



M'arachi v Land Adjudication Officer Meru Central (Ruiru/Rwarera Adjudication Section); Arachi (Interested Party) (Judicial Review Application 20 of 2018) [2022] KEELC 13311 (KLR) (5 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13311 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW APPLICATION 20 OF 2018**

CK NZILI, J

OCTOBER 5, 2022

**IN THE MATTER OF THE LAND CONSOLIDATION ACT CAP 283
LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA, LAND
REGISTRATION ACT CAP 300 AND LAND ACT CAP 6 LAWS OF KENYA**

AND

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

BETWEEN

GERALD NTEERE M'ARACHI APPLICANT

AND

**LAND ADJUDICATION OFFICER MERU CENTRAL (RUIRU/RWARERA
ADJUDICATION SECTION) RESPONDENT**

AND

JOHN MURUINGI ARACHI INTERESTED PARTY

JUDGMENT

A. Pleadings

1. The notice of motion dated December 14, 2018 the *ex parte* applicant sought for orders of *certiorari* to issue calling for and quashing of the proceedings and the decision of the land adjudication officer dated August 25, 2018 regarding objection No 3997 Ruiru-Rwarera adjudication section and secondly an order for *mandamus* compelling the respondent to allow objection No 128, to reverse any registration and to return the original land to the *ex parte* applicant.



2. The application was supported by a statutory statement of facts dated November 13, 2018, a verifying affidavit by Gerald Nteere M'Arachi of the even date in which he attached a sale agreement dated September 6, 1988, payment receipts made on September 28, 1988, a final payment acknowledgement receipt dated December 7, 1988 a "1" letter dated September 28, 1989 requesting for the transfer, objection letter made in 2003 to the land adjudication officer, summons from the assistant county commissioner dated September 19, 2017, a decision by the District Land Adjudication and Settlement Officer in objection No 128 dated 25.5.2018, a decision in objection No 3997 declaring that the land in question be transferred under a family name of their choice and a consent to sue marked as GNM "1" to "5" respectively.
3. The respondent opposed the notice of motion through grounds of opposition dated March 18, 2022 on the basis that:-
 - i. The application offended order 53 rule 2 of the Civil Procedure Rules since it was not accompanied by a statement.
 - ii. It offends section 9(1)(c) of the Law Reform Act for bringing new grounds and reliefs without leave of court.
 - iii. The orders sought in the notice of motion contradicted those sought in the statutory statement of facts hence it was defective and a non-starter.
 - iv. A prayer for *mandamus* could not issue unless a respondent has a mandatory duty under the law to act in relation to the matter.
 - v. There is no evidence that the *exparte* applicant requested the respondent to carry out any duty or acted with ulterior motives calculated to prejudice the rights of the applicant.
 - vi. Judicial review deals with procedure and not merits.
 - vii. The orders sought are discretionary in nature and the application is vexatious, frivolous, scandalous and an abuse of the court process.
4. The interested party filed a replying affidavit sworn by John Muriungi Arachi on March 23, 2022, confirming that as his elder brother he filed objection No 128 claiming to have been the one who bought the land and sought for the transfer from Janerosa Nkorote M'Mwarania the recorded owner of parcel No 1369, who was not present at the objection proceedings though represented by her son Benjamin Maingi Daniel. He averred that the said Benjamin Maingi Daniel testified that his mother had sold the land to an old man who later passed on. That the mother or wife to that old man came seeking for a transfer, which could not be possible since the (two parties) died before the transfer was effected hence the reason the record remained until the adjudication register (AR) was published in 2003.
5. The interested party averred that he then filed objection No 3997 since it was his late parents who had bought the land from Janerosa M'Mwarania through the *exparte* applicant who instead used his name in the sale agreement.
6. For that reason, the interested party averred that the objection No 128 was dismissed since he was seeking to subdivide the land as his. That his objection No 3997 was allowed so that the interested party could hold the entire property in trust for all the siblings including the *exparte* applicant, the property being family land. The interested party averred that the applicant failed to appeal to the minister or introduce any documents or request for time to call any witness during the objection proceedings.



