



Republic v District Land Registrar, Nakuru & 2 others; Mugo & another (Suing as the legal representatives of the Estate of the Late Annah Wanjiku Ngunjiri) (Exparte Applicant); Nguru (Interested Party) (Environment and Land Case Judicial Review Application 3 of 2024) [2025] KEELC 63 (KLR) (Environment and Land) (23 January 2025) (Judgment)

Neutral citation: [2025] KEELC 63 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION 3 OF 2024
MC OUNDO, J
JANUARY 23, 2025
(FORMERLY NAKURU JUDICIAL REVIEW 2 OF 2023)
IN THE MATTER OF LAND ACT, 2012
AND
IN THE MATTER OF KIAMBOGO/KIAMBOGO BLOCK 1/846

BETWEEN

REPUBLIC APPLICANT

AND

DISTRICT LAND REGISTRAR, NAKURU 1ST RESPONDENT

RIFT VALLEY REGIONAL SURVERYOR 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

MICHAEL NGUNJIRI MUGO AND ANDERSON MWANGI (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE ANNAH WANJIKU NGUNJIRI) EXPARTE APPLICANT

AND

SUSAN WANGUI NGURU INTERESTED PARTY



JUDGMENT

1. Pursuant to Leave of Court dated 19th September, 2023, the Ex parte Applicant filed an undated Notice of Motion brought pursuant to the provisions of Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 22 (25) Order 45 (1) and Order 51 of the Civil Procedure Rules 2010 and all enabling provisions of the law seeking for the following orders:
 - i. Spent
 - ii. That the Honourable Court be pleased to issue an Order of Certiorari to remove to the Honourable court the Respondent's decision to amend the Registry Index Map in respect of Kiambogo/Kiambogo Block 1 thereby adversely reducing the size of land parcel No. Kiambogo/Kiambogo Block 1/846.
 - iii. That the Honourable Court be pleased to issue an order of Mandamus to compel the Respondents to conduct a fresh boundary dispute hearing between parcel Nos. Kiambogo/Kiambogo Block 1/846 and 851 be within the parameters of law. (sic)
 - iv. That costs of the Application be provided for.
2. The said application was based on the grounds in the Statement of Facts dated 8th September, 2023 together with the Supporting Affidavit dated 20th November, 2023 sworn by Michael Ngunjiri Mugo and Anderson Mwangi, the Ex-Parte Applicants herein and the Legal Representatives of the Estate of the late Annah Wanjiku Ngunjiri.
3. The gist of the application was that their mother, the late Annah Wanjiku Ngunjiri was the registered owner of all that parcel of land known as Kiambogo/Kiambogo Block 1/846 while the Interested Party was the registered owner of all that parcel of land known as Kiambogo/Kiambogo Block 1/851. That the Interested Party herein had on several occasions made complaints to the 1st Respondent herein regarding a non-existing boundary dispute between herself and their late mother which complaints had never been addressed.
4. That despite the 1st Respondent being legally mandated to resolve such a dispute, it had neither invited nor summoned the parties herein for a hearing nor had any such proceedings or an eventual decision been made to determine such a dispute. That nonetheless, on or around 1st January, 2023, the 2nd Respondent wrote to the area chief Mahiga Location informing him that they would visit the area to resolve a boundary dispute between land parcel Nos. Kiambogo/Kiambogo Block 1/846 and 851.
5. That the said 2nd Respondent neither invited nor notified the ex-Parte Applicants herein in total disregard of rules of natural justice. That thereafter, the 2nd Respondent had proceeded to amend the area RIM by imposing an access (sic) on the ex-parte Applicants' land thereby considerably reducing its acreage.
6. That the Respondents herein had acted in total disregard and or breach of substantive powers, procedural powers, in abuse of their power and in bad faith. That further, the Respondents' actions had been ultra vires the administrative law whose principle required the substantive exercise of powers to be in strict compliance with the prescribed procedures and which canon principles the Respondents had disregarded.
7. That the ex-parte Applicants had an arguable case hence it was only fair and just that the prayers herein be granted.



