



**Republic v Land Adjudication and Settlement Officer, Tigania West Sub-County & another;
Mutua (Interested Party); Murithi (Exparte) (Environment and Land Miscellaneous
Application E016 of 2021) [2022] KEELC 2573 (KLR) (6 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2573 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E016 OF 2021**

CK NZILI, J

JULY 6, 2022

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT
CAP 26 LAWS OF KENYA**

AND

**IN THE MATTER OF LAND PARCEL NO. 2536 MBWAA 'B'
ADJUDICATION SECTION**

AND

IN THE MATTER OF LAND COMMITTEE CASE NO. 279/2021

BETWEEN

REPUBLIC APPLICANT

AND

**LAND ADJUDICATION AND SETTLEMENT OFFICER, TIGANIA WEST SUB-
COUNTY 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

AND

SALOME KIRITO MUTUA INTERESTED PARTY

AND

RAPHAEL MURIUNGI MURITHI EXPARTE



JUDGMENT

1. The court is asked to call for and quash the proceedings and decision of 1st respondent made on January 28, 2021 in land committee case no. 279 No. 279/20/21 involving land Parcel No. 2536 Mbwaa “b” Adjudication section.
2. Secondly the court is urged to prohibit the implementation of the decision by the respondents.
3. The application is based on the statutory statement of facts dated May 18, 2021 and an affidavit in verification of the facts of the even date attaching an extract of the record of the suit property, notice to sue, a reply, hearing notice and the proceedings thereof marked as annexures RMM 1- 4 respectively.
4. The facts are that on July 31, 2013 the exparte applicant purchased an un demarcated land measuring one acre at Kshs.250,000 from one Kithia David Rukunga who had bought the same also from the interested party’s late father. He thereafter took vacant possession.
5. It was averred that on June 21, 2016 the land was demarcated in favour of the exparte applicant as parcel no. 2536 Mbwaa adjudication section following which in around November 2019, the interested party allegedly trespassed into the suit land, started farming and destroying the exparte applicant’s developments.
6. The exparte applicant averred he made various reports at Tigania Police station against the interested party who opted to ignore the police summons hence the issuance of notice to sue and the reply dated November 6, 2020.
7. Upon receipt of the demand letters the exparte applicant was served with a letter dated November 12, 2020 on the same day and was told the matter was slated for a committee hearing. It was averred the exparte applicant sought for more time to prepare himself as he had only been summoned by phone to attend, and did not have enough notice to call his witnesses. Unfortunately, the exparte applicant averred he was harassed, hounded, tormented and intimidated throughout the proceedings by the land committee which seemed to have a predetermined decision.
8. It was averred that on January 28, 2021, a verdict was reached which was partial and deprived the exparte applicant his land without the due process of the law.
9. The exparte applicant averred the objection by the interested party was lodged outside the stipulated time; it was heard by a committee lacking quorum; the committee was unfair, partial and biased; the burden of proof was shifted to him, he had legitimate expectation that the committee would act fairly, impartially and independently. However, the decision was based on ‘no evidence’ the committee was unreasonable, irrational and acted *ultra vires* and hence was against his interests.
10. Despite leave to reply given to the respondents to comply by April 1, 2022 it was only the interested party who opposed the proceedings.
11. The interested party by a replying affidavit sworn on July 26, 2021 averred he attended the demarcation exercise only to find that the applicant had allegedly been demarcated his land hence lodged the objection which was heard on November 17, 2020 in the presence of the exparte applicant in a fair manner.