7. Further, the interested party averred that the *ex parte* applicant's assertion that he was transferred the land was not related in the proceeding's adjudication record and confirmation thereof. The interested party attached annexures marked JMR "1" & "2" & "3" respectively.
8. In his supplementary affidavit sworn on April 25, 2022 the *ex parte* applicant averred that he bought the suitland solely and a transfer was effected at the chiefs office through Janerosa M'Mwarania. He insisted that the interested party did not disclose the source of his information to the effects that his parent bought the land and handed over the money to Janerosa or state whether he was present during the alleged transaction.
9. Further, the *ex parte* applicant averred that the sale agreement was not challenged during the objection proceedings remained valid documents and insisted that the adjudication committee oversteered its mandate by ignoring a written, valid contract and relying on unproven oral evidence, where the alleged purchasers and or vendors did not testify. Additionally, the *ex parte* applicant averred that the evidence of Joanina Gakii, the interested party's sister amounted to hearsay.

B. Written Submissions

10. With leave, parties opted to canvass the application through written submissions and also made oral highlights on April 28, 2022. The *ex parte* applicant through Miss Kaume advocate submitted that three issues fell for courts determination namely: if the respondent's decision was unfair, unreasonable and failed to take into account his purchaser's right for a consideration; if the respondent failed to consider crucial evidence and hear key witnesses and lastly whether the hearing was unfair and conducted contrary to both statutory and constitutional provisions.
11. The *ex parte* applicant submitted that judicial review was a constitutional means of supervising quasi – judicial bodies exercising administrative authority over illegality, irrationality and procedural impropriety. Therefore, the court would not be looking at the merits of the decision but the process as held in council for *Civil Service Unions v Minister for Civil Service* (1985) AC 314 *Municipal Council of Mombasa v Rep & Umona* (2002) eKLR, *Pastoli v Kabale District, Local (Government Council and others)* (2008) 2EA 300. In an application by *Bukoba Gyukha Club* (1963) EA 478, and as provided under article 47 and 50 of the *Constitution* which invokes the *African Commission on Human and Peoples Rights on General Principles and Guidelines on Legal Proceedings*.
12. Additionally, the *ex parte* applicant relied on *Odhiambo Kidero and 4 others v Ferdinard Ndungu Waititu and 4 others* (2014) eKLR on fair hearing; *Indru Ramchand Bharvani & others vs Union of India and others* (1988) SCR suppl 1.544 555 from the Supreme Court of India on the proposition that fair hearing has two justiciable elements namely an opportunity of hearing and which must be reasonable.
13. The *ex parte* applicant while applying the above principles and guidelines, submitted that he was not given an opportunity by the respondent to adduce both documentary and oral evidence through witnesses and that the respondent also abused his powers in not allowing him a fair hearing, showed open bias and his constitutional rights were therefore violated.
14. Regarding the interested party, the *ex parte* applicant submitted that it was not clear why such parents would use him to buy the land instead of them directly doing so and that if he was buying on behalf of them the sale agreement would have indicated so. Thus, the *ex parte* applicant he submitted that by acceding to the interested party's request, the respondent was biased and misused his powers.
15. The respondent through Miss Kendi advocate submitted that an application for leave must be accompanied by a statutory statement of facts under order 53 rule (2) of the *Civil Procedure Rules*



