



**Republic v Kaplamai Land Control Board & another; Gichuhi & 2 others
 (Ex parte Applicants) (Environment and Land Judicial Review Case
 E005 of 2025) [2025] KEELC 7236 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7236 (KLR)

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

CK NZILI, J

OCTOBER 22, 2025

**IN THE MATTER OF AN APPLICATION BY JOSEPH MWANGI GICHUHI, AARON
 MIARE NJOROGE, AND JAMES NDUNGU KERO, FOR LEAVE TO REMOVE INTO
 THIS COURT AND QUASH THE DECISION OF THE KAPLAMAI LAND CONTROL
 BOARD WHICH WAS MADE ON 31/10/2024 IN RESPECT OF LR. NO. 1803 AND
 CONCERNING KITALE ELC CASE NO. 103 OF 2015, NYAKINYUA MUGUMO
 TREE COMPANY LIMITED VS JOSEPH MWANGI NJORORGE & 6 OTHERS**

BETWEEN

REPUBLIC APPLICANT

AND

KAPLAMAI LAND CONTROL BOARD 1ST RESPONDENT

NYAKINYUA MUGUMO TREE CO. LTD 2ND RESPONDENT

AND

JOSEPH MWANGI GICHUHI EX PARTE APPLICANT

AARON MIARE NJOROGE EX PARTE APPLICANT

JAMES NDUNGU KERO EX PARTE APPLICANT

JUDGMENT

1. The court, by an application dated 28/4/2025, is asked to issue a writ of certiorari, to call for and quash the decision of Kaplamai Land Control Board made on 31/10/2024 regarding LR No. 1803 concerning Kitale ELC Case No. 103 of 2015, Nyakinyua Mugumo Tree Co. Ltd -vs- Joseph Mwangi Njoroge & Others. The reasons are contained in the statutory statement of facts dated 6/4/2025, and a supporting and verifying affidavit sworn by James Ndungu Kero, on 16/4/2025.



2. Order 53 Rule 2 of the Civil Procedure Rules provides that an application for leave shall be accompanied by a statement setting out the names and description of the applicant, the reliefs sought, the grounds on which they are sought, and an affidavit verifying the facts relied upon.
3. Order 53 Rule 3 of the Civil Procedure Rules provides that upon leave being granted, a notice of motion be filed within 21 days and served upon the respondents together with the accompanying affidavits or documents during the application for leave.
4. Order 53 Rule 4 (2) of the Civil Procedure Rules provides that at the hearing, no grounds shall be relied upon or any relief sought except the grounds and reliefs set in the said statement.
5. The notice of motion before the court has introduced other grounds, which were not set out in the statement of facts dated 16/4/2025. Leave was not sought to amend the statement of facts. The said grounds shall therefore not be considered by the court.
6. The brief facts as set out in the statement of facts are that the ex parte applicants are residents of Nyakinyua Mugumo Tree Farm. It is averred that the ex parte applicants' land control board application seeking consent for the amalgamation of some plots was rejected by the respondents, contrary to a consent order obtained in Kitale ELC No. 103 of 2015, which had allowed the excision of 70 acres out of L.R. No. 1803 or its subdivisions, to be sold in execution of a valid court decree.
7. The ex parte applicants aver that the 1st respondent acted in breach of the rules of natural justice in handling the proceedings generally, and in particular, considered extraneous matters in arriving at the decision.
8. Further, the ex parte applicants aver that the alleged objector and or owner of Plot No. 1457 had not filed any objection, was not before the board, yet the 1st respondent entertained the objection in the absence of the ex parte applicants or without serving them with a notice. The ex parte applicants aver that the board sat on the proceedings with a predetermined mind on the matter in issue and thus denied them a fair hearing.
9. The ex parte applicants rely on the verifying and supporting affidavits of James Ndung Kero and Jeremiah Ongero Samba, sworn on 16/4/2025. It is deposed that the ex parte applicants are decree holders in Kitale ELC No. 103 of 2015. The costs of Kshs. 19,205, 825/= are owed to them by the 2nd respondent. The ex parte applicants depose that by a consent order dated 19/1/2023, the applicants were granted leave to excise 70 acres of L.R. No. 1803. It is deposed that, through survey works, it was proposed that there was a need for the amalgamation of some portions of L.R. No. 1803, following which they sought the consent of the 1st respondent.
10. The ex parte applicants depose that the consent for amalgamation of portions of L.R. No. 1803, totaling 70 acres, was meant to actualize the consent order issued by the court on 24/1/2023. The ex parte applicants aver that the 1st respondent had no jurisdiction to act like they were sitting on an appeal against the court order. Again, the ex parte applicants depose that the rejection of the application was not based on any objection, as the alleged objector did not personally attend the meeting, nor was there any letter of objection on record.
11. Again, the ex parte applicants depose that the allegations that the alleged objector had attended the previous meeting when there were no such deliberations confirm bias on the part of, and the questionable conduct of the 1st respondent's members.



