

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC JR. NO. E002 OF 2025

REPUBLIC

APPLICANT

VERSUS

**COUNTY LAND ADJUDICATION & SETTLEMENT
OFFICER, TRANS NZOIA COUNTY-----1ST
RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION &
SETTLEMENT-----2ND
RESPONDENT**

AND

**MARY ILARI LOKWAWI-----1ST
INTERESTED PARTY**

**ELIZABETH AKIRU LOKWAWI-----2ND
INTERESTED PARTY**

EX-PARTE: SAMSON TOLEL KORII

JUDGMENT

1. The application for consideration is dated **26/2/2025**.
The exparte applicant seeks:

- (a) An order of certiorari to remove into this court and to quash the decision of Trans Nzoia County Land Adjudication and Settlement Officer made on 20/11/2024, purporting to subdivide Plot No. 263 Kanyarkwati Settlement Scheme,**

measuring 5 acres between the applicant and the interested parties.

(b) Prohibition order stopping the Director of Land Adjudication and Settlement from effecting the decision by Trans Nzoia County Land Adjudication & Settlement Officer, to subdivide Plot No. 263, Kanyarkwat Settlement Scheme, measuring 5 acres between the applicant and the interested parties.

(c) Mandamus compelling the Director of Land Adjudication and Settlement to issue a Certificate of Discharge for Plot No. 263 Kanyarkwat Settlement Scheme, measuring 5 acres, to the applicant.

2. The notice of motion is supported by a statutory statement of facts, a verifying affidavit by Samson Total Korii, sworn on **10/2/2025**. The grounds are that by a letter of offer dated **23/3/2021**, the exparte applicant was allocated **Plot No. 263, Kanyarkwat Settlement Scheme**, measuring **5** acres at **Kshs. 25,300/=**, which was paid on **21/11/2022**, and the exparte applicant took vacant possession while awaiting the Certificate of Discharge.
3. The exparte applicant deposes that by a letter dated **12/11/2024**, the 1st respondent summoned the exparte applicant over a complaint purportedly raised by the 1st interested party on undisclosed

particulars, and when he appeared on **20/11/2024**, the 1st respondent purportedly decided that the plot should be subdivided between him and the interested parties at the ratio of **2** and **3** acres each.

- 4.** The exparte applicant avers that the 1st respondent did not give any reasons or basis for the decision, but instead coerced him to append his signature on a purported agreement in blatant violation of **Article 47 (1) and (2)** of the Constitution and the Fair Administrative Action Act.
- 5.** The exparte applicant avers that since he had already paid full consideration for the plot, he had acquired ownership rights which could not be taken away so arbitrarily, while the 1st respondent, at the same time, is keeping his money and taking away a portion of the land.
- 6.** Further, the exparte applicant avers that the 1st respondent lacked the jurisdiction to make the said decision, which is clearly in violation of **Article 50(1)** of the Constitution, as it is against the rules of natural justice.
- 7.** The exparte applicant relies on the copy of a letter of offer, receipts for payment made on **21/11/2022** and **13/9/2023**, summons dated **12/11/2024**, and the

purported agreement signed on **20/11/2024**, marked as annexures **SKL-1, 2(a), (b), and (c), 3, and 4**, respectively.

- 8.** The respondents and the interested parties were duly served with the notice of motion and appeared before the court through Miss Chilaka and Miss Arunga, learned counsels, on **19/3/2024**, who requested **21** days to file a response. The court granted the parties **30** days to do so, with a mention date for **11/6/2025** to confirm compliance. The interested parties complied with the same.
- 9.** Leave was subsequently extended for **21** days to the respondents to file a response. Parties were also directed to put in written submissions by **23/7/2025**.
- 10.** The respondents did not comply by **23/7/2025** and requested **14** more days to comply. The court extended the leave to both the respondents and the interested parties to comply by **30/8/2025**.
- 11.** The 2nd interested party opposed the notice of motion vide the replying affidavit by Elizabeth Akiru Lokwawi of **29/7/2025**. She averred that she has resided on **Plot No. 263, Kanyarkwat**, for the last **30** years, where they have constructed homes.

- 12.** The 2nd interested party averred that the applicant fraudulently obtained the ownership documents to the suit land. Further, the 2nd interested party averred that the applicant's letter of offer dated **23/3/2021** was obtained while they were in full use and occupation of the suit land.
- 13.** By way of written submissions dated **20/6/2025**, the applicant submits that whereas the suit land belongs to Settlement Fund Trustees and that the interested parties and the respondents have not produced any evidence regarding allocation of the same to the interested parties, whether the interested parties adhered to the terms and conditions in respect of the said allocation by paying full consideration and if any demand notice was ever made against the interested parties making the land available for new allocation.
- 14.** It is submitted that the 1st interested party has not filed any document to show that the 2nd interested party has authorized him to swear the affidavit on her behalf. Further, the exparte applicant submits that the interested parties have not provided any evidence that they have been on the land for **30** years, if any structures were constructed thereon,

and whether vacant possession had actually not been obtained by them.

