



Republic v Changach/Emsea Adjudication Committee & another; Mitei (Exparte Applicant); Cheptalam (Interested Party) (Environment and Land Judicial Review Case E002 of 2024) [2025] KEELC 4198 (KLR) (19 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4198 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2024**

**L WAITHAKA, J
MAY 19, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**CHANGACH/EMSEA ADJUDICATION COMMITTEE 1ST RESPONDENT
ELGEYO MARAKWET COUNTYLAND ADJUDICATION OFFICER 2ND
RESPONDENT**

AND

ISAAC KIPLIMO MITEI EXPARTE APPLICANT

AND

PAUL KIBOWEN CHEPTALAM INTERESTED PARTY

JUDGMENT

Background

1. Pursuant to leave notice granted to the ex parte applicant on 26th January 2024 to institute judicial review proceedings, the ex parte applicant filed the notice of motion dated 15th February 2024 seeking an order of Certiorari to remove into this court and quash the decision of Changach Emsea land adjudication committee given on 14th August 2023.
2. The application is premised on the grounds that the decision and the proceedings leading to the decision are unlawful as the applicant was not given an opportunity to be heard and to cross examine witnesses.



3. The applicant contends that the 1st respondent had no jurisdiction to hear and determine the dispute as it can only deal with a dispute referred to it by the recording officer under section 19 as read with section 20 of the *Land Adjudication Act* (LAA), Cap 284 Laws of Kenya. The applicant contends that the 1st respondent acted ultra vires its mandate under the LAA.
4. The ex parte applicant also contends that his parcel of land plot number 739, was not mentioned in the proceedings hence it was not in dispute.
5. In reply and opposition to the application, the respondents filed grounds of opposition dated 10th February 2025 through which they contend that the applicant has not met the legal threshold for granting an order of Certiorari under Order 53 Rules 1, 2, 3 and 7 of the Civil Procedure Rules; that the application does not meet the legal and jurisprudential threshold for grant of an order of Certiorari; that the affidavit sworn in support of the application is incurably defective and that the application is incompetent, lacking in merit and an abuse of the court.
6. Further, that the application should be regarded as an afterthought as the applicant who appeared before the adjudication committee on 14th August 2023, did not raise any objection to jurisdiction; that the application is not arguable and has no chance of success and that the applicant has not demonstrated what harm he stands to suffer if the orders sought are not granted.
7. The interested party did not file a response to the application despite having been given an opportunity to do so.
8. Pursuant to directions given on 11th February 2025, the application was disposed of by way of written submissions.

Submissions

Ex parte applicant's submissions

9. In his submissions dated 26th February 2025, the applicant has given an overview of the application and identified three (3) issues for the court's determination. These are: -
 - i. Whether the proceedings and the determination by the respondents offend the rules of natural justice;
 - ii. Whether the ex parte applicant is entitled to the judicial review order sought;
 - iii. Who should bear the costs of the application?
10. On whether the proceedings and the determination by the respondents offend the rules of natural justice, the applicant acknowledges that the interested party lodged a complaint against him before the Adjudication Committee regarding his parcel of land, plot No. 739. The applicant also acknowledges that he was summoned to attend the hearing of the complaint on 14th August 2023 but maintains that he was neither heard nor given an opportunity to cross examine the claimant's witnesses on his parcel of land, 739. Based on the decisions in the cases of *Msagha vs. Chief Justice & 7 others NBI HCMA No.1062*; *Onyango Oloo v. Attorney General (1989)EA*, the applicant submits that the 1st respondent was obliged to proceed with the hearing and determination of the complaint in a just and fair manner by allowing him to be heard and present his case.
11. The applicant faults the respondent for hearing the case without affording him opportunity to be heard. Based on the alleged denial of the right to be heard, the applicant contends that the 1st respondent's impugned decision/finding is null and void ab initio.



