



Kabwi v District Land Adjudication Officer Tigania East & another; Nthuku (Interested Party) (Judicial Review E005 of 2025) [2025] KEELC 5189 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW E005 OF 2025**

**JO MBOYA, J
JUNE 25, 2025**

BETWEEN

ZIPPORAH INOKOBIA KABWI APPLICANT

AND

**DISTRICT LAND ADJUDICATION OFFICER TIGANIA EAST 1ST
RESPONDENT**

HON ATTORNEY GENERAL 2ND RESPONDENT

AND

ISAIAH NTHUKU INTERESTED PARTY

RULING

1. What is before me is the Chamber Summons Application dated 28th May 2025; brought pursuant to the provisions of Sections 8 & 9 of the *Law Reform Act* Cap 26 Laws of Kenya; Order 53 of the Civil Procedure Rules; Article 23 (3) and 47 of *the Constitution* 2010 and wherein the Applicant has sought the following reliefs:
 - i. That this Honourable court be pleased to certify this application as urgent and issue the order sought in the first instance.
 - ii. That the Applicant be granted leave to institute proceedings and apply for an order of mandamus compelling the 1st respondent to implement the decision of the committee Karama adjudication section dated 12/11/2021 by re-demarcating parcels number 477 (mother number) & 2497, 5727, 5755 and 6223 Karama Adjudication Section.
 - iii. That Leave so be granted compelling the 1st respondent to implement the decision of the committee Karama Adjudication Section by re-demarcating parcels number 477 (mother number & 2497, 5727, 5755 and 6223 Karama Adjudication Section.



- iv. Costs of this Application be awarded to the applicant.
2. The instant application is premised on the various grounds which have been highlighted in the body thereof. Furthermore, the application is anchored on the statement of facts dated 28th May 2025, as well as the supporting affidavit sworn on the even date. Additionally, the applicant has annexed various documents to the supporting affidavit, including a copy of the proceedings and decision of the land adjudication and settlement officer dated 12th November 2021.
3. The respondents herein duly filed grounds of opposition dated 24th June 2025 and wherein the respondents have raised various issues inter alia that there is no decision of the adjudication committee capable of being addressed vide judicial review proceedings; that the decision referenced is the decision of the land adjudication officer and not otherwise; that the decision referred to dismissed the objection; and finally that what is sought to be addressed by the applicant was not the decision but a mere observations/suggestions.
4. Though the application for Leave to commence judicial review proceedings is ordinarily ex-parte, however, when the subject application was filed, the court considered same and thereafter issued directions. In particular, the court observed that there are certain issues that require to be clarified by the applicant and hence the application was set down for inter partes hearing. The direction[s] of the Court were underpinned by the provision[s] Order 53 Rule 1 of the Civil Procedure Rules, 2010; which allows the Court to set down the application for Leave for Inter-partes hearing where apposite.
5. The instant application came up for hearing on the 25th June 2025 whereupon the advocates for the parties agreed to canvass and dispose of same by way of oral submissions. Suffice it to state that the submissions made on behalf of respective parties form part of the record.
6. The learned counsel for the applicant adopted the grounds at the foot of the chamber summons application and thereafter reiterated the contents of the supporting affidavit. In addition, learned counsel submitted that the applicant herein lodged an objection to Karama adjudication committee, but the objection under reference was dismissed. Nevertheless, it was submitted that the adjudication committee directed that the land adjudication officer does undertake re-demarcation of the various plot numbers which were the subject of the objection. To this end, learned counsel referenced the decision made on 12th November 2021.
7. Secondly, learned counsel for the applicant has submitted that despite the decision of the adjudication committee made on 12th November 2021, the 1st respondent has failed to implement the decision in question. In particular, it was submitted that the 1st respondent has declined to undertake the re-demarcation in the manner advised by the adjudication committee.
8. Furthermore, learned counsel submitted that the applicant has since written several letters to the 1st respondent seeking to implore same to implement the decision of the adjudication committee. Nevertheless,, it has been posited that the 1st respondent has remained adamant and thus the need for the court to issue leave to commence judicial review proceedings in the nature of mandamus.
9. Flowing from the foregoing submissions, learned counsel for the applicant has therefore contended that same has placed before the court plausible reasons and sufficient cause to warrant leave being granted for purposes of commencing judicial review proceedings. In short, counsel has implored the court to allow the application and grant the leave sought.
10. Learned counsel for the respondent relied on the grounds of opposition dated 24th June 2025 and thereafter highlighted three [3] salient issues. Firstly, learned counsel for the respondents has submitted that the decision which has been annexed to the affidavit of the applicant is the decision of the land