8. In response and in opposition to the Ex-Parte Applicants' application, the Respondents filed their Grounds of Opposition dated 5th June, 2024 wherein they deposed as follows:
 - i. That the suit is an abuse of the court process as the same violates the provisions of Order 53 of the Civil Procedure Rules.
 - ii. That the suit does not specify the exact date the Respondents had amended Registry Index Map.
 - iii. That the instant suit is time barred hence the court lacks jurisdiction to hear and determine the same.
 - iv. That Section 14(2)(e) of the [Land Registration Act](#) empowers the Chief Land Registrar to hear and determine appeals from the registries thus the Applicants had not exhausted alternative remedies available before referring the instant case to court.
 - v. That the instant suit be dismissed with costs to the Respondents.
9. The application was canvassed by way of written submissions wherein the Ex-parte Applicants vide their written submissions dated 7th October, 2024 first framed one issue for determination, to wit; whether they were entitled to the orders sought herein before hinging their reliance on the provisions of Section 9(1) of the [Fair Administrative Action Act](#) and the decided case in *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] eKLR on the power to determine Judicial Review application.
10. They further placed their reliance on the principles necessary for Judicial Review and the purposes of an order of certiorari and mandamus as was set out in the cases of *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR and in the case of *Commissioner of Lands & Attorney General v Kithinji Murugu M'agere* (Miscellaneous Application 395 of 2012) [2014] KEHC 7190(KLR)(Judicial Review)(11 February 2014) (Judgment) contending despite numerous complaints having been made to the 1st and 2nd Respondents over an alleged boundary dispute, the said 1st and 2nd Respondents had never taken action and when they did, they did not notify the Applicants about their visit. That subsequently, the Applicants had been denied their right to participate and be heard wherein the decision to amend the RIM for the area had been prejudicial to the effect that it had reduced their portion of the land without according them due process.
11. That although the provisions of Section 18 of the [Land Registration Act](#) granted the 1st and 2nd Respondents the mandate to determine boundary disputes yet the said provisions of the law had to be interpreted together with the provisions of Section 14 of the [Land Registration Act](#) which empowers the Land Registrar to act. That the Respondents herein neither responded, were not observant to the rules of natural justice and neither had they demonstrated that they had served the Applicants who had refused to attend or participate in the process.
12. They hinged their reliance in the decided case of *Zachariah Wagunza & another v Office of the Registrar Academic Kenyatta University & 2 others* [2013] eKLR to submit that the Respondents had not followed the due process expected of them thereby violating the natural rights of the Applicants and dispossessing them of their land. The Applicants' submission that they had demonstrated a case to warrant the granting of the orders sought herein.
13. In response, the Respondent's submission was hinged on the provisions of Section 9 of the [Law Reform Act](#), Order 53 rule 2 of the Civil Procedure Rules, 2010, Section 14 (2) (e) of the [Land](#)



Registration Act and Section 9 (2) of the Fair Administrative Action Act wherein they framed two issues for determination as follows:

- i. Whether the Judicial Review application should be dismissed for being filed out of time.
 - ii. Whether the Applicants had exhausted all the statutory dispute resolution procedures.
14. On the first issue for determination, they submitted in the affirmative to the effect that the ex parte Applicants had brought the Judicial Review application out of time after the alleged cause of action had arisen, the application herein having been made on 19th September, 2023 while the alleged cause of action had arisen on or around 26th March, 2019. That this was contrary to the provisions of section 9 (2) of the Law Reform Act as read with Order 53, rule 2 of the Civil Procedure Rules which required that an Application for Judicial Review be made within 6 months or such shorter period as may be prescribed, after the act or omission to which the application for leave related.
15. That further, whereas the Applicants had been granted leave on 19th September, 2023 to file the substantive Notice of Motion Application within 21 days, they had exceeded the said period by filing the said Notice of Motion on 21st November, 2023 hence the court should find that the instant Application was incompetent and deserving to be dismissed. Reliance was placed on the decisions in the case of *Wilson Osolo v John Ojiambo Ochola & another* [1996] eKLR, *Republic v Medical Laboratory Technicians and Technologists Board Ex parte Anastacia Ngithi Wahu & 177 Others* (Judicial Review Application 16 of 2016) [2017] KEHC 2514 (KLR) (8 June 2017) (Ruling) and *Republic v The Kenya Medical Laboratory Technicians And Technologists Board Ex-Parte Edna Mwendu Kavindu* (Judicial Review 130 of 2016) [2017] KEHC 7788 (KLR) (Judicial Review) (17 January 2017) (Judgment).
16. On the second issue for determination as to whether the Applicants had exhausted all the statutory dispute resolution procedures, the Respondents submitted in the negative contending that the ex parte Applicants had failed to exhaust all the appeal procedures provided for by Section 14 (2) (e) of the Land Registration Act wherein they had proceeded to file Judicial Review application before the court before the appealing to the Chief Land Registrar. That further, the doctrine of exhaustion provides for exhaustion of statutory remedies provided for in the Act in dispute resolutions before referring the dispute to court for resolution. That in this regard, the ex parte Applicants' motion should be dismissed for failure to exhaust remedies provided for under the Act.
17. Reliance was placed on the decisions in the case of *Speaker of National Assembly v Njenga Karume* [1992] KLR 21, *Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others* [2015] eKLR and *Albert Chaurembo Mumba & 7 Others v Maurice Munyao & 148 Others* [2019] eKLR to submit that the failure to exhaust all the remedies before approaching the court had rendered the court devoid of jurisdiction to determine the dispute. That the issue on jurisdiction was discussed in the decided case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1. They thus prayed that the instant Application be dismissed with costs.

