



**Republic v Cabinet Secretary for Land, Housing & Physical Planning & 5 others;
Mbae & another (Interested Parties) (Environment and Land Judicial Review
Case E007 of 2023) [2025] KEELC 6575 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6575 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E007 OF 2023

EO OBAGA, J

OCTOBER 2, 2025

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI, PROHIBITION AND MANDAMUS BY KITEVU MUIA MBAE**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLES 40, 47 AND 48

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

**IN THE MATTER OF DECISION OF APPEAL TO
THE MINISTER DATED 3RD FEBRUARY, 20222**

AND

**IN THE MATTER OF APPEAL CASE NO. 377 OF 2017 OVER PLOTS NOS.
3503, 3504 AND 1242 AT KISEKINI ADJUDICATION SECTION (KILUNGU,
MAKUENI) BETWEEN KITEVU MUIA MBAE VERSUS MICHAEL NUYA MUIA**

AND

IN THE MATTER OF ARTICLE (C) 47 AND 50 OF THE CONSTITUTION

AND

**IN THE MATTER OF THE LAND ACT, 2012 AND IN THE MATTER
OF THE LAND REGISTRATION ACT CAP 300 (LAWS OF KENYA)**

BETWEEN

REPUBLIC APPLICANT

AND



**THE CABINET SECRETARY FOR LAND, HOUSING & PHYSICAL
PLANNING 1ST RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 2ND
RESPONDENT**

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE LAND REGISTRAR MAKUENI 4TH RESPONDENT

**THE DEPUTY COUNTY COMMISSIONER, KILUNGU SUBCOUNTY,
MAKUENI COUNTY 5TH RESPONDENT**

**LAND ADJUDICATION OFFICER, KISEKINI ADJUDICATION
SECTION 6TH RESPONDENT**

AND

KITEVU MUIA MBAE INTERESTED PARTY

EZEKIEL MULUMBA INTERESTED PARTY

JUDGMENT

Introduction

1. The Ex-parte Applicant filed a notice of motion dated 17th October, 2023 in which he sought the following orders:-
 1. That this honourable court be pleased to grant an order of Certiorari to remove into this court and quash the decision of the Deputy County Commissioner, Kilungu Sub-county Makueni County, delivered on 3rd February, 2022.
 2. That this honourable court be pleased to grant an order of prohibition to prohibit the respondents from implementing the decision of the Deputy County Commissioner Kilungu Sub-county, Makueni County delivered on 3rd February, 2022.
 3. That this honourable court be pleased to grant an order of mandamus to be issued to the Land Registrar Makueni not to issue title deeds in respect to parcels of land known Makueni/3503 And 3504 until the determination of this judicial review.
 4. That the cost of this application be borne by the Respondents.

Background

2. The dispute herein emanates from subdivision of land owned by Muia Mbae. The clan subdivided Mbae's land amongst his three sons. The Ex-parte Applicant was given plot No. Makueni/Kisekini/1242. His brother Michael Muya Muia was given plot No. Makueni/Kisekini/3503 whereas Kivuko Muia was given plot No. Makueni/Kisekini/3504.
3. The Ex-parte Applicant's two brothers sold their plots to David Mulumba who resides in the United States of America. David Mulumba left his two parcels under the care of his brother Ezekiel Mulumba the 2nd Interested Party in this suit.



4. Before the process of adjudication could be completed, the Ex-parte Applicant complained that the 2nd Interested Party had encroached on to his land parcel No. Makueni/Kisekini/1242. He filed his complaint to the Adjudication Committee and lost. He filed a further complaint to the Arbitration Board where he also lost. He finally filed an appeal to the Minister as provided for under the Land Adjudication Act. The verdict of the Minister was that the demarcation officer had to go to the ground and fix the boundaries of parcel Nos. Makueni/Kisekini/1242, 3503 and 3504.
5. The Ex-parte Applicant was dissatisfied by the verdict of the Minister prompting him to file these proceedings before this court.

The Ex-parte Applicant's Case

6. The Ex-parte Applicant's case is that his father subdivided his land amongst his three sons. He was given plot 1242 which later became Makueni/Kisekini/1242. The 1st Interested Party who is his brother was given plot 3503 which later became Makueni/Kisekini/3503. His other brother Kivuko Muia was given plot 3504 which became Makueni/Kisekini/3504.
7. It is his case that the 1st Interested Party went to Mombasa where he stayed for long. When he came back, he found that his land had been grabbed and that the clan decided that his father's land had to be subdivided afresh so that each of the brothers had a share of their father's land. He states that this is how the 2nd Interested Party ended up encroaching on to his land.
8. The Ex-parte Applicant states that his complaint to the committee stage, and the subsequent fora were not handled fairly. He states that he was forced to undergo the hearings while sick and that when he finally appealed to the Minister, the Minister did not consider his case but he only agreed with the verdicts of the Land Adjudication Officer and that he sat on the decision which he only came to be aware of after he was served with a letter seeking to implement the Minister's decision.
9. The Ex-parte Applicant states that the whole adjudication process was unfair and the Minister did not give any justification for his decision which was contrary to the rules of natural justice.

Respondents' Case

10. The Respondents opposed the Ex-parte Applicant's application through grounds of opposition dated 10th June, 2024. The Respondents contend that the Ex-parte Applicant's application is bad in law, incompetent, incurably defective and is a waste of judicial time. They further contend that the application is groundless and is full of falsehoods and is only meant to hoodwink the court that the Minister acted outside his jurisdiction.