12. The ex parte applicants depose that if it were true that the 1st respondent had allegedly unilaterally seen or come across the alleged original title of the supposed objector in their absence, it clearly demonstrates bias and lack of integrity of its chairperson and membership.
13. The ex parte applicants rely on annexures in the list of documents, namely: the application for consent of land control board dated 16/5/2023, minutes of the 1st respondent dated 31/10/2024, the certificate of costs dated 10/3/2017, a court order dated 24/1/2023, and the mutation form No. 0090056506 dated 16/8/2023.
14. The application is opposed by an affidavit of Pierra Ntongai, the Chairman and the Assistant County Commissioner, Kaplamai Division, Trans Nzoia, dated 1/8/2025. It is deposed that when the board met on 26/9/2024, it did not deal with the application by the ex parte applicants, as records showed that the application was contested and required time to study the parcels in question. It was then deferred to 31/10/2024.
15. The 1st respondent deposes that on 31/10/2024, the application was rejected for reasons that, parcel No. 1457 sought to be amalgamated could not be done without its owners being notified of the same; the parcels were scattered and could not be amalgamated, the owners of some of the parcels listed for amalgamation if not all were never parties in suit No. 103 of 2015 and therefore, they were not aware of the said orders requiring amalgamation. The 1st respondent has attached the application as PM-1, with comments written “deferred”.
16. The 1st respondent deposes that upon reaching the said decision, it informed that it had deferred and or rejected the application. It is deposed that the ex parte applicants were verbally notified and minutes on the same were prepared and shared, as per attachment marked as PN-1, 2(a) and (b) dated 26/9/2024 and 31/10/2024.
17. The 1st respondent deposes that it was very conversant with the matters in question, since it was also briefed by the predecessor and the board members. Otherwise, the board is composed of a Land Administrator who is fully conversant with all the land issues, and who was even present before the deponent took over the chairmanship of the board.
18. Again, the 1st respondent deposes that he has been advised that judicial review is not concerned with the merits but the procedure. In this case, it is deposed that the applicants have not shown how the process before the land control board was marred with illegality and irregularity, more so when they were present at the hearing before the board, when the decision was made.
19. Though the 2nd respondent was served on 18/6/2025, through its chairperson and affidavit of service filed dated 19/6/2025, no response was filed to the notice of motion.
20. The ex parte applicants rely on written submissions dated 28/7/2025. Strangely, the ex parte applicants submit that the notice of motion is brought inter alia under Sections 3, 4, 5, 7, 8, and 12 of the *Fair Administrative Action Act* and Article 47 of *the Constitution*.
21. The court notes that *the Constitution* and the *Fair Administrative Action Act* were not invoked at the leave stage. Similarly, no leave was sought for the amendment of the primary pleadings in general and, in particular, the statement of facts to rely on new grounds to widen the scope of the judicial review proceedings. The court shall revisit this issue in the course of this judgment, as it touches on the jurisdiction of the court.
22. The ex parte applicants submit that the writs of judicial review, including certiorari, arise where a public body acts ultra vires, breaches the rules of natural justice, and the fair administrative action.