12. Further the interested party stated the complaints by the exparte applicant were false, lacked merits and that he had failed to exercise and or exhaust all the available remedies before filing the current proceedings hence had come to court with unclean hands.
13. Lastly, the interested party stated the proceedings herein offend the doctrine of ripeness hence was an epitome of an abuse of the court process.
14. With leave of court parties were ordered to put in written submissions by April 1, 2022.
15. By written submissions dated March 31, 2022 the exparte applicant stated the issues for this court determination are; the applicable law for the proceedings; if the applicant should have preferred an appeal; if the objection was time barred; if the applicant was accorded fair hearing during the objection; if the committee was properly constituted and adhered to the rules of natural justice and lastly if the decision was reasonable, rational and logical.
16. The exparte applicant submitted that the objection proceedings were governed by Section 9, 11 & 26 of the *Land Consolidation Act*. Reliance was placed on *John Kiunjuri M'Mwitha and 2 others vs Land Adjudication Officer Antuamburi Adjudication Section and another* (2018) eKLR and *Peter Kimandiu vs Land Adjudication Officer Tigania West District and 4 others* (2016) eKLR.
17. Concerning the exhaustion of the available internal remedies, the exparte applicant submitted as per Section 26 (3) of the *Land Consolidation Act* an appeal could not lie over the committee's decision to rectify the register and replace his name with the one of the interested parties. Reliance was placed on *Joshua Mithika & another vs Kobia M'Twamwari Kangeri & 2 others* (2021) eKLR, *Margaret Mukomugaa vs Samuel Kingirwa Amuru & 4 others* (2021) eKLR, *Joseph Ndegwa & another vs M'Abutu M'Rinya and 2 others* (2022) eKLR, *Rep Vs District Land Adjudication officer Tigania East Exparte Mwenda Makigi; Ithalii Joseph M'Mutura* (2022) eKLR.
18. On the issue of the objection filed by the interested party being time barred, the exparte applicant submitted under Section 26 (1) of the *Land Consolidation Act*, the land committee must issue a notice of completion of the record of existing rights and an objection has to be lodged within 60 days as provided by Section 17 thereof.
19. Given that the recording in favour of the applicant was on July 29, 2016 an objection filed in 2020 was way outside the stipulated 60 days.
20. As to whether there was sufficient time and an opportunity accorded to prepare and call evidence the applicant submitted none was given. Reliance was placed on *Kori Erick Nganga vs University of Nairobi* (2019) eKLR on the proportion that where the outcome has the likelihood in resulting to prejudice or injuries to an individual, such a party must be given reasonable, adequate and sufficient opportunity to defend himself and give his side of the story, in line with Articles 47 and 50 of *the Constitution*.
21. Given the applicant was not notified in advance and only a phone call ensued and was given the notice of the hearing few minutes before the objection commenced the exparte applicant submitted that there was non-compliance with rules of natural justice and the right to fair administrative action.
22. About the composition of the land committee, the exparte applicant submitted Section 9 and 14 (3) of the *Land Consolidation Act* required the committee to be made up of at least 25 members hence the five members who heard the objection as per the proceedings attached contravened the law. Reliance was placed on *Mikinduri-Marega Children of Hope Initiative vs Land Adjudication Officer, Antuamburi Adjudication Section & 2 others* (2018) eKLR.