- and that once leave was granted section 9 (1) (c) of the [Law Reform Act](#) cap 26 provides that, no new ground or reliefs shall be relied upon except those in place at the leave stage, which the *ex parte* applicant has flouted as the orders sought in the notice of motion were materially different from those in the statutory statement of facts.
16. Secondly the respondent submitted that for an order of mandamus to issue an applicant must demonstrate that he had requested the respondent to carry out a statutory duty and failed to do so with ulterior motives which prejudiced him.
 17. On this ground, the respondents submitted that on November 16, 2018, the chamber summons seeking for leave was accompanied by the statutory statement dated November 13, 2018 a verifying affidavit and annexures marked GNM 1-5 attaching the decision dated May 25, 2018, whereas the notice of motion dated December 14, 2018, is accompanied by a statutory statement of facts dated the even date and a two-verifying affidavit(s).
 18. Relying on Nabuye J. as she then was in [Lithotech exports \(PTY\)Ltd v Electoral Commission of Kenya](#) (2007) eKLR and [Judah Muthee Festus v Land Adjudication and settlement officer Tigania East and another; Joseph Mathira Ikirima \(interested party\)](#) (2022) eKLR, the court was urged to find the notice of motion herein as incompetent, a non-starter and an abuse of court process.
 19. As regards the purpose of mandamus, the respondent relying on the components of it as expounded in [Republic v Principal Secretary, Ministry of Internal Security and another exparte Schon Noorani & another](#) (2018) eKLR, urged the court to find that the *ex parte* applicant had failed to demonstrate that the respondent had a mandatory duty under the law to act in relation to the matter, he requested for the said duty, a reasonable time elapsed or non-compliance, and there was an express, or an implied refusal one through unreasonable delay and that no other adequate remedy was available except the orders sought which have some practical value or effect and no equitable bar exists to the relief.
 20. Regarding the orders sought, the respondent submitted that the *ex parte* applicant's application dealt with the merits of the dispute before the respondent contrary to the settled case law that judicial review deals with the decision-making process and not the merits.
 21. Lastly the respondent submitted that the issues on non-admission and the weight to be attached to the documentary evidence of the sale agreement were there attempts to pre-empt the discretion of the respondent, which in any event fell under the province of civil suits and not a judicial review.
 22. Mr Mutuma advocate for the interested party associated himself with the submissions of the respondents and stated that annexure JMR "1" showed that the judgment was delivered on May 25, 2018 after the objection hearing on January 31, 2018.
 23. In the view of the interested party, the burden under section 109 of the [Evidence Act](#) was on the *ex parte* applicant to prove that the failure to produce documents and or call witness during the hearing of the objection proceedings was attributable to the respondent and the interested party since by producing the additional evidence herein the court cannot consider evidence after the fact.
 24. Counsel further submitted that the *ex parte* applicant ought to have produced such additional evidence before the respondent who would have considered its authenticity and gave a chance to cross-examine to the interested party. However, there was no evidence that the *ex parte* applicant was denied such chances by the respondent under section 26 of the [Land Adjudication Act](#) which grants a party a right of appeal and what the *ex parte* applicant was raising here should have been grounds of appeal.
 25. Counsel also submitted that in absence of evidence at the objection stage, a party should not come before court for reprieve but should have appealed to the minister.



26. Regarding marked annexures judicial review “R” 2 & 3, counsel submitted that it was like a search under the *Land Registration Act* which showed the first owner and the subsequent owners.
27. Counsel took the view that JMR “3” showed the date of the filing of the objection and when the caution was put while the judgment and the decision showed the details.
28. As to section 2 of the *Law of Contract Act*, counsel submitted that there were no witnesses to the contract and that in the objection proceedings, the *exparte* applicant appeared to have gone alone to sign the contract with no witnesses.
29. On the letters written to District Land Adjudication and Settlement Officer to transfer counsel submitted in the absence of a confirmation of the authenticity of whether the two letters were submitted and or received by the office, the respondent was not at liberty to consider them since there was a possibility on non-submission of the documents.
30. Counsel urged the court to find that it was unprocedural to bring evidence before this court which was never tendered at the objection proceedings.
31. In a rejoinder, Miss Kaume advocate for the *exparte* applicant submitted that the fact that the two letters was not considered yet they were in the custody of the respondent were the more reason why this court has to find the application with merits since evidence exist that they were received and revenue receipts issued.
32. Counsel further submitted that even if the *exparte* applicant went to the minster, the proceedings showed that the evidence was selectively taken, in a biased manner hence no fair hearing was conducted.
33. Counsel submitted there was no fresh evidence before the court since the respondent had in its custody all the evidence but shut its eyes and ears over the said crucial evidence.
34. Counsel took the view that the minster could not hear the matter more so when JMR “2” & “3” were dated long before the proceedings were commenced.
35. Counsel posed the question why and how could the transfer happen in 2000 and the objection be filed in 2018 which was a strong indicator that the respondent had tampered with the records, acted *ultra vires*, was biased and acted irregularly all which fell under the jurisdiction of this court.
36. Lastly, counsel urged the court to find that the interested party’s evidence was sketchy, there were no witnesses to the sale agreement and that the decision allowed non-parties to the contract to benefit from the objection.

C. Issues for Determination

37. The issues commending themselves for the court’s determination are:
 - i. If the notice of motion is based on grounds and seeks reliefs other than those contained in the statement of facts and the verifying affidavit during leave stage.
 - ii. If the applicant should have exhausted the internal mechanisms instead of the judicial review process.
 - iii. What is the status and the jurisdiction of the court in hearing and determining judicial review proceedings after 2010.
 - iv. If the respondent followed the statutory and constitutional parameters in the hearing and determination of the objection.



