



**Republic v District Adjudication Officer Tharaka North & another; Kariuko (Ex parte Applicant); Kamwana (Interested Party) (Environment and Land Case Judicial Review Application E001 of 2024) [2025] KEELC 4850 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4850 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E001 OF 2024**

**BM EBOSO, J  
JUNE 23, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DISTRICT ADJUDICATION OFFICER THARAKA NORTH .... 1<sup>ST</sup>  
RESPONDENT**

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

**AND**

**JULIUS KIRAMBIA KARIUKO ..... EX PARTE APPLICANT**

**AND**

**AGNES MATIIRA KAMWANA ..... INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. On 20/8/2024, Julius Kirambia Kariuko [the ex-parte applicant] brought a notice of motion dated 15/8/2024 under Order 53 of the Civil Procedure Rules, seeking leave to initiate judicial review proceedings seeking an order of certiorari quashing the award of the District Land Adjudication Officer, Tharaka North, made on 24/5/2025, on the following verbatim grounds:

- “(i) The arbitrator was biased in favour of the respondent as he rejected the applicant’s request to visit the scene to establish who occupies what acreage;
- (ii) The arbitrator was hostile to the applicant and did not write down all the testimony present to him by the applicant and his witnesses;



- (iii) The arbitrator did not allow the land committee board to participate in the proceedings but he made the decision arbitrary which is contrary to Section 26 of Cap 284 Laws of Kenya;
  - (iv) The whole arbitration proceedings were an abuse of the due process as they did not conform with the procedure laid down in the Act.”
2. On 28/8/2024, this court [Yano J] granted the ex-parte applicant leave in the following verbatim terms:
- “(i) That leave is granted to the ex-parte applicant to apply for orders of judicial review in the nature of certiorari in terms of prayer 2 of the application;
  - (ii) That the envisaged substantive motion shall be filed within 21 days;
  - (iii) That the prayer for leave to operate as stay be served for interpartes hearing on 25th September 2024.”
3. Subsequent to that, the ex-parte applicant brought a substantive notice of motion dated 30/8/2024 expressed as brought under Order 53 rule 34 (sic) of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act, seeking orders of certiorari in the following verbatim terms:
- “1. The Honourable court be pleased to issue judicial review orders in form of certiorari to call up the award of the 1<sup>st</sup> respondent delivered on 24/5/2024 in objection proceeding No.494 of 2021 and quash it.
  - 2. Costs of the application be provided for.”
4. The above notice of motion dated 30/8/2024 falls for determination in this judgment. The key issue to be determined in the judgment is whether the application meets the threshold for granting an order of certiorari. I will summarize the parties’ respective cases before I analyze and dispose the issue. The reason for capturing the prayers and the preceding court orders verbatim will become clear in the analysis and determination part of this judgment.

### **Ex-parte Applicant’s Case**

5. The ex-parte applicant’s case is contained in the grounds outlined in the motion dated 30/8/2024; in the supporting affidavit dated 30/8/2024; in the statement of facts dated 15/8/2024; and in the written submissions dated 24/1/2025. In summary, the ex-parte applicant’s case is that: (i) the adjudication officer was biased in favour of the interested party in the manner he conducted and determined the objection proceedings; (ii) the adjudication officer was hostile and did not write down all the testimony that was presented to him by the ex-parte applicant and his witnesses, (iii) the adjudication officer excluded “land committee board” members from the objection proceedings and proceeded to make a decision in contravention of Section 26 of the Land Adjudication Act; and (iv) the objection proceedings were an abuse of the due process because they did not conform with the procedure laid in the Act. The ex-parte applicant wants the award quashed on the above grounds.

### **Respondents’ Case**

6. The respondents opposed the application through grounds of opposition dated 25/10/2024 and written submissions dated 24/4/2025, filed by Ms E. Kendi, a Senior Litigation Counsel in the Office of the Attorney General. The case of the respondents is that the application is fatally defective, misconceived, mischievous and an abuse of the process of the court. They contend that judicial review



proceedings deal purely with questions of procedure and decision-making. They add that judicial review does not deal with the merits and/or substance of a decision.