Second Interested Party's case

11. The 2nd Interested Party opposed the Ex-parte Applicant's application based on a replying affidavit sworn on 16th February, 2024. The 2nd Interested Party contends that the Ex-parte Applicant appealed against the Minister's decision at Kilungu court. The case was heard on 20th January, 2022 and a decision made on 3rd February, 2022.
12. The 2nd Interested Party contends that the Ex-parte Applicant has no grounds for filing this application which is a waste of court's time.



The Ex-parte Applicant's submissions

13. The Ex-parte Applicant filed his submissions dated 25th March, 2025. The Ex-parte Applicant submitted that the Minister was biased against him and favoured the Interested Parties. He relied on Article 50 (1) Of the [Constitution](#) which provides as follows:

“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”.

14. The Ex-parte Applicant further submitted that the Minister was wrong in that he treated the matter before him as if it was a boundary dispute. He contended that the judgment of the Minister did not state with precision how he arrived at the determination and the reasons for the decision. He relied on Article 47 (1) of the [Constitution](#) which provides as follows:

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”.

The Second Interested Party's submissions

15. The 2nd Interested Party submitted that for the Ex-parte Applicant to succeed, he ought to show that the Minister's decision was ultra vires and against the law. He submitted that the Ex-parte Applicant was given an opportunity to be heard before the Minister. He was not sick and he conducted his case. The Minister analyzed the case and made his findings. He further submitted that the impugned decision was made on 3rd February, 2022 and the application to quash it was filed on 14th March, 2023. He submitted that though leave was granted, the period for challenging the Minister's decision was long over. He therefore submitted that none of the prayers in the application can be granted.
16. The 1st Interested Party neither entered appearance nor filed grounds of opposition or replying affidavit. The Respondents did not file any submissions.

Analysis and Determination

17. I have carefully gone through the Ex-parte Applicant's application, the opposition thereto by the Respondents and the 2nd Interested Party as well as the submissions by the parties. The only issue for determination is whether the Ex-parte Applicant has met the threshold for grant of the orders sought.
18. To begin with, the application for certiorari was brought outside the statutory period of six months. The impugned decision was made on 3rd February, 2022. The Ex-parte Applicant made the application for leave on 14th March, 2023. This was a period of over one year. Though leave was granted by the court, the Interested parties were at liberty to challenge that leave during the hearing and the 2nd Interested party did so in his submissions. There is no room for extension of time to file judicial review proceedings brought under Order 53 of the [Civil Procedure Rules](#).
19. Though the Ex-parte Applicant had been granted leave albeit irregularly, he did not file within the given time. He again came back to court for extension of time which was granted again irregularly. The orders of certiorari cannot therefore be granted in the circumstances.
20. The Ex-parte Applicant claims bias. A look at the decision of the Minister shows that the Minister arrived at his decision after hearing the parties. All the parties who were present during the hearing were given opportunity to cross examine their opponents.



21. During the hearing, it turned out that there were no visible boundaries on the ground. There was therefore no basis upon which the Minister would have made a finding that there was encroachment to either parcels in issue. He therefore reached a decision that the demarcation officer should go to the ground and fix the boundaries.

22. In Judicial review cases, the court is concerned about the process leading to the decision. It is not concerned about the merits of the decision. In the case of *Municipal Council of Mombasa –vs- Republic & Another* (2002) EKLR, it was held as follows:

“Judicial review is concerned with the decision-making process, not with merits of the decision itself. Mr. Justice Waki clearly recognized this and stated so; so that in this matter, for example, the court would not be concerned with the issue of whether the increases in the fees and charges were or were not justified. 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 made the decision have the power, ie. 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 he take into account irrelevant matters? These are the kind of questions a court hearing a matter byway 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 there was or there was not sufficient evidence to support the decision”.

23. In the case of *Pastoli –vs- Kabale District Local Government Council and Others* (2008) EA 300 it was held as follows:

“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 improprietyillegality 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 District interdicts a public servant on 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 law 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. The Ex-parte Applicant did not cite any ground of either impropriety, illegality in his verifying affidavit. The Minister’s decision which was rendered on 3rd February, 2022 was fair, expedient and procedurally fair. The appeal was heard on 20th January, 2022 and a decision was made on 3rd February, 2022. The decision contained reasons why the Minister arrived at his decision. The parties during the hearing had conceded that there were no visible boundaries on the ground. The Minister visited the ground on 26th January, 2022 and confirmed that no boundaries were visible. The only way the dispute could



be determined was by the demarcating officer to go to the ground and place the boundaries as they ought to be.

25. The Minister had jurisdiction to hear the appeal. He gave each party an opportunity to be heard. There is no evidence to show that the Ex-parte Applicant was sick during the hearing before the Minister. The Minister did not consider anything which was irrelevant.

Disposition

26. From the above analysis, it is clear that the Ex-parte Applicant's application is devoid of merit. The same is dismissed with costs to the Respondents and 2nd Interested Party.

HON. E. O. OBAGA

JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 2ND OCTOBER, 2025.

In The Presence Of:

Mr. Mwendwa for Exparte Applicant.

Court assistant – Steve Musyoki