- v. If the applicant is entitled to the reliefs sought.
38. The law relating to judicial review is governed by article 23 (3) (f), and 47 of the Constitution, the Fair Administrative Action Act, 2015, the Law Reform Act and order 53 of the Civil Procedure Rules as amended *vide* Legal Notice 22 dated February 26, 2020.
39. Order 53 of the Civil Procedure Rules requires leave to be sought and obtained for the prayer of prohibition, *mandamus* and *certiorari* through an application made *ex parte* which shall be accompanied by a statement of facts setting the name description, reliefs sought and the grounds thereof and the supporting affidavit verifying the facts.
40. Order 53 rule (3) thereof provides that once leave has been granted, a notice of motion to be filed within 21 days or such other time as the court may direct and the notice to be served upon all persons directly affected and where the object is either to compel the court or an officer thereof to undertake any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served upon the presiding officer of the court and all parties thereof.
41. Further, order 53 rule (4) of the Civil Procedure Rules provides that copies of the statement accompanying the application for leave shall be served with the notice of motion, and copies of any affidavit accompanying the application for leave shall be supplied on demand and that no grounds shall subject as hereafter in this rule provided be relied upon or any relief sought at the hearing of the notice of motion except the grounds and the reliefs set out in the said statement of facts.
42. The court under sub rule 4(2) thereof may at the hearing allow further affidavits to be used if they deal with a new matter arising out of the affidavit of any other party to the application and where the *ex parte* applicant intends to be allowed to amend his statement or use further affidavits, he shall give notice of his intention and of any proposed amendments of his statement and shall supply on demand copies of any such further affidavits.
43. Order 53 rule 7 of the Civil Procedure Rules requires that a copy of the decision to be quashed shall be lodged before the hearing with the Deputy Registrar of the court duly certified.
44. By an *ex parte* chamber summons dated November 13, 2018 which was accompanied by a statement of facts, verifying affidavit and an affidavit verifying facts all dated November 13, 2018, and attaching annexures marked GMM “1” – “5”, the court on October 26, 2018 granted leave to commence judicial review proceedings over a decision and proceedings attached as GMM “4” which order was to operate as a stay of the decision for a period of six months.
45. In compliance with the order the *ex parte* applicant filed a notice of motion dated December 14, 2018 accompanied by a statutory statement verifying affidavit, affidavit verifying facts with annexures marked GMM “1” – “5”.
46. The court has carefully gone through the notice of motion dated December 14, 2018.
47. There is no requirement in law for the notice of motion to be accompanied by a fresh statement of facts, affidavit in verification and or annexures save for the documents filed at the leave stage.
48. Be that as it may, the filed documents are the same as those filed at the leave stage save for the date at the bottom. Similarly, the notice of motion did not include other grounds or prayers other than those contained in the statement of facts save that the *ex parte* applicant omitted the prayer for prohibition at paragraph 6 (11) of thereof. However the further supplementary affidavit filed on April 27, 2022 introduced other grounds not included at the initial stage. This was contrary to the orders made on



- March 24, 2022 which were clear that no new issues ought to be raised since the respondents had already filed their grounds of opposition.
49. To that extent my finding is that grounds of opposition (1), (2), (3) and submissions by the respondent have merits.
 50. The proceedings and the decision sought to be impugned was made on May 28, 2018. The aggrieved party was given a right of appeal to the Minister within 60 days.
 51. The District Land Adjudication & Settlement Officer proceeded to issue the *ex parte* applicant with a consent to sue dated June 28, 2018. The same was attached as which was for annexure marked GMM “5” for injunction against the encroachment on parcel No 1369. The filing of the application was within a month after the decision was rendered. Instead of filing the ministers appeal the *ex parte* applicant sought for judicial review on November 18, 2018. This was within six months period as envisaged by order 53 of the *Civil Procedure Rules* and sections 67 and 8 of the *Law Reform Act* where the prayer is for *certiorari*.
 52. The respondent and the interested party have opposed the notice of motion on the grounds that the judicial review proceedings deal with the procedural aspects and not the merits of the decisions and that the case herein fell with the minister not this court.
 53. On the other hand, the *ex parte* applicant had submitted that the issues raised herein were beyond the minister for they touch on *inter-alia*, fair hearing, disregard of rules of natural justice, acting ultra vires and being biased.
 54. In *Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others* (2015) eKLR, the Court of Appeal held, that it was imperative where a dispute resolution mechanism exists outside court to be exhausted before the jurisdiction of the court was invoked since courts ought to be the last resort and not the first point of call the moment a storm brews. The court said that the doctrine of exhaustion was a sound one serving the purpose of the post-ponement of judicial consideration of matters so as to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside court.
 55. In *Mutanga Tea & Coffee Estate Co Ltd v Siakara Ltd and another* (2015) eKLR the court held that a party should resort to a mechanism set out by the *Constitution* or statute before purporting to invoke the jurisdiction of the court as per article 159 (2) (c) of the *Constitution* and to ignore such a mechanism, would be tantamount to undermining a clear constitutional imperative or objective.
 56. Applying the above binding principles and decisions the *ex parte* applicant has not explained why he did not file a minister’s appeal as directed by the District Land & Settlement Officer. He however explained that the issues raised go beyond the minister’s mandate.
 57. Looking at the statutory statement herein the *ex parte* applicant attacks the respondent and the decision made for failing to find that he had legally bought the suit land for refusing to allow documentary evidence and or failing to consider the evidence in the decision and for failing to allow him call crucial witnesses. The prayers sought are to quash the decision through *certiorari*, prohibit the enforcement of the decision and *mandamus* to compel the respondent to reverse the decision and allow the *ex parte* to file for a transfer of his legally acquired piece of law.
 58. The question for this court to answer is whether the issues raised herein fall under the judicial review or appeal to the minister?
 59. The parameters of a court sitting under judicial review have been well settled by our courts.



