judicial review proceedings. Similarly, in *Professor Elijah Biama vs. University of Eldoret and other (2014) eKLR*, the court took the view that judicial review, after 2014, proscribes and favours a universal approach towards the realization of the constitutional rights and freedoms irrespective of their primary formal suit, for *the Constitution* incorporates all as part of the Bill of Rights.
35. In *Cortec Mining (K) Ltd vs Ministry of Mining and 9 others (2017) eKLR*, the Court of Appeal reviewed the scope of judicial review after 2010 and observed that ".....succeed in any application for judicial review, the applicant has to show that he decision or act complained of is tainted with illegality, irrationality and procedural impropriety. Illegality is when the decision-making authority commits an error of law in the process of taking or making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality; irrationality is when there is such unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the fact and the law before it would have made such a decision. Such a decision is usually in deviance of logic and acceptable moral standards. Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness toward one to be affected by the decision. See *Pastoli vs Kabale District Local Council & other (2008) 2 EA 300*".
36. In *Republic vs Public Procurement Administrative Revenue Board & another exparte Rongo University (supra)*, the court observed that judicial review remedies were meant to afford the prejudiced party administrative justice to advance efficient and an effective public administration compelled by constitutional precepts and at a broader level, to entrench the rule of law. Further, the court observed that the task for the courts in evaluating whether a decision was illegal, was essentially one of construing



the content and scope of the instant conferring the duty or power upon the decision maker to establish that it acted with the four corners of their powers or duties as they act as guardian of Parliaments will. Additionally, the court has to construe the scope of the decision maker's discretion in a meaningful and purposeful manner which the statute or regulation provides. The court observed further that in judicial review, as opposed to an appeal, a court is only concerned with the lawfulness of the process by which the decision was arrived at since the court's role is only supervisory. The court further said that a judicial review court should avoid the forbidden appellate approach and that as long as the processes followed by the decision maker were proper and the decision within the confines of the law, the court will not interfere as held in Republic vs. AG & 4 others *ex parte* Diamond Hashim Lalji & another (2014) eKLR.

37. The court observed that once a judicial review court fails to sniff any illegality, irrationality or procedural impropriety, it should down its tools as held in Republic vs National Water Conservation and Pipeline Corporation & *Ex parte* Roshina Timber Mart (2009) eKLR, since a judicial review was posited on the idea that the agencies remain within the area assigned to them by parliament.
38. Applying the preceding principles and caselaw, the decision made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents must pass the test of conformity with *the Constitution* and the relevant applicable statutory law. Does the decision clash with the constitutional values, purposes, principles, rule of law, human rights and fundamental freedoms? Has the *ex parte* applicant demonstrated that the 1<sup>st</sup> and 2<sup>nd</sup> respondents acted unlawfully, unreasonably, unprocedurally and unfairly? On the other hand, the 1<sup>st</sup> – 6<sup>th</sup> respondents indicated that the decision-making process and the decision did not adversely affect the *ex parte* applicant since it was lawful and accompanied by written reasons.
39. I think the answers lie in the decision itself. In contrast, the 1<sup>st</sup>-6<sup>th</sup> respondents knew that the facts raised in the proceedings herein. They did not provide the documents forming part of the appeal, such as the grounds of appeal when the 7<sup>th</sup> respondent filed it and if all the grounds of appeal were considered. From the proceedings, the 7<sup>th</sup> respondent requested for the recovery of his land to distribute it to his siblings. He did not seek for any portion of it. He did not call for and produce any documents to show that he was the first demarcated owner of the land in 1984.
40. In cross-examination by the 7<sup>th</sup> respondent, the *ex parte* applicant was not shown any demarcation book or record showing that the 7<sup>th</sup> respondent was the initial demarcated owner of the land. Similarly, the 7<sup>th</sup> respondent did not challenge the evidence of the government land surveyor. He was also not cross-examined by the 7<sup>th</sup> respondent or questions put to him by the Minister. Regarding the facts identified, item number 1 was not factually correct, given that each of the parties had alleged vandalism of their developments on the land because of the contents of item number 8.
41. On item number 4, no investigative report was availed to show that the land adjudication officer never made any cancellation or replacement. The 7<sup>th</sup> respondent had not produced any demarcation book to support the assertion that it was irregularly or unprocedurally done. The Minister should have sought more information from the land adjudication officers, especially on item number 6, which said that Julius Kimaita had tempered with land records.
42. On item 9, the Minister established that the *ex parte* applicant was an innocent buyer. If that be so, then in the ruling, the 1<sup>st</sup> and 2<sup>nd</sup> respondents proceeded to render a verdict of allowing the appeal partially and subdividing the land into two portions in favour of the 7<sup>th</sup> respondent. The basis and the reasons for that outcome were never stated in the decision. That act flies against Article 47 (2) of *the Constitution*, which required the 1<sup>st</sup> and 2<sup>nd</sup> respondents to give written reasons for the administrative action, which were adversely going to affect the *ex parte* applicant's right of protection of the property,



which the 1<sup>st</sup> and 2<sup>nd</sup> respondents as a state organ under Article 21 (1) of *the Constitution* must observe respect, protect and fulfil, before arbitrarily depriving a person of his interest in right over any property or limit or restrict his enjoyment without compensation under Article 40 (1), (2), (3), (4), (5) & (6) of *the Constitution*.