- 15.** The exparte applicant submits that the allegations of fraud against him have not been particularized, clarified, or proved regarding how his letters of ownership were obtained fraudulently.
- 16.** Equally, the exparte applicant submits that he has met the conditions to be entitled to the reliefs sought under **Articles 23, 40, 47 and 50** of the Constitution, since the 1st respondent lacked jurisdiction to subdivide the land, the rationale used is not pleaded, the decision was arbitrary and that upon compliance with the terms and conditions of the letter of offer, he had acquired ownership rights following payment and taking up of vacant possession, which rights cannot be arbitrarily taken away. Reliance was placed on **Joseph Kimechwa - vs- County Land Adjudication & Settlement Officer, Trans Nzoia & Others Petition No. E003 of 2023.**
- 17.** Judicial review, as held in **Ziran Amrild Shah & Another -vs- Republic & others [2013] eKLR,** is not concerned with reviewing the merits or otherwise of a decision by a public entity, but the decision-

making process itself. The purpose of judicial review is to determine whether the applicant was accorded fair treatment by the concerned public body.

- 18.** What the exparte applicant is challenging is whether the 1st respondent, after obtaining full consideration as per the letter of offer, had jurisdiction to summon him and to subject the suit land to subdivision in favour of the interested parties, in the manner it did, without giving reasons or basis. The exparte applicant attacks the process as against **Articles 23, 40, 47, and 50** of the Constitution.
- 19.** **Article 47** of the Constitution grants every person the right to an administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. **Article 50** thereof provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.
- 20.** In **Vickers Security Services Limited -vs- Public Procurement Administrative Review Board & 3 others [2025] KECA 671 (KLR)**, the court observed that the object of pleadings is to ensure

that both parties shall know what the points in issue between them are. The court cited **Mohamed Fugicha -vs- Methodist Church (K) & Others (2016) KECA 273 [KLR]**, that the primary purpose of pleading is to communicate with an appreciable degree of certainty and clarity the complaint that a pleader brought and for the other party to answer.

- 21.** The law expects that any proceedings undertaken by the 1st respondent regarding the suit land must meet the parameters set by **Articles 47** and **50** of the Constitution, as regards administrative law. Both Articles cover proceedings before judicial and quasi-judicial tribunals that are bestowed with the responsibility to resolve disputes or make decisions.
- 22.** The exparte applicant pleads that he was not informed of the basis of the complaint by the interested parties before the meeting, and the decision that was rendered by the 1st respondent to subdivide the land on **20/11/2024**. The reason for subjecting him to the deliberations and causing the subdivision of his land was the exparte applicant's complaint. He terms the proceedings and the decision as arbitrary and arrived at in violation of his

rights to own property, fair hearing, natural justice, and fair administrative action.

23. In **Githiga & Others -vs- Kiru Tea Factory Co. Ltd [2023] KESC 41 [KLR]**, the Supreme Court of Kenya emphasized that the right to fair hearing is a non-derogable right. The court held that procedural justice in the administration of justice involves fair hearing, and the rule against bias, which requires that a decision-maker, *inter alia*, affords a person an opportunity to be heard before making any decision. Further, the court held that procedural fairness in decision-making requires that a person is not to be deprived of their right without due process of the law, including affording them a right of controvert, by proof, every material fact. The court said that the doctrine of due process encompasses the right to be treated fairly, efficiently, and effectively in the administration of justice.

24. In **General Medical Council vs Spackman [1943] 2 ALLER 337**, the court said that if the principle of natural justice is violated, it matters not if the same decision would have been arrived at fairly, notwithstanding the absence of the departure. Similarly, in **Onyango Oloo -vs- Attorney General**

[1986-89] EA 465, the court held that denial of the right to be heard renders any resultant decision null and void.

25. The remedy of judicial review is available to any party aggrieved by a decision made in violation of **Articles 47 and 50** of the Constitution, especially where the decision-making process and the decision itself are arbitrary, capricious, irrational, unreasonable, unlawful, and above all against the rules of natural justice. See **Pastoli -vs- Kabale District Local Government Council & Others [2008] 2 EA 300.**
26. In **Kenya National Examination Council -vs- Republic & 4 others (Civil Appeal 500 of 2019) [2025] KECA 1172 (KLR) (20 June 2025) (Judgment)**, the court cited **Section 9(4)** of the Fair Administrative Action and **Nicholus -vs- Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment)**, that what matters at the end of the day is that a path is chosen that safeguards a litigant's right to access justice while also recognizes the efficiency and

specificity that the alternative dispute resolution mechanism can offer.