7. It is the case of the respondents that the *Land Adjudication Act* provides a clear procedure for raising objection and for appeals by dissatisfied parties and they fault the ex-parte applicant for ignoring the statutory procedure. They argue that this court lacks jurisdiction to entertain the ex-parte applicant's claim, which they contend falls within the ambit of the *Land Adjudication Act*. The respondents assert that the application violates the provisions of Section 30 of the *Land Adjudication Act*. The respondents add that it is an established principle of law that where there is an alternative statutory remedy, it is only in exceptional circumstances that the courts would allow a litigant to by-pass it and approach the court directly. They term the application as frivolous, vexatious and meant to defeat the cause of justice. They urge the court to reject the application.

### **Interested Party's Case**

8. The interested party opposed the application through a replying affidavit and written submissions dated 15/12/2024, filed by M/s David John Mbaya & Co. Advocates. The case of the interested party is that she is a widow of the late Benard Kairanya Nkanga. She is the current registered proprietor of the Suit land, which she describes as "family ancestral land" which has been occupied by her late husband's family since time immemorial. The suit land, parcel number 10039, Tharaka Nithi/Kathangachini Adjudication Section, underwent adjudication under the *Land Adjudication Act* and all interested parties were accorded an opportunity to be heard. The land was confirmed to belong to her family and was awarded to her.
9. The interested party states that, dissatisfied with the award of the committee, the ex-parte applicant filed Objection No.494 of 2021 pursuant to the provisions of Section 26 of the Act and the objection was heard and subsequently determined through a decision rendered on 13/5/2024. She faults the ex-parte applicant for ignoring the appeal mechanism stipulated under Section 29 of the Act. It is her case that judicial review proceedings deal with impropriety in arriving at a decision and that they do not deal with the merits of the decision.
10. The interested party contends that at the hearing of the objection to the adjudication register, the adjudication officer accorded all parties their inherent right to be heard and acted within the framework of the Act. It is her case that the impugned decision was arrived at on the basis evidence. She faults the ex-parte applicant for failing to demonstrate with sufficient clarity the nature of misconduct/bias in the actions of the adjudication officer. It is her case that the ex-parte applicant has failed to establish a proper ground that would warrant issuance of the order of certiorari. She urges the court to reject the application.

### **Analysis and Determination**

11. I have considered the application, the responses to the application, and the parties' respective submissions. As observed in the introduction part of this judgment, the key issue to be determined in the judgement is whether the application under consideration meets the threshold for granting an order of certiorari.
12. The ex-parte applicant moved the court under Order 53 of the Civil Procedure Rules and Sections 8 and 9 of the *Law Reform Act*. He did not move the court under any article of *the Constitution*. In the motion under consideration, he did not allege breach of any specific article of *the Constitution*. Consequently, it does emerge from the ex-parte applicant's pleadings that he invited this court to examine the process that the adjudication officer employed in reaching the impugned decision. The framework which the ex-parte applicant invoked does not avail the court the liberty to review the merits



of the decision of the adjudication officer. This view is informed by the prevailing jurisprudence on judicial review. I will briefly outline the prevailing jurisprudence.

13. In *SGS Kenya Limited v Energy Regulatory Commission & 2 Others*; SC Petition No 2 of 2019 (2020) eKLR, the Supreme Court of Kenya observed as follows:

“[40] The petitioner approached the High Court by way of the prescribed procedures under judicial review, which revolve around the paths followed in decision-making. Such a course, as the appellate court properly held, is not concerned with the merits of the decision in question. The law in this regard, which falls under the umbrella of basic “Administrative Law,” is clear enough, and it is unnecessary to belabor the point.

We have, however, observed that the appellate court was right in its finding that the High Court should not have gone to the merits of the Review Board decision as if it was an appeal, nor granted the order of mandamus, since the 1st respondent did not owe any delimited statutory duty to the petitioner.”

14. In *Praxides Saisi & 7 Others v Director of Public Prosecutions & 2 Others* (Petition 39 & 40 of 2019 (consolidated) [2023] KESC 6 (KRL) (Civ) 27 January 2023) (Judgment), the Supreme Court of Kenya observed as follows:

“It is our considered opinion that the framers of *the Constitution* when codifying judicial review to a constitutional right, the intention was to elevate the right to fair administrative action as a constitutional imperative not just for state bodies, but for any person, body or authority.”