60. In *Ransa Co Ltd v Manca Francesco & 2 others* (2015) eKLR the Court of Appeal held that a court sitting on judicial review exercises a *sui generis* jurisdiction which is restrictive for it principally challenges the process and other technical issues like excessive jurisdiction rather than the merits of the case. The court held that the remedies were also restrictive in nature.
61. In *Pastoli v Kabale* (supra) and an application by *Bukoba Gyukba Club* (supra), the court held that in order to succeed in a judicial review, a party must show that the decision or the act complained of was tainted with illegality, irrationality and procedural impropriety. In *Republic v Nairobi City Council exparte Gurcharn Singh Sihra & 4 others* (2014) eKLR, citing with approval *Republic v KRA exparte Yaya Towers Ltd* (2008) eKLR, the court reiterated the purpose of judicial review was to ensure an individual is given fair treatment by the authority to which he has been subject to and that the judiciary could not substitute its opinion with that of that body which is mandated to decide the matter.
62. In *Republic v Director of Immigration Services and 2 others exparte Olamilekan Gbenga Fasuyi & 2 others* (2018) eKLR, the court took the view that judicial review was about the decision making process and not the decision itself and that a court should not attempt to adopt the forbidden appellate approach but only establish if the decision or action was unauthorized or invalid as part of its supervisory role to hold public bodies accountable for the manner that they exercise administrative power.
63. In *Enton Njuki Makungu v Republic & 2 others* (2014) eKLR the Court of Appeal took the view that the judicial review remedy of certiorari was neither created nor established to create or confer title to land.
64. In *Nicholas Njeru v AG & 8 others* (2013) eKLR the Court of Appeal stated it was a well settled principle of law that the court has supervisory powers to check the excesses of jurisdiction and compliance with the rule of law by inferior tribunals and other public bodies or persons discharging such public acts.
65. The court held that prohibition is directed at inferior tribunal or public body forbidding them from acting in excess of their jurisdiction or contrary to law whereas mandamus was a command to a public body or person requiring it or him to do a particular thing specified in the command which appertains to his or their office of the nature of a public duty.

D. Determination

66. Applying the above principles and binding decisions, the issues raised by the notice of motion herein do not fall on this court's jurisdiction while exercising its power of judicial review under articles 23 and 47 of the *Constitution* as regards inexpedience, inefficiency, unlawfulness, unreasonableness and or procedural impropriety as read together with sections 4 (1) (2) (3) (4), 5, and 6 of the *Fair Administrative Action Act* 2015.
67. On the issue of judicial review post 2010 *Constitution*, it is true that the right to fair administrative action has been elevated to a constitutional imperative or right. In line with the *Constitution*, the *Fair Administrative Action Act* was enacted in 2015.
68. An administrative action has been defined to include the powers, functions and or duties exercised by authorities or quasi-judicial tribunals or any act, omission or decision of any person, body or authority that affects the legal rights or interest of any person to whom such action relates. The scope of those is that an administrator is therefore no longer restricted to public bodies or organs.