Determination.

18. I have considered the ex-parte Applicants' substantive Notice of Motion that is undated and which seeks an order of certiorari to remove to the Honorable court the Respondent's decision to amend the Registry Index Map in respect of Kiambogo/Kiambogo Block 1 which had subsequently adversely reduced the size of land parcel No. Kiambogo/Kiambogo Block 1/846.



19. The Applicants further seek that an order of Mandamus be issued to compel the Respondents to conduct a fresh boundary dispute hearing between parcel Nos. Kiambogo/Kiambogo Block 1/846 and 851 within the parameters of law.
20. I have also considered the Respondents' response in opposition to the application to the effect that the suit was an abuse of the court process as the same violated the provisions of Order 53 of the Civil Procedure Rules. That further the suit did not specify the exact date the Respondents had amended Registry Index Map and therefore was time barred and lastly that the Applicants had not exhausted alternative remedies available before referring the instant case to court therefore contravening the doctrine of exhaustion of which their suit should be dismissed with costs.
21. Lastly I have also considered the parties' submissions as well as the authorities cited wherein the issue that emerges for determination is whether the ex-parte Applicants are entitled to the remedies so sought.
22. The purpose of Judicial Review as set out in the case of *Municipal Council of Mombasa vs. Republic, Umoja Consultant Ltd*, (2002) eKLR was held follows;

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who make the decision have the power i.e the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a Court hearing a matter by way of Judicial Review is concerned with and such Court is not entitled to act as a Court of Appeal over the decider. Acting as an Appeal Court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of judicial review”.

23. In the Uganda case of *Pastoli vs. Kabale District Local Government Council and Others* [2008] 2 EA 300, the Court citing *Council of Civil Unions vs. Minister for the Civil Service* [1985] AC 2 and *An Application by Bukoba Gymkhana Club* [1963] EA 478 at 479 held:

“In order to succeed in an application for judicial review, the applicant has to show that the 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 a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance 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 towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules



expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

24. Whereas an order of certiorari is issued to quash a decision already made if such decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons, the writ of Mandamus on the other hand is a judicial remedy in the form of an order from a court to any government, subordinate court, corporation, or public authority, to do (or forbear from doing) some specific act which that body is obliged under law to do (or refrain from doing), and which is in the nature of public duty, and in certain cases one of a statutory duty.
25. The purpose of an order for Mandamus is to remedy defects of justice. It lies in the cases where there is a specific right but no specific legal remedy for enforcing that right. The grant of an order for Mandamus is therefore an equitable remedy; a matter for the discretion of the court, the exercise of which is governed by well-settled principles.
26. An order for Mandamus, being a discretionary remedy, its application must be made in good faith and not for indirect purposes. The Applicant must, of course, satisfy the Court that he or she has the legal right to the performance of the legal duty as distinct from mere discretion of authority.
27. An order for Mandamus is normally issued when an officer or an authority by compulsion of statute is required to perform a duty and that duty, despite demand in writing, has not been performed.
28. In the present case, the Applicants’ complaint as the Legal Representatives of the Estate of the late Annah Wanjiku Ngunjiri, was that there had been a boundary dispute between parcels of land No. Kiambogo/Kiambogo Block 1/846 belonging to their late mother and No. Kiambogo/Kiambogo Block 1/851 registered to the interested party wherein despite several complaints to the 1st Respondent, the said complaints had never been addressed.
29. That on or around 1st January, 2023, the 2nd Respondent had written to the area chief Mahiga Location informing him of their visit to the area to resolve a boundary dispute wherein no invitation or notification had been extended to the Applicants in total disregard of the rules of natural justice. That subsequently the 2nd Respondent had proceeded to amend the area Registry Index Map (RIM) thereby imposing an access (sic) on the Applicants’ land which reduced its acreage considerably.
30. The Applicants’ argument was therefore that the Respondents had acted in total disregard and or breach of their substantive and procedural powers, in abuse of their power and in bad faith wherein their action had been ultra vires the administrative law whose principle required the substantive exercise of powers to be in strict compliance with the prescribed procedures and which canon principles the Respondents had disregarded. That they had been denied their right to participate and be heard wherein the decision to amend the RIM for the area had been prejudicial to them as it had reduced their portion of the land without according them due process. That with this in mind that it was only fair and just that their prayers herein be granted.
31. In opposition to the application, the Respondents’ stand was that the Judicial Review application was contrary to the provisions of Section 9 (2) of the [Law Reform Act](#) as read with Order 53, Rule 2 of the Civil Procedure Rules having been made on 19th September, 2023 while the alleged cause of action had arisen on or around 26th March, 2019 and therefore the same was brought out of time.
32. That further, whereas the Applicants had been granted leave on 19th September, 2023 to file their substantive Notice of Motion Application within 21 days, they had exceeded the said period by filing the said Notice of Motion on 21st November, 2023 hence the court should find that the instant Application was incompetent and deserving to be dismissed.