- Reliance is placed on parameters for judicial review as set out in *Pastoli -vs- Kabale District Local Government Council & Another* [2008] 2 EA 300, *Municipal Council of Mombasa -vs- Republic & Umoja Consultants Ltd* [2002] eKLR, Halsbury's Laws of England 5th Edition Vol. 61 page 639, *Sangram Singh -vs- Election Tribunal Kotech* Air 1955 SC 664 at 711, Supreme Court of Canada in *Baker -vs- Canada (Minister of Citizenship & Immigration)* [1992] 2 SCR 817 and *Onyango Oloo -vs- Attorney General* [1986-1989] EA 456.
23. The ex parte applicants submit that the board acted ultra vires in invalidating a court decree as if it was sitting as an appellate court, yet its mandate is governed by Section 9(1) of the *Land Control Act*, to consider inter alia the economic development of the land concerned, whether the proposal promotes good husbandry, whether the purchaser is likely to farm the land well or develop it adequately, whether the terms of the transaction are fair to the parties and lastly, whether the subdivision or transfer would reduce the productivity of the land.
 24. Further, the ex parte applicants submit that the acts of the 1st respondent were procedurally unfair and ultra vires its mandate; otherwise, it did not interrogate the substance of the objection vis-à-vis Section 9 of the *Land Control Act*.
 25. The ex parte applicants submit that under Section 17(1) of the *Land Control Act*, the 1st respondent should have summoned the applicants and any other person interested or likely to be affected by the decision, to attend, to avail or produce any documents or evidence relating to the land or transaction, and to allow reasonable time for the persons to appear or provide relevant materials.
 26. Therefore, the ex parte applicants submit that they contributed to the procedural defectiveness of the process, rendering the decision invalid or unjustified in law. Reliance is placed on *Republic -vs- Kiambu Land Control Board Ex parte Burnaby Properties Ltd* [2006] KEHE 3081 [KLR], *Agricultural Finance Corporation -vs- Land Control Board of Loitoktok & Others* [2014] eKLR, *Republic -vs- Public Procurement Administrative Review Board & Others Ex parte Olive Telecommunication PVT Ltd* [2014] eKLR, and *Republic -vs- Kisumu Muslim Association Kisumu HC Misc. Appl. No. 280 of 2003*.
 27. Judicial reviews are special proceedings. A party that applies for it ought to bring itself within the ambit of the same. See *Farmers Bus Service & Others -vs- Transport Licensing Appeal Tribunal* [1959] EA 779 and *Mohamed -vs- Republic* [1957] EA 523. The scope of judicial review remedies was discussed in *Kenya National Examination Council -vs- Republic Ex parte Geoffrey Gathenji Njoroge & Others* [1997] KECA 58 (KLR).
 28. A writ of certiorari aims at quashing a decision made without jurisdiction or in excess of it, or where the rules of natural justice have not been adhered to.
 29. In *Municipal Council of Mombasa -vs- Republic Ex parte Umoja Consultants Ltd Civil Appeal No. 185 of 2007*, the court held that judicial review is concerned with the decision-making process but not the merits of the decision.
 30. The main purpose of judicial review remedies is to ensure that an individual is given fair treatment by the authority to which he has been subjected. See *Republic -vs- Kenya Revenue Authority Ex parte Yaya Towers Ltd* [2008] eKLR. Judicial review orders are also discretionary in nature. It is not an automatic right of a party. A court may refuse to grant them if it is not the most efficacious relief in the circumstances, even if the requisite grounds exist. A court must, nevertheless, act on sound legal principles.
 31. The court may also refuse to grant the relief if there is an inordinate delay, where the public body has done all it could to fulfil its duty, or where the remedy is not necessary or would cause administrative