23. As concerns the issue of fairness, impartiality, reasonableness, rationality and logic of the decision, given that the applicant was not accorded adequate notice he could not have been expected to have come prepared and equipped with witnesses for his defence. He therefore submitted the committee was biased, unfair, partial, unreasonable, irrational and reached an illogical verdict.
24. Reliance was placed on *District Land Adjudication Officer Tigania East District ex parte Joseph M'Ing'ala (Deceased) Represented by Jacob Aketa Ing'ala and another* (2016) eKLR since the interested party did not allege any fraudulent dealings, the acreage had not been established.
25. The ex parte applicant also relied on *Republic vs Ololunga Land Disputes Tribunal and another ex parte Nguruman Ltd* (2017) eKLR on the proposition that a person entrusted with discretion must direct himself properly in law, consider relevant matters, must obey the procedures and in good faith and consider only relevant factors.
26. The issues commending themselves for my determination are: If the 1st respondent followed the statutory and constitutional provisions in hearing and determining the objection proceedings brought by the interested party. If the applicant has pleaded and proved breach of the right to fair hearing and breach of the fair administrative action to be entitled to the prayers sought in the notice of motion dated 8.6.2020.
27. For a party seeking to quash a decision through certiorari, it must move the court within 6 months from the date the decision was made. In this matter the ex parte applicant sought and obtained leave on May 21, 2021 and duly filed the notice of motion herein on June 9, 2021.
28. The ex parte applicant takes the view that he was not served with sufficient notice for the hearing of the objection by the interested party. He stated he was served with the notice dated November 12, 2020 marked as annexure RMM “5” on the day of the hearing on 17.11.2020.
29. The respondents have not replied to the notice of motion even after they were given more than three opportunities to respond to both the factual and legal aspects of the judicial review proceedings as to whether there was compliance with the right to fair administrative action, fair hearing and the right not to be deprived of property without due process of the law.
30. To start with, the law governing the objection was not clearly indicated in the summons to appear dated November 12, 2020 as well as in the proceedings and the decision dated 28.1.2021.
31. The ex parte applicant has urged this court to take the view that the proceedings were governed by the *Land Consolidation Act* given under the *Land Adjudication Act*; the objection are heard by the land adjudication officer and not the land committee.
32. Unfortunately, this court acts on evidence and not presumptions. The annexure marked RMM “S” does not indicate if this was a committee or an arbitration board objection. It could not be both.
33. Secondly the notice clearly indicated the ex parte applicant was to attend according to the *Land Adjudication Act*. There is nothing indicating that the objection was governed and was to be heard in line with the *Land Consolidation Act*.
34. Similarly, there is nothing brought by either of the parties clarifying that the said land adjudication process fell under the *Land Consolidation Act*.
35. Again, the interested party has not attached a copy of the objection she filed a day after learning that the land had been adjudicated in favour of the ex parte applicant. Additionally, the 1st respondent in the proceedings gave the ex parte applicant a right of appeal of 14 days. The decision under Section 26 (1)



of the [Land Consolidation Act](#) is final and not appealable to the minister under Section 26 (3) thereof. On the other hand, if the proceedings were governed by the [Land Adjudication Act](#) as indicated in the summons, the appeal to the minister would have been filed within 60 days from the date of the decision and not 14 days.

36. In my considered view, the hearing notice and the summons ought to have been clear as to the nature of the objection, the law governing it and should have been served with sufficient notice to the exparte applicant to prepare for the same. There is no indication if the objection itself formed part of the proceedings and was duly served by both the respondents and the interested party upon the exparte applicant on time so as to know its contents and adequately prepare a response.
37. Section 11 & 12 of [Cap 284](#) provides the procedure to be followed in hearing objection proceedings as close to the one observed during the hearing of civil suits. The 1st respondent in discharging his duties under Section 9 (2) (b) of the [Land Adjudication Act](#) is bound by the threshold set out under Articles 47, 50(1) and Section 43(a) (b) (c) (g) (4) (a) (b) & (d) of the [Fair Administrative Action Act](#) 2015.
38. Consequently, the exparte was right in invoking Section 7 & 8 of the [Fair Administrative Action Act](#) for this court to determine the legality, validity and constitutionality of the proceedings and the decision in line with Section 7 (2) of [the Act](#). The respondents have not disputed the claims that the 1st respondent failed to accord the exparte applicant adequate notice, time and resources to prepare his defence. This amounted to denial of his rights to fair hearing and fair administrative action.
39. My finding is that the applicant came to court within reasonable time, since his rights as to [fair administrative action](#) and fair hearing were violated in view of the foregoing and consequently, I find and hold the proceedings and decision made on January 28, 2021 was undertaken contrary to the statutory and constitutional requirements on fair hearing and [fair administrative action](#). See [Mohammed Shahid Moughal vs Malindi District Land Adjudication Officer & another](#) (2021) eKLR.
40. In line with Section 11 (e) of [Fair Administrative Action Act](#) I set aside the said proceedings and the decision and remit the objection for reconsideration by a different land adjudication officer and land committee members as the case may be under the relevant laws on land adjudication within 60 days from the date hereof.
41. Costs to the proceedings herein shall be borne by the respondents.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 6TH DAY OF JULY, 2022

HON. C.K. NZILI

ELC JUDGE

In presence of:

C/A: Kananu

Gitonga for interested party

Murithi for exparte applicant