- 27.** The court said that the right of access to court for redress of alleged constitutional violations should not be impeded or stifled in a manner that frustrates the enforcement of the fundamental rights and freedoms.
- 28.** In this matter, the respondents were accorded an opportunity to respond to the notice of motion. There is no evidence that the interested parties had lodged a claim that the process of procurement of a letter of offer and the compliance thereto, by the exparte applicant, had been undertaken fraudulently and in flagrant disregard of an earlier letter of offer.
- 29.** The nature of complaint, date of the complaint, manner of hearing the complaint, if the exparte applicant was accorded an opportunity to respondent to it and the proceedings thereto, is what the respondent has not availed before this court as required by the Fair Administrative Action Act, during the review proceedings, for this court to satisfy itself that the proceedings and the decision making process and decision itself met the constitutional tenets of **Articles 40, 47** and **50** of the Constitution,

as read together with **Section 9(2)** of the Fair Administrative Action Act.

- 30.** The grant of an order of *certiorari* neither prohibits the taking of an action nor compels the taking of the action. It simply quashes the impugned decision and leaves it to the decision makers to decide on what steps to take next.
- 31.** On the other hand, the grant of an order for *mandamus* does not compel the doing of an act in a particular manner, unless the manner of doing the act is prescribed by the law. See **Kenya National Examination Council -vs- Republic Ex parte Geoffrey Gathenji & Others [1997] eKLR.**
- 32.** The exparte applicant avers that he was not told the nature of the interested parties' complaint and the reasons for the decision. **Section 4(3)(a) and (b)** of the Fair Administrative of Action Act, provide that where an administrative action is likely to adversely affect the fundamental rights and freedoms of any person, the administrator shall give the person affected by the decision prove, and adequate notice of the nature and reasons for the decision and an opportunity to be heard and to make representation in that regard.

- 33.** In **Kiore (In his capacity as the Donee of Power of Attorney and Covenant -vs- C.S. Ministry of Land & Housing & Urban Developments & Others Civil Appeal 418 of 2018 [2025] KECA 1122 [KLR] (20th June 2025) (Judgment)**, the court said that failure to afford a person likely to be affected by an administrative decision notice to recall the power of attorney for revocation or deregistration and in which its subsequent deregistration or revocation was made, rendered the same void. The court found it unnecessary to deal with whether the decision to revoke or deregister was *ultra vires*.
- 34.** The exparte applicant has averred that after he met the terms and conditions of the letter of offer, took vacant possession, he was awaiting the discharge of the charge and not otherwise, as is required of the 1st respondent.
- 35.** In **Kumar -vs- State of Haryana & Others [2012] 78 ACC 70**, the court held that the doctrine of legitimate expectation is essentially a creature of administrative law to provide for effective safeguards from arbitrariness or abuse of power. The court said that it is a right to be treated fairly, and as held in **National Building of Construction Corporation -**

vs- S. Raghunathan & Others AIR 1998 SC 2779,
the government in the administration of the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full consideration without any iota of abuse of discretion. See **Republic -vs- Attorney General & Another Exparte Waswa & Others [2005] 1 KLR 280.**

- 36.** In my considered view, once the exparte applicant met the terms and conditions of the offer letter, the respondents had to adhere to the law, that is, the repealed Agriculture Act, and to issue the discharge of charge. Without giving reasons why the terms and conditions of the offer letter were being changed midstream, or varying the letter of offer, I find the respondents' actions offended **Articles 40, 47,** and **50** of the Constitution.
- 37.** The upshot is that the decision-making process and the outcome call for quashing by an order of *certiorari*. The respondents are prohibited from effecting the said decision. The court finds no basis to issue an order of *mandamus* in the manner framed by the exparte applicant.
- 38.** Costs to the applicant.
- 39.** Orders accordingly.

Judgment dated, signed, and delivered via
Microsoft Teams/Open Court at **Kitale** on this **8th**
day of **October 2025**.

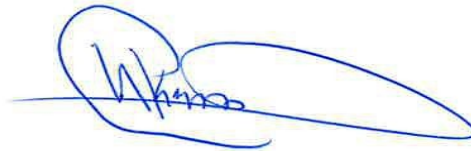
In the presence of:

Court Assistant - Dennis

Lichuma for applicant present

Chilaka for respondents absent

Arunga for interested parties present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**