



**Mukonyo (Suing as the Administrator of the Estate of Jeremiah Peneti Ole Mukonyo - Deceased) v Kajiado & another (Environment and Land Judicial Review Case E003 of 2023) [2024] KEHC 7704 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7704 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2023  
LC KOMINGOI, J  
JUNE 20, 2024**

**BETWEEN**

**JOB SAYIANKA MUKONYO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF JEREMIAH PENETI OLE MUKONYO - DECEASED) .. APPLICANT**

**AND**

**LAND REGISTRAR KAJIADO ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By an originating Notice of Motion dated 25<sup>th</sup> September 2023 brought under Article 47 of the [Constitution](#), Sections 7,9,10,11 of the [Fair Administrative Action Act](#) 2015 and all other enabling provisions.
2. It seeks Orders;
  1. Spent
  2. Spent
  - Spent
  4. A declaration be issued that the Ruling of the 1<sup>st</sup> Respondent delivered on 22<sup>nd</sup> September 2023 was and is unlawful, unprocedural, biased and was materially influenced by an error of law.
  5. The Ruling of the 1<sup>st</sup> Respondent delivered on 22<sup>nd</sup> September 2023 be removed and quashed through an order of Certiorari.
  6. The costs of this application be provided for.



3. The grounds are on the face of the application and are set out in paragraphs 1 to 13.
4. The Notice of Motion is supported by the affidavit of Job Sayianka Mukonyo, the Applicant herein, sworn on the 25<sup>th</sup> September 2023. He is the Administrator of the Estate of Jeremiah Peneti Ole Mukonyo (deceased) who is the registered owner of Land Parcel Known as Loitoktok/Enkariak – Rongena/290.  
  
He depones that on 9<sup>th</sup> August 2023, summons were left at his home requiring him to appear before the meeting convened by the 1<sup>st</sup> Respondent on 10<sup>th</sup> August 20-23, at the disputed boundary for purposes of settling a boundary dispute.
5. It is his case that he was not given an opportunity to be heard and to have his surveyor and or witnesses present during the said site visit. That this violates his rights under Article 47 of the Constitution.
6. Upon being served, the 1<sup>st</sup> Respondent put in grounds of opposition dated 1<sup>st</sup> November 2023. It is the Respondent's contention that the Notice of Motion contravenes order 53 rule 1 of the Civil Procedure Rules, which provides that no application for Judicial review should be made unless leave of court was sought and granted. They pray that the Notice of Motion be dismissed
7. On the 2<sup>nd</sup> November 2023, the court directed that the Notice of Motion be canvassed by way of Written Submissions.

#### **The applicant's submissions.**

8. They are dated 20<sup>th</sup> November 2023. Counsel outlined two issues for determination:
  - a. Whether the Judicial Review application herein is competent.
  - b. Whether the Applicants right to Fair Administrative action was violated by the Respondents.
9. Counsel submitted that an applicant who files for Judicial Review pursuant to Section 7 of the Fair Administrative Action Act, 2015 does not need to seek leave. He has put forward the case of NSSF v Sokomania Ltd & Another (2021) eKLR .
10. It is further submitted that for the 1<sup>st</sup> Respondents to re-establish the boundaries he ought to have notified all persons involved and require their attendance. He also ought to have notified the survey office and accord each party an opportunity to be heard.  
  
He has put forward the cases of Republic v Kenyatta University Exparte Martha Wahuini Ndung'u (2019) eKLR; Daniel Kibet Mutai & 9 Others v AG (2019)eKLR.
11. Counsel further submitted that the Applicant's failure to seek consent from the Co-Administrator before filing suit is not fatal to this application. He has put forward the cases of Zeinab Khalifa Khator & 4 Others v. Abdulrazak Khalifa Salim & Another (2007)eKLR; Rahab Wangui Kageni (Suing as the administrator of the Estate of Samuel Mubika Kageni v. Roselyn Dola Ouko & another (2019) eKLR .  
  
He prays that the Application be allowed.

#### **The respondents' submissions.**

12. They are dated 9<sup>th</sup> January 2024. They raise two issues for determination;
  - i. Whether the Applicant ought to have sought leave before filing this Judicial Review application.



- ii. Whether it was within the 1<sup>st</sup> Respondents mandate to visit the disputed boundary and make a determination.
13. Counsel submitted that what the Applicant seeks is an order of Certiorari to quash the ruling delivered by the 1<sup>st</sup> Respondent on 22<sup>nd</sup> September 2023.
- That this being a Judicial Review application, it ought to strictly adhere to the mandatory provisions of the Law Reform Act and Order 53 of the Civil Procedure Rule. She has put forward the case of Gilbert Joseph Kabunjia v. Land Adjudication and Settlement Officer Meru South & 30 Others. (County Government of Tharaka Nithi (Interested Party)) (2019) eKLR.
14. It is further submitted that it is mandatory to seek leave before filing a substantive motion whether the same is brought under the Fair Administrative Actions Act, or not. She has put forward the cases of Republic v. Chief Magistrate Milimani Commercial Court & 2 Others Exparte Fredrick Bett (2022) eKLR.
- AAR Insurance v Public Procurement Administrative Review Board & Others. HCJR Case No. E087 of 2021 (Unreported).
- She prays that the suit be found to have been brought unprocedurally for failure to seek and obtain leave it ought to be dismissed.
15. It is also submitted that Section 18 of the Land Registration Act No.3 of 2012, mandates the Land Registrar to resolve boundary disputes. She has put forward the case of George Kamau Macharia v DexKa Ltd (2019) eKLR.
16. Counsel also submitted that the 1<sup>st</sup> Respondent strictly adhered to the provision of Regulation 40 of the Land Registration Regulations. The suit herein ought to be found to be unmeritious and should be dismissed with costs to the Respondents.
17. I have considered the notice of Motion, the Affidavit in support and the grounds of opposition. I have also considered the written submissions and the authorities cited. The issues for determination are;
- i. Whether the Applicant ought to have sought leave before filing this Judicial Review application.
  - ii. Is the Applicant entitled to the relief sought?
  - iii. Who should bear costs?
18. In his Originating Notice of Motion dated 25<sup>th</sup> September 2023, the Applicant seeks
- “... that the ruling of the 1<sup>st</sup> Respondent delivered on 22<sup>nd</sup> September 2023 be removed and quashed through an order of Certiorari.”
- There is no doubt that the Applicant herein is seeking an order of Certiorari which is a discretionary order.
19. It is the Applicant's submission that the application is brought under section 7 of the Fair Administrative Action Act, 2015 which requires no leave to be sought.



