



REPUBLIC OF KENYA



**Quadco One Hundred and Twenty Limited & 5 others v District Registrar, Kajiado (BK
Leitich); Solitei (Proposed Interested Party) (Environment and Land Judicial Review
Miscellaneous Application E005 of 2024) [2025] KEELC 5201 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E005 OF 2024**

MD MWANGI, J

JUNE 13, 2025

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI AND MANDAMUS**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010,
ARTICLES 27 (1), 40, 47, 64, 159 (2), 165(6), (7), 50 AND 25 (C)**

**IN THE MATTER OF: SECTION 8 AND 9 OF THE
LAW REFORM ACT, CAP 26 LAWS OF KENYA**

IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

**IN THE MATTER OF: THE DECISION OF THE DISTRICT
LAND REGISTRAR, KAJIADO DELIVERED ON 3RD MAY 2024**

**IN THE MATTER OF DETERMINATION OF BOUNDARY LINES BETWEEN
LAND KJD/KAPUTIEI-SOUTH/1676, 1679, 1677, 1680, 3189 AND 2536**

BETWEEN

**QUADCO ONE HUNDRED AND TWENTY LIMITED 1ST EX PARTE
APPLICANT**

REUBEN SARUNI OLE NAKUO 2ND EX PARTE APPLICANT

LAWRENCE KIMONDO NGATA 3RD EX PARTE APPLICANT

JAMES MUGAMBI KIBERIA 4TH EX PARTE APPLICANT

HENRY MAINA 5TH EX PARTE APPLICANT

DAVID TIRKWALE KEREMA 6TH EX PARTE APPLICANT



AND
THE DISTRICT REGISTRAR, KAJIADO (BK LEITICH) RESPONDENT
AND
KASAINO OLE SOLITEI PROPOSED INTERESTED PARTY

RULING

(In respect of the chamber summons dated 29th May 2025 and the preliminary objection dated 21st June 2024 by the proposed interested party)

Background

1. The ex parte applicants moved this court by way of the chamber summons application dated 29th May 2024 brought under the provisions of Order 53 rules 1 and 2 of the Civil Procedure Rules, Sections 8 and 9 of the Law Reforms Act and Articles 27(1), 159(2) and 165(7) of *the Constitution*. The Ex Parte Applicants pray for leave to apply for an order of certiorari to bring to this court and quash the decision of the Land Registrar issued on 3rd May 2024 determining the boundaries of parcels of Land known as Kjd/ Kaputiei-South 50 and 3185. Further, they seek leave to apply for an order of mandamus to compel the Land Registrar to determine the boundary lines afresh and in the process involve the other proprietors whose parcels border the interested party's land.
2. The ex-parte applicants too prayed that the leave so granted operates as a stay of implementation of the decision of the impugned decision of the Land Registrar.
3. From the statutory statement attached to the application, the grounds upon which the application is grounded include violation the applicants' rights to a fair hearing and violation of the principles of natural justice. The applicants seek to challenge the process as well as the merits of the decision of the Land Registrar.

Preliminary objection by the interested party.

4. The interested party's response to the Chambers Summons by the ex parte applicant was by way of the preliminary objection dated 21st June 2024. Though the objector was referred to as 'a proposed interested party', he is already a party to the proceedings. The ex-parte applicants baptized him as such instead of merely referring to him as an interested party. That is misleading. He is an interested party. He has every right to participate in the proceedings.
5. The preliminary objection is premised on three grounds;-
 - i. That the application offends the provisions of Section 18 of the *Land Registration Act* and Regulations 40(6) of the Land Registration (General) Regulations, 2017 which provide that the only way a party aggrieved by the decision of the Land Registrar can approach the court is by way of an appeal.
 - ii. Accordingly, Judicial Review is not available to the ex-parte applicants herein and granting leave would be an exercise in futility.



- iii. Since judicial review proceedings are sui generis the issues being raised by the ex-parte applicants in their application are issues of facts that can only be argued by way of an appeal and not through judicial review.

Directions by the court.

6. The parties brought to the attention of the court, the directions by my predecessor, Gicheru J, issued way back on 24th June 2024 whereby the learned Judge directed that the application be canvassed by way of written submissions and the preliminary objection be treated as a response to the application. Both sides had complied. I have had the opportunity to read and consider the submissions which now form part of the record of this court.

Issues for determination.

7. From the foregoing, the sole issue for determination is whether the ex-parte applicants have made a case for grant of leave to apply for the judicial review orders of certiorari and mandamus against the decision of the Land Registrar.

Analysis and determination.