- chaos, public inconvenience, or where the object for which it is made has already been realized. See Anthony John Dickson & Others -vs- Municipal Council of Mombasa, MSA HMA No. 96 of 2000.
32. Judicial review proceedings post *the Constitution* have tremendously changed. In Saisi & 7 others -vs- Director of Public Prosecutions & 2 others (Petition 39 & 40 of 2019 (Consolidated)) [2023] KESC 6 (KLR) (Civ) (27 January 2023) (Judgment), and in Dande & Others -vs- Inspector General of Police [2023] KESC 4 [KLR] (16th June 2023) (Judgment), the court held that the approach to judicial review must be based on the pleadings and the approach taken by the applicant in the pleadings.
 33. Where the proceedings are commenced through Order 53 of the Civil Procedure Rules, and not under *the Constitution*, the court in Saisi & 7 others -vs- Director of Public Prosecutions (supra) held that the resultant reliefs cannot be issued under *the Constitution*; otherwise, the traditional approach must be strictly followed.
 34. In Dande & Others -vs- Inspector General of Police (supra), the Supreme Court held that a merit-based review was necessary, especially if a party's constitutional fundamental rights and freedoms are at stake. This jurisprudential shift, therefore, allows judicial review to encompass both procedural and merit-based review. The caveat, however, is that it only applies where the provisions of *the Constitution* have been invoked in the pleadings.
 35. Guided by the foregoing, to succeed in an application for judicial review, an applicant has to show that the decision, or acts complained of, are tainted with illegality, irrationality, and procedural impropriety. In Pastoli -vs- Kabale District Local Government Council (supra), illegality was defined as where the body commits errors of law in the process of making the act, acting without jurisdiction or in excess of it, or contrary to the provisions of the law or its principles.
 36. Irrationality is defined as where there is gross unreasonableness in the decision or act, such as it deviates from logic or an acceptable moral standard. Procedural impropriety refers to the failure to act fairly, non-observance of the rules of natural justice, or failure to act with procedural fairness towards the affected parties, or failure to adhere to and observe procedural rules laid out by the statute.
 37. Judicial review post 2010 is a constitutional imperative by dint of Article 47 of *the Constitution*. The right to fair administrative action connotes expeditious, efficient, lawful, reasonable, and procedurally fair decision. Under section 4(1) and (2), and 7 (2),(a)(1) of the *Fair Administrative Action Act*, a party is entitled to an administrative action before a quasi and non-quasi body or institution that is expeditious, efficient, lawful, reasonable, and procedurally fair.
 38. Section 7 thereof requires adequate notice of the nature and reasons for the proposed administrative action. The Section also prohibits the decision-maker from taking action in excess of jurisdiction or powers conferred to them under any written law. Breach of constitutional and statutory provisions such as the right to access to justice, fair hearing, fair administrative action, lawful limitation of its constitutional right, and protection of the law are also contrary to Articles 48, 25, 50, 47, 24, and 10 of *the Constitution*.
 39. Failure to give a party an opportunity to ventilate its case or complaint amounts to a violation of the rules of natural justice. See Republic -vs- Commission of Administrative Justice & Another, Ex parte Samson Kegengo Ongeru [2015] eKLR, Kenya Ports Authority -vs- Industrial Court of Kenya [2014] eKLR. In Republic -vs- Public Procurement Administrative Review Board & Others Ex parte Rongo University [2018] eKLR, the court observed that a decision which fails to give proper weight to a relevant factor may be challenged as unreasonable, or a decision which is reached without evidence or intelligible justification.



40. A decision may also be illegal if it pursues an objective other than that for which the power to make the decision was conferred, or which is not authorized by any power, or contravenes or fails to implement a public duty.
41. The role of the court in judicial review, therefore, is supervisory in nature. A court may interfere where the decision-making process is flawed, there are procedural irregularities, bias, or a conflict of interest. See *Motor Vessel Lillian "S" -vs- Caltex Oil (K) Ltd* [1989] KLR 1, *Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank Ltd & Others* [2012] eKLR, *Republic -vs- Public Procurement Administrative. Review Board & Another Ex parte Selex Sistemi Integrati* [2008] eKLR and *Republic -vs- Judicial Service Commission Ex-Parte Pareno* [2004] KEHC 2684 (KLR).
42. The ex parte applicants invoke *the Constitution* at this late stage to benefit from the decision in *Dande & Others -vs- Inspector General of Police* (supra), where the court said thus :