He has cited the case of *National Social Security Fund v. Sokomania Limited & Another* (2021) eKLR; Where Justice S. Okongo observed thus;

“Judicial review as a relief is provided for in among others; Article 23 (3) of the *Constitution of Kenya* 2010, Section 8 of the *Law Reform Act* Chapter 26 Laws of Kenya, Section 13 (7) of the *Environment and Land Court Act* 2011, Section 7 of the *Fair Administrative Action Act* 2015 and the Common law. In my view, no leave is required to seek judicial review as a relief under Article 23 (3) of the *Constitution* where proceedings are instituted to enforce the Bill of Rights under Article 22 of the *Constitution* or where proceedings have been brought under Section 7 of the *Fair Administrative Action Act*, 2015 for the review of an administrative action. Such leave is also not required under the *Environment and Land Court Act* 2011 before such relief is sort.”

20. Similarly, Joel Ngugi J (as he then was) in *James Gacheru Kariuki & 22 Others v Kiambu County Assembly & 3 Others* (2017) eKLR held;

“29. As my analysis in the above case shows, I am not persuaded that it was the Constitutional intention to retain Judicial Review proceedings simpliciter as they existed in the *pre 2010 Constitution*. I am even less persuaded that it was the intention of the drafters of the *Constitution* that all suits seeking the review of administrative actions of public bodies would, in the post 2010 period; take the form of Judicial Review proceedings simpliciter as strictly provided for in order 53 of the *Civil Procedure Rules* .

30. Section 9 of the Kenya *Law Reform Act* and Order 53 of the *Civil Procedure Rule* were introduced into law to give the High Court special jurisdiction to issue the writs of certiorari, mandamus and prohibition. Prior to that, the High Court did not have any such jurisdiction.

However, in the *Constitution of Kenya* 2010, the jurisdiction of the High Court to review the administrative actions of public (and private) bodies is now expressly provided for in Article 47 of the *Constitution* as read together with Article 23 of the *Constitution*. Parliament has further enacted the *Fair Administrative Actions Act* to give effect to Article 47 of the *Constitution*. In other words, it is no longer necessary to rely on the *Law Reform Act*, as the law that clothes the High Court with jurisdiction to review administrative decisions and actions by public bodies; the constitution bequeaths that jurisdiction to the High court directly by constitutionalizing the right to Fair Administrative Action....

34. This Section self consciously creates an avenue for an aggrieved party to directly approach the High Court for relief. The Section does not require the party to mould her application for relief within the confines of the existing order 53 of the *Civil Procedure Rules*. Instead Section 9 (1) of the *Fair Administrative Action Act*, simply allows a party aggrieved by an administrative decision or action of a public body to make an appropriate application to the High Court.....



40. My express holding is that I find no requirement in our law or rules of procedure that a party seeking to commence a suit under the Fair Administrative Action Act must just obtain the leave of the court.....”
21. I am guided by the above authorities in finding that the Applicant did not require leave before filing this Judicial Review application.
22. Section 18 of the Land Registration Act, 2012 mandates the Land Registrar to resolve boundary disputes. The Applicant claims not to have given an opportunity to be heard.
23. I have gone through the proceedings of that day and I note that he was present in the said meeting and he made presentations. The fact that his name does not appear in the list of those present is neither here nor there. I am not convinced that the Applicant has stated the truth.
24. The Applicant admits that some summons were left at his home by the neighbour’s children requiring him to attend the meeting convened by the Land Registrar the following day. His claim that he was not aware of the meeting cannot be true.
25. The Applicant has not tendered any evidence to show that the Land Registrar did not comply with the Regulation 40 of the Land Registration Regulations.
26. The ruling by the Land Registrar shows that the Applicant was present and made presentations in respect of Parcel No. Loitoktok/Enkariak Rongena/290.  
In paragraph 3 of his supporting affidavit he depones’  
“That on 10<sup>th</sup> August 2023 I saw the Land Registrar Kajiado and certain other persons including some of our neighbors on our late father’s land where I rushed to confirm what was going on.”
27. This confirms that he was present at the site meeting that gave rise to the impugned ruling.
28. The Applicant has failed to put forth evidence to show why the impugned ruling should be removed into this court for quashing.
29. I see no reason why the court should interfere with the ruling of the Land Registrar. I believe the final marking and re-establishing of the boundaries will be done in the presence of all parties.
30. I find no merit in this Originating notice of motion and the same is dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF JUNE 2024.**

**L. KOMINGOI**

**JUDGE.**

In the presence of:-

Mr. Chacha for Ms. Khafafa for Applicant.

Ms. Nyawira for the Respondents.

Court Assistant – Mutisya.