8. The main purpose for leave to apply for the orders of judicial review as explained by Waki J (as he then was), in the case of Republic –vs- County Council of Kwale and another; ex parte Kondo & 57 others Mombasa HCMA No. 384 of 1996, is to ensure that an applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. That way, the court has the opportunity to identify and filter out at an early stage frivolous and vexatious complaints.
9. Jonathan Auburn, in his book Judicial Review; Principles and Procedure, enumerates the preliminary factors that a court considers and addresses at the leave stage as follows;
 - i. Whether the enactment, action, decision or failure to act that is being challenged is amenable to judicial review;
 - ii. Whether the claimant has capacity to bring a claim for judicial review;
 - iii. Whether the claimant has sufficient interest to bring a claim for judicial review.
 - iv. Whether the particular challenge brought by the claimant is one that may be brought by the Judicial review procedure, and whether it is appropriate to bring it by that procedure.
 - v. Whether the claim is otherwise an abuse of process.
 - vi. Whether all or some of the grounds of challenge relied upon by the claimant are sufficiently meritorious to justify the grant of permission.
 - vii. Whether the claim has been brought promptly; and
 - viii. Whether there are any discretionary grounds that justify the refusal of permission in the exercise of the court’s discretion.
10. The proposed interested party’s objection in a nutshell is that the complaint by the ex parte applicants is not one that may be brought by the Judicial Review Procedure. His argument is that the only option available to the applicants is an appeal from the impugned decision.
11. I have carefully considered the arguments by the parties in their submissions. The proposed interested party’s arguments particularly on whether the scope of judicial review includes merits consideration



- of the impugned decision are in my considered view are based on the pre- 2010 Constitution decisions and before the enactment of the *Fair Administrative Action Act*.
12. A critical reading of the *Fair Administrative Action Act* reveals that it expanded the scope of judicial review in this country from basically considering procedural (im)propriety in decision making to include other considerations like failure to take into account relevant consideration or taking into account irrelevant considerations, reasonableness, and rationality that goes into the merits of the decision under review.
 13. Indeed the Court of Appeal in the case of Suchan Investment Limited –vs- Ministry of National Heritage & 3 others (2016) eKLR, explaining the import of Section 7(2) of the *Fair Administrative Action Act* stated that;

“Traditionally, judicial review is not concerned with the merits of the case. However, Section 7(2) of the *Fair Administrative Action Act* provides proportionality as a ground for judicial review. ...the test of proportionality leads to “greater intensity of review” than the traditional grounds. What this means is that the consideration of the substantive merits of a decision play a much greater role, ...in our view, consideration of proportionality is an indication of the shift towards merits consideration in statutory judicial review applications”.
 14. Mutungi J in the case of Republic & 3 others –vs- Manager National Irrigation Settlement Scheme & another (2024) KEELC 5289 (KLR), was of the view that the scope of judicial review has been expanded since the promulgation of the 2010 Constitution and the enactment of the *Fair Administrative Action Act*, 2015, to include a measure of merits review of the decision the subject of review. He cited with approval the decision of the court in the case of Kenya Human Rights Commission –vs- Non Government Co-ordination Board (2016) eKLR, where the court held that;

...the court effectively has a duty to look both into the merits and legality of the decision made due to the requirement of reasonableness under article 47, and also the process and procedure adopted due to the requirement of following all the precepts of natural justice under both Articles 47 and 50(1) of *the Constitution*”.
 15. I agree with the decision of Mutungi J cited above. I have no doubt in my mind that the remedy of judicial review is available against a decision of the Land Registrar where the application is premised on any of the grounds under Section 7(2) of the *Fair Administrative Action Act* subject to the provisions of section 9 of the Act.
 16. It must however be noted that Section 9 of the *Fair Administrative Action Act* explicitly provides that no review of an administrative action or decision shall be entertained under the Act by the court UNLESS the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted. Only in exceptional circumstances and on an application by the applicant shall the court exempt such an applicant from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
 17. In this case, the ex-parte applicants have not made such an application for exemption under Section 9(4) of the *Fair Administrative Action Act*; to be exempted from first exhausting the remedy provided for under Section 18 of the *Land Registration Act*.
 18. Consequently, under the provisions of Section 9(3) of the *Fair Administrative Action Act*, this court finds and holds that the ex-parte applicant must first exhaust the mechanisms provided under Section 18 of the *Land Registration Act*. Consequently, I have only one option; to strike out the chamber



summons dated 21st June 2024 which I hereby do, but with no orders as to costs considering that these proceedings were only at the stage of leave.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 13TH DAY OF JUNE 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Ketao h/b for Mr. Sankale for the Interested Party

N/A by the Applicants and the Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