43. The 1<sup>st</sup> and 2<sup>nd</sup> respondents had found that the ex parte applicant was an innocent buyer who had lawfully acquired the land. So, his rights to the land were lawful. How and on what basis the 1<sup>st</sup> and 2<sup>nd</sup> respondents found it fit to deprive him half of his land without justification and or compensation falls squarely under the scope and mandate of this court to determine if it was a lawful, reasonable and a procedurally fair process.
44. The ex parte applicant did not plead that an ulterior motive or purpose was calculated to prejudice his legal rights. He claimed the decision was legally unsound and unjustified, going by the facts, evidence and the law applicable. The ex parte applicant has submitted that the findings by the 1<sup>st</sup> and 2<sup>nd</sup> respondents lack support to the conclusion that the land be divided into two. He called the same in-law a no-between scenario because he was already an innocent purchaser for value. He submitted that he should not have been penalized to lose half of his land, especially to the 7<sup>th</sup> respondent, who had not justified that he acquired the land. He says that to be condemned at the tail end amounted to procedural unfairness for being subjected to an unreasonable decision.
45. The proceedings do not indicate if any of the protagonists had raised the issue of subdividing the land into two. The 7<sup>th</sup> respondent had asked for the entire land, and so was the ex parte applicant. The 1<sup>st</sup> – 6<sup>th</sup> respondents averred that the decision was just, fair and procedural. In *Onyango Oloo vs AG (1989) C.A* the court observed that there is a presumption in the interpretation of statutes that the rules of natural justice will apply, and a decision in breach of natural justice was void ab initio.
46. In the case of *Ransa Co. Ltd vs Manco Francesco & 2 others (2015) eKLR*, the court emphasized that a court sitting on judicial review exercises a sui generis jurisdiction, which was restrictive as it challenges the process and other technical issues like excessive jurisdiction and whose remedies are also restrictive in nature. In *Enton Njuki Makungo vs Republic & others (2014) eKLR*, the court believed that judicial review was neither created nor established to create or confer title to land.
47. An administrative action includes the powers, functions, or duties exercised by authorities or any act, omission, or decision of anybody or authority that affects the legal rights or interest of any person to whom such action relates. The scope of administrative action is no longer restricted to public bodies or organs as per the *Fair Administrative Action Act*. Section (6) of the *Fair Administrative Action Act* provides that an administrator must give the reasons and information for the action. If, upon request, an administrator fails to furnish the reasons for the administrative action or decision, in any proceedings for review of such action or decision and in the absence of proof to the contrary, it will be presumed that the administrative action was taken without good reasons. Sub-Section (5) thereof has a rider that an administrator may depart from the requirement to furnish adequate reasons if reasonable and justifiable in the circumstances.
48. Instead of rebutting this presumption, the 1<sup>st</sup> – 6<sup>th</sup> respondents have pleaded that the ex parte applicant has not demonstrated an ulterior motive or purpose calculated to prejudice his rights. There was no request for precise and better particulars.
49. The ex parte applicant pleaded that the basis, rationale and justification for ordering half of his land to go to the 7<sup>th</sup> respondent was unsupported by the grounds of appeal, facts and evidence tendered. He pleaded that the premise and the outcome of the appeal were illogical and unreasonable, leading to the loss of half of his land. The law requires the 1<sup>st</sup> – 2<sup>nd</sup> respondents to supply the reasons within



30 days if sought in writing. Before this court, no reasons were availed by the 2<sup>nd</sup> respondent why she ordered the land to be divided in half, without giving an audience to the exparte applicant before such a drastic action was taken. Section 4 (4) (d) of the Fair Administrative Act, as read with Article 50 of *the Constitution*, requires that the exparte applicant be heard on the subdivision aspect. See *Makenge vs Ngochi* (1979) KLR 53, *Republic vs Mwingi District Commissioner & 2 others exparte Mutinda Mwangangi* (2014) eKLR. *Republic vs Minister for Land & another exparte Bonface Njeru Ngari* 7 another (2013) eKLR.

50. In the case of *Jasper Maluki Kitavi vs. Minister for Land, Settlement & Physical Planning & another* (2017) eKLR, the court cited with approval *JSC vs. Mbalu Mutava & another* (2015) eKLR, where the court noted *Rudge vs. Baldwin* (1964) AC 40, that the rules of natural justice require a body to act fairly.
51. I find that the 1<sup>st</sup> and 2<sup>nd</sup> respondents abused their discretion and went out of their way to make a decision bereft of logic or justification for the deprivation of the right to land ownership without a fair hearing or compensation. The decision is grossly unreasonable or outrageous and in defiance of logic or acceptable moral standards as held in *Associated Provincial Picture Houses Ltd vs Wednesbury Corporation* (1948) 1 K.B 223. In *OJSC Machines Ltd, Transcentury Limited and Civicon Limited (Consortium) vs Public Procurement Administrative Review Board of Kenya & 2 others* (2017) eKLR, the court observed that the purpose of judicial review is to prevent statutory bodies from injuring the rights of citizens by either abusing their powers in the execution of their statutory duties and functions or acting outside of their jurisdiction.
52. The upshot is that I am satisfied that the decision dated 8.12.2022 was made in excess of jurisdiction or breach of rules of natural justice, was unreasonable and in defiance of logic. The same is quashed, and the appeal is remitted for re-hearing by a different officer within three months from the date hereof. Costs to the exparte applicant.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 4<sup>TH</sup> DAY OF OCTOBER 2023**

**In presence of**

C.A Kananu

Muriuki for applicant

6<sup>th</sup> respondent

Miss Maina for Mbaikyatta for 1<sup>st</sup> – 5<sup>th</sup> respondent

Mwenda for 6<sup>th</sup> respondent

**HON. CK NZILI**

**ELC JUDGE**