15. In the most recent decision in *Dande & 3 Others v Inspector General, National Police Service & 5 Others* (Petition 6 (E007) & 8 (E010) of 2022 (consolidated) [2023] KESC 40 [KLR] (16 June 2023) (Judgment), the Supreme Court of Kenya examined the origin and evolution of judicial review jurisdiction in Kenya and outlined the law as follows:

“It is clear from the above decisions that when a party approaches a court under the provisions of *the Constitution*, then the court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of Order 53 of the Civil Procedure Rules and does not claim any violation of rights or even violation of *the Constitution*, then the court can only limit itself to the process and manner in which the decision complained of was reached or action taken and following our decision in *SGS Kenya Ltd* and not the merits of the decision per se.”

16. Having examined the pleadings and the prevailing jurisprudence and having reached to the conclusion that the jurisdiction which the court was invited to exercise is limited to a review of the process and the manner of arriving at the impugned decision as opposed to interrogating the merits of the decision, I now turn to the key issue that falls for determination in the application.

17. Does the application under consideration meet the threshold for grant of an order of certiorari? The writ of certiorari is essentially a court order reviewing the decision of a lower court or a government agency or a public officer. The principles which guide issuance of the writ vary depending on the judicial review process through which the applicant approaches the court. The two judicial review processes are: (i) the common law judicial review process which is anchored on Sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules; and (ii) Article 47 judicial review



process which is anchored on various articles of the Constitution and on the framework in the Fair Administrative Actions Act and the rules made thereunder.

18. The notice of motion dated 30/8/2024 seeks an order of certiorari quashing a decision alleged to have been rendered on 24/5/2024. From a perusal of the materials presented to the court, no such decision was exhibited. The exhibited decision was rendered on 13/5/2024. If not for any other reason, the notice of motion dated 30/8/2024 would fail because of the following two reasons: (i) the leave that was granted on 28/8/2024 authorized initiation of a judicial review motion to quash the decision of the Land Adjudication Officer rendered on 13/5/2024 and not 24/5/2024; and (ii) the alleged decision of 24/5/2024 which the application dated 30/8/2024 targets has not been exhibited, hence the court does not know if it indeed exists.
19. Even if the above fatal error were to be ignored, I do not think the application under consideration meets the criteria for granting an order of certiorari. The Land Adjudication Act is a piece of legislation that was enacted by Parliament to provide a framework for ascertainment, recording and ultimate registration of individual rights and interests in community land. The statute contains an elaborate mechanism for ventilating objections to registers that are prepared to reflect the ascertained and recorded rights and interests. The Act contains an appeal mechanism. Lastly, the Act precludes the courts against entertaining suits relating to land that is still the subject of adjudication.
20. The decision rendered on 13/5/2024 was made by the Land Adjudication Officer under Section 26 of the Land Adjudication Act. A party aggrieved by a decision of the Land Adjudication Officer made under Section 26 of the Act has the statutory remedy of an appeal to the Minister under Sections 29 and 30 of the Act. When exercising appellate jurisdiction under Section 29 of the Act, the Minister receives evidence from the parties to the appeal before rendering a determination.
21. A perusal of the decision dated 13/5/2024 reveals that the Land Adjudication Officer informed the ex-parte applicant about his right of appeal to the Minister within 60 days. The ex-parte applicant elected not to utilize the appeal mechanism availed to him by the statute. He decided to prematurely invoke the jurisdiction of this court under Sections 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules. By so doing, the ex-parte applicant clearly violated the principle of exhaustion of remedies and has not demonstrated a justification for that. Our courts have umpteen times stated that unjustifiable disregard of the principle of exhaustion of remedies is untenable.
22. In the case of *Secretary, County Public Service Board and Another v Hulbhai Gedi Abdille* [2017] eKLR the centrality of the doctrine of exhaustion of remedies was emphasized by the Court of Appeal as follows:

“Time and again it has been said that where there exists other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that avenue or forum and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other regime.”
23. The rationale of the principle was outlined by the Court of Appeal in *Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 others* [2015] eKLR as follows:

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be a fora of last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial



consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts.”

24. For the above reasons, I do not think the application dated 30/8/2024 meets the threshold for granting an order of certiorari. The application is rejected and dismissed.
25. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the ex-parte applicant shall bear costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 23RD DAY OF JUNE, 2025.**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:

Ex-parte Applicant – Julius Kirambia

Respondents – Absent

Interested Party – Agnes Matiira

Court Assistant – Mr. Mwangi