“Where a party approaches a court under the provision of *the Constitution*, then the court ought to carry out a merit review of the case. However, if a party files suit under the provision of Order 53 of the Civil Procedure Rules, and does not claim any violation of the rights or even violation of *the Constitution*, then the court can only limit itself to the process and the manner in which the decision complained of was reached or action taken and not the merits of the decision per se.”
43. Parties are bound by their pleadings. The ex parte applicants did not, at the outset of the proceedings, invoke any violation of their constitutional rights while seeking leave to institute the proceedings.
44. The powers of the 1st respondent are governed by the *Land Control Act*. An application for a land control board consent is governed by Section 8 thereof. Grant or refusal of consent is provided for by Section 9 thereof. The considerations by the 1st respondent in exercising that power are set in Section 9(1)(a) and (b) of the Act.
45. An aggrieved party to a grant or refusal of a consent has a right of appeal to the provincial land control appeal board under Sections 10 and 11 thereof.
46. An appeal can also be escalated to the Central Land Control Appeals Board under Sections 12 and 13, whose decision shall be final and conclusive. Sections 15-18 thereof provide the procedure, quorum, attendance, and the decision of the board. The Land Control Regulation L.N. No. 23 of 1968, Rule 4 and 4A sets the manner of the appeal and the decision-making process.
47. From the foregoing provisions, it is clear that a Land Control Board must act within the law. See *Republic -vs- Kiambu Land Control Board Ex parte Burnaby Properties Ltd* (supra).
48. In *Agricultural Finance Corporation -vs- Land Control Board of Loitokitok & 3 others* [2014] KEHC 1013 (KLR), the board had refused to grant a consent to the applicant. The board was blamed for acting in bad faith, for abuse of administrative authority, and the failure to take into account relevant considerations. The issue of an appeal to the Provincial Land Board had been raised. The court held that the *Land Control Act* imposed a statutory duty on the board to give its decision in writing by stating the reasons thereof as per Article 47 of *the Constitution*. The court said that given the decision amounted to nothing, there was nothing capable of being appealed against.
49. In this matter, the replying affidavit of Pierra Ntongai on behalf of the 1st respondent is silent on whether there was full compliance with the constitutional and the statutory legal framework governing the hearing and determination of an application for the Land Control Board generally.



50. The 1st respondent has not addressed the issues as to strict compliance with the tenets of a fair hearing or trial, access to justice, fair administrative action, adequate notice to all the parties, and whether the evidence was interrogated on one way or the other, before the decision was made. Other than writing the word “deferred”, the manner, particulars, considerations, basis, and the reasons for the decision have not been included in the minutes.
51. The issues now raised in the 1st respondent’s replying affidavit as the considerations were not set out in the body of the decision-making process or the decision. There were no written reasons granted to the applicants. Deferring the decision indefinitely is not what is envisaged in law. In *Agricultural Finance Corporation -vs- Land Control Board of Loitokitok* (supra), the court held that public authorities are not entitled to abuse the discretion given to them, for they hold the office in trust to act for the benefit of the people, as per Article 129 of *the Constitution*.
52. The acts of the 1st respondent amount to a breach of the duty to act fairly, reasonably, and procedurally. There was no decision capable of appeal. The decision was not made in writing, and the reasons given for the deferral. Failure to do so amounts to abuse of discretion.
53. Having found that there was no decision made by the 1st respondent which is capable of being quashed, the said proceedings are hereby invalidated for not meeting the constitutional muster. The ex parte applicants are directed to lodge their application for a land control board consent afresh within 2 weeks, since the initial one expired after six months, for consideration by the appropriate or the gazetted Land Control Board.
54. Costs of the proceedings herein to be met by the 1st respondent.
55. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 22ND DAY OF OCTOBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Mr. Samba for applicants present

Hon. Attorney General absent