- adjudication and settlement officer dated 12th November 2021 and not the decision of the adjudication committee. In any event, it has been posited that the adjudication committee did not make any decision to warrant the current application or at all.
11. Secondly, learned counsel for the respondent has submitted that in the absence of a decision made by the adjudication committee in the manner contended by the applicant, the application before the court is therefore intended to address a non-existent decision. In this regard, the counsel for the respondent has posited that the application is misconceived and legally untenable.
 12. Thirdly, learned counsel for the respondent has submitted that the decision of the land adjudication and settlement officer, which has been annexed by the applicant, is explicit and devoid of ambiguity. In particular, it has been submitted that the objection by the applicant was dismissed.
 13. Finally, learned counsel for the respondents has submitted that what the applicant is seeking to pursue vide the intended judicial review is the suggestions and or mere observations but not the decision of the land adjudication and settlement officer. To this end, it has been posited that the leave sought cannot issue in the absence of a decision capable of being enforced and or implemented.
 14. Having reviewed the application and the response thereto and upon consideration of the submissions by the parties; and having taken cognizance of the applicable Law; I come to the conclusion by the determination of the subject application turns on two [2] key issues namely; whether the decision sought to be enforced by the applicant lawfully exist or otherwise; and whether the applicant has established sufficient cause to warrant leave being granted or otherwise.
 15. Regarding the first issue, it is imperative to recall and reiterate that the applicant herein is seeking leave of the court to take out mandamus towards compelling the 1st respondent to implement the decision of the committee Karama Adjudication section. Furthermore, the decision under reference is said to have been made from the 12th November 2021.
 16. Be that as it may, what the applicant has annexed and referenced is a decision of the land adjudication and settlement officer dated 12th November 2021. It is imperative to underscore that there is a distinction between the adjudication committee and the land adjudication officer. Suffice it to state that either body is bestowed with separate and distinct powers under the *Land Consolidation Act* Cap 283, Laws of Kenya and *Land Adjudication Act* Cap 284, Laws of Kenya.
 17. Notably, the decision of the land adjudication and settlement officer cannot be confused to be the decision of the adjudication committee and vice versa. In this regard, it was incumbent upon the applicant to exhibit the decision [if any] of the adjudication committee. However, there is no gainsaying that no such decision has been exhibited.
 18. In the absence of the decision of the adjudication committee, which is sought to be implemented vide an order of mandamus, it then means that the applicant herein is speaking to and referencing a non-existent decision. In any event, it is not lost on the court that when this particular issue was brought to the attention of counsel for the applicant, counsel remained mute and was unable to respond to the issue.
 19. On the other hand, I must point out that the decision that has been annexed by the applicant relates to the land adjudication officer and not the adjudication committee.
 20. In the premises, I am afraid that the instant application has been filed in respect of a non-existent adjudication committee decision. Absent such a decision, the court is deprived of the jurisdiction to grant leave, either in the manner sought or at all.



21. Turning to the second issue, namely; whether the applicant has established sufficient cause to warrant the grant of leave, it is important to underscore that the granting of leave to file judicial review proceedings is not a matter of right. Moreover, an applicant is not entitled to leave for the mere asking.
22. Put differently, the necessity to procure and obtain leave before filing an application for judicial review is intended to enable the court to sieve the application and to discern whether there exists a cause of action capable of being canvassed before the court of law. Furthermore, it is at the leave stage that a court of law is called upon to discern whether what is intended to be brought forth is frivolous or otherwise.
23. As pertains to the instant matter, the applicant herein is seeking leave to compel the 1st respondent to implement [sic] the decision of Karama adjudication committee dated 12th November 2021. However, there is no gainsaying that no such decision exists. In this regard, it is evident that the leave being sought is actually an exercise in futility.
24. On the other hand, it is also important to observe that the decision which has been annexed and which decision was made by the 1st respondent clearly dismissed the objection. For good measure, the aspect of the decision touching on the applicants seeking re-demarcation or arbitration were mere suggestions and thus orbiter.
25. To this end, the question that does arise is whether leave to commence judicial review in the nature of mandamus can issue. It is not lost on me that mandamus can only suffice where there exists a public duty bestowed upon a particular body or person but which duty has not been performed; however, where there is no such duty then an order on mandamus cannot issue. [See Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR and Republic v Kenya Civil Aviation Authority & another ex-parte Elite Earthmovers Limited [2017] eKLR].
26. Flowing from the foregoing analysis, I come to the conclusion that the granting of leave to file judicial review proceedings can only arise where the intended cause of action discloses a reasonable and triable claim. It cannot issue for the sake of it. Moreover, the grant of Leave is not a cosmetic exercise.

Final Disposition:

27. For the foregoing reasons, I hold the considered view that the application beforehand does not warrant the grant of leave. In any event, it will be an exercise in futility to grant leave to commence judicial review in the nature of mandamus seeking to implement a non-existent decision.
28. Consequently, and in the premises, the final orders of the court are as hereunder;
 - i. The Chamber Summons application dated 28th May 2025 be and is hereby Dismissed.
 - ii. No orders as to costs.
29. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF JUNE 2025

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Mr. Mutuma - Court Assistant.

Mr. Otieno C. for the Applicant



Ms. Miranda for the Respondent