33. Lastly, that the Applicants had not exhausted all the statutory dispute resolution procedures as provided for by Section 14 (2) (e) of the *Land Registration Act*. That they ought to have appealed the impugned decision to the Chief Land Registrar before filing the Judicial Review application before the court. That the application therefore was contrary to the doctrine of exhaustion which had in turn rendered the court devoid of jurisdiction to determine the dispute. They thus prayed that the Application be dismissed with costs.
34. The Doctrine of Exhaustion is defined in Black’s Law Dictionary 10th Edition as follows –
- “exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine’s purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary”
35. Section 90 of the *Fair Administrative Action Act* provides for the Doctrine of Exhaustion as follows; –
- “(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the *Constitution*.
- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
- (5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”
36. Section 14 (2) (e) of the *Land Registration Act* provides as follows;
- “In addition to the powers conferred by section 14 (1) the Chief Land Registrar shall—
- (e) ...hear and determine appeals from the registries;”
37. The Applicants’ complaint was that the 2nd Respondent had proceeded to amend the area Registry Index Map (RIM) wherein there had been imposed an access (sic) on their land which had reduced its acreage considerably. The provisions of Section 14 (2) (e) of the *Land Registration Act* are to the effect that the Chief Land Registrar has powers to hear and determine on appeal, complaints arising from the decision of the registries. This was therefore the Applicants’ first point of entry after being dissatisfied with the 2nd Respondents decision. Indeed the Court of Appeal through various decisions



has cautioned courts against expanding its jurisdiction to hear and determine matters over which it otherwise lacks jurisdiction. Litigants are also warned against drafting their pleadings with the intent to bypass dispute resolution mechanisms provided under the Statute.

38. The doctrine of exhaustion was aptly captured by the Court of Appeal in *Republic v National Environmental Management Authority* [2011] eKLR where the Court had observed: -

“... Where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted and that in determining whether an exception should be made and judicial review granted, it is necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it ...”

39. I find that as the Respondents have argued, that even where superior courts have jurisdiction to determine profound questions of law, first opportunity has to be given to the relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.

40. Secondly Section 9 (3) of the *Law Reform Act* Cap 26 Laws of Kenya, provides as follows:

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

41. On the other hand, Order 53 Rule 2 of the Civil Procedure Rules provides that:

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

42. In *Wilson Osolo v John Ojiambo Ochola & Another* [1996] eKLR, the court of Appeal had observed as follows;

“It can readily be seen that order 53 rule 2 (as it then stood) is derived verbatim from Section 9(3) of the *Law Reform Act*. Whilst the time limited for doing something under the civil procedure rules can be extended by an application under order 49 of the Civil Procedure Rules that procedure cannot be availed of for the extension of time limited by statute, in this case the *Law Reform Act*. There is no provision for extension of time to apply for such leave



in the *Limitation of Actions Act* (Cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a limitation period”.

43. Court orders are serious decisions that can only be exercised based on material placed before it. In this case although the Applicants have deponed that the pursuant to the letter of 1st January, 2023, wherein the 2nd Respondent had written to the area chief Mahiga Location informing him of their visit to the area to resolve a boundary dispute with no notification to themselves, the 2nd Respondent had proceeded to amend the area Registry Index Map (RIM), I have taken note of the annexures therein the Notice of Motion dated 20th November, 2023 wherein the said letters had been addressed to Hannah Wanjiku Ngugiri through the Chief Kianjoya Location were both dated the 26th March 2019, while one talked of the visit to the suit land to take place on 28th May 2019, the other had indicated the 31st October 2019, the Applicants have not placed any evidence before the court depicting that the impugned cause of action had occurred six months prior to the filing of their Application, which was contrary to the above captioned provisions of the law.
44. I thus find and hold that the Applicants having initiated the Judicial Review proceedings in utter disregard to the dispute resolution mechanism availed by law therein sidelining the doctrine of exhaustion, and further there having been no justification of their inaction to bring their application within the limitation of time provided for by the law, the current substantive notice of motion must fail. The same is herein dismissed with cost.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 23RD DAY OF JANUARY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