12. On whether the ex parte applicant is entitled to the Judicial Review order sought, the applicant has cited the cases of Council of Civil Services Union vs Minister of Civil Service (1985)AC 374; Pastori vs. Kabale District Local Government Council others (2008) 2 EA 300; Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd Civil Appeal No.185 of 2001 and Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Ltd (2008)e KLR. The applicant has also cited the provisions of 47 and 50 of *the Constitution* and section 4(3)(b) of the *Fair Administrative Action Act*, 2015 in support of his argument that he is entitled to the order sought because he was denied an opportunity to give evidence, cross examine witnesses and to call witnesses in support of his case.
13. Based on the Adjudication Committee's proceedings, the applicant states that the interested party as well as defendants gave their testimony and were allowed to cross examine the complainant's witnesses yet he was not accorded a similar opportunity thereby violating his right to a fair hearing.
14. On costs, the applicant submits that his case is merited and urges the court to allow it with costs.

Interested Party's Submissions

15. In his submissions dated 20th March 2015, the interested party has framed three issues for the court's determination. These are: -
 - i. Whether the decision of the 1st and 2nd respondents was valid;
 - ii. Whether the ex parte applicant is entitled to the orders sought; and
 - iii. Who should bear the costs of the suit/application?
16. On whether the decision of the 1st and 2nd respondents was valid, the interested party has made reference to the case of Mohamed Ahmed Khalid (Chairman) and 10 others vs. Director of Land Adjudication and 2 others (2013) e KLR and submitted that the respondents performed their mandate under the LAA and if the applicant was dissatisfied with their decision, he ought to have exercised his right of appeal provided in the Act.
17. As to whether the ex parte applicant is entitled to the orders sought, the interested party has made reference to the provisions of Section 26 and 29 of LAA and reiterated his contention that the ex parte applicant had right of appeal and that he ought to have appealed if he was aggrieved.
18. Maintaining that due process was followed and faulting the applicant for having failed to appeal if he was dissatisfied with the decision of the Adjudication Committee, the interested party urges the court to dismiss the application with costs.

Analysis and determination

19. As pointed out herein above, the applicant instituted this suit contending that he was condemned unheard; that he was not afforded an opportunity to cross examine witnesses and that his parcel of land, plot No. 739 was not in dispute. He also contended that the Adjudication Committee acted ultra vires its powers under the LAA as it could only entertain a matter referred to it by the recording officer under section 19 and 20 of the Act.
20. In his submissions, the applicant resiled from and/or abandoned part of his pleaded case, like the claim that his parcel of land was not in dispute. He also acknowledged that the Adjudication Committee had power to hear and determine the dispute preferred before it. Having resiled from and/or abandoned those aspects of his case, I will deem them as abandoned hence I will not consider them.



21. Concerning the remaining aspects of his case, the applicant appears to base his case on the fact that the proceedings of the Adjudication Committee do not indicate that he testified and/or cross examined witnesses.
22. Whilst it's true that the proceedings of the Adjudication Committee do not indicate that the applicant testified, tendered witnesses and/or cross examined the complainant's witnesses, that in itself is not evidence of denial of opportunity to testify.
23. Noting that the applicant was invited to attend the hearing and that he attended and participated in the proceedings which appear to have been representative in nature and further noting that the applicant does not claim that he requested for opportunity to tender individual evidence and witnesses, which request was denied, I find and hold that the applicant's claim for denial of the right to be heard unsubstantiated.
24. As submitted by the interested party, the applicant had a right of appeal against the decision of the Adjudication Committee, which right he never pursued. No explanation has been offered by the applicant why he never availed himself that right.
25. The upshot of the foregoing is that the applicant has not made a case for being granted the orders sought. Consequently, I dismiss his suit with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 19TH DAY OF MAY, 2025.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Ms. Chelimo for the *Exparte* applicant

Mr. Mulongo holding brief for Ms. Rop for the respondents

N/A for the interested party

Court Assistant: Christine