69. The application of the [Fair Administrative Action Act](#) 2015 also applies to the courts as they exercise judicial functions.
70. The Act under section (6) brings on board a presumption that the action was taken without good reason if the reasons for the decisions are not supplied to the aggrieved early and within 30 days of the decision.
71. Concerning the institution of proceedings, an aggrieved party has a right to apply for review under section (8) thereof to court or to a tribunal in exercise of its jurisdiction conferred in that regard under any written law.
72. The mandate of both the tribunal and the court has been set up under sections 7&2 of the [Fair Administrative Action Act](#) 2015 to include whether the administrator had powers, acted with the powers, was biased, denied him fair hearing, failed to comply with material procedure or condition precedent; if he was procedurally fair, if he considered material factors, if he acted with ulterior motives or under influence or prejudiced his rights; or acted in bad faith; if he was rational; if there was abuse of discretion; if there was unreasonable delay or failure to act; disproportionality; failure to meet legitimate expectations; unfairness in decision making and or was made in abuse of power. Further the Act provides that an application and appeal herein shall be determined within 90 days of the filing of the application.
73. As regards the procedure for judicial review, an aggrieved party under section (9) thereof, has to file an application without unreasonable delay but the court shall not review an administrative action or decision under the Act unless the internal mechanism for appeal or review and all remedies available under any other written law are first exhausted and the court may direct a party to first exhaust those mechanisms before coming to court.
74. The court can however under exceptional circumstances and on an application by the applicant, exempt such a person from the obligations to exhaust any remedy before coming to court.
75. Under section 10 thereof, an application for judicial review is to be heard without undue regard to procedural technicalities.
76. Regarding the orders sought sections 11 thereof allows the courts and tribunals to grant declaratory orders on rights; restraining orders, order for an administrator to give written reasons for a decision; prohibitory order; setting aside of the decisions compelling order of performance of duty; remitting the matter for reconsideration; temporary reliefs or interdiction; the award of costs; directions to take a decision; declaration of rights of parties as regard the decision and lastly orders directing parties to do or refrain from doing an act in the interest of justice to the parties.
77. Under section 12 thereof, the Act is clear that it applies in addition to and not in derogation from the general principles of common law and the rules of natural justice.
78. Arising out of the application of this act to the instant case, the judicial review application was filed on November 21, 2018 while this Act commenced operation on June 17, 2015.
79. Section 7 (1) thereof provides that one may apply for review against a decision to a court or to a tribunal as per a jurisdiction conferred by any written law.
80. In this matter, the *exparte* applicant ought to have preferred a Minister's appeal as required under section 26 of the [Land Adjudication Act](#) cap 284 Laws of Kenya.



81. The *ex parte* applicant could only have moved directly to this court on exceptional circumstances and through an application to exempt him from submitting to the jurisdiction of the Minister under section (9) (4) of the *Fair Administrative Action Act* 2015.
82. The *ex parte* applicant has neither given reasons nor sought for an exemption even after the issue of the non-exhaustion of internal mechanism was raised by the respondent and the interested party.
83. The Act is not in contradiction with the *Law Reform Act* and the *Civil Procedure Act* and the *Fair Administrative Action Act* 2015 and the rules made thereunder.
84. In my considered view, the applicant has prematurely come to this court and failed to submit to the court in a regular manner. Even if I was to make a finding that the *ex parte* applicant was properly before this court the grounds and the prayers sought in the notice of motion are restrictive.
85. Counsel for the *ex parte* applicant and counsel for the respondent and interested parties went beyond the parameters of the grounds set out in the statement of facts contrary to order 53 of the *Civil Procedure Rules* to wit legality of the sale agreement, nature of witnesses the evidence, admissibility of evidence, bias, *ultra vires* and the benefit to non-parties by the decision.
86. As indicated above the *ex parte* applicants' grounds of the matter were set out under paragraph 6 of the statement of facts namely; unfairness and unjustifiability in not considering that he had legally bought the subject land and the failure to allow for documentary and oral evidence only.
87. The grounds on bias, illegality, *ultra vires*, irrationality, impropriety and unreasonableness were not set out in the statement of facts. No leave was sought to include more grounds than what was included at the time leave was granted to file the notice of motion.
88. The upshot is that I find the notice of motion lacking merits. The same is hereby dismissed with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 5TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Mr. Kieti for respondents

Mutuma for interested party

HON. C.K. NZILI

ELC JUDGE

