



Kimani & another v National Irrigation Authority & 7 others (Environment and Land Judicial Review Case E006 of 2024) [2025] KEELC 8103 (KLR) (13 November 2025) (Judgment)

Neutral citation: [2025] KEELC 8103 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E006 OF 2024
JM MUTUNGI, J
NOVEMBER 13, 2025**

BETWEEN

**DORCAS KABURA KIMANI 1ST APPLICANT
JACKSON MUGI MOKO 2ND APPLICANT**

AND

**NATIONAL IRRIGATION AUTHORITY 1ST RESPONDENT
MANAGER MWEA IRRIGATION SCHEME 2ND RESPONDENT
LUCY NYAMBURA MACHARIA 3RD RESPONDENT
LOISE WAITHERERO 4TH RESPONDENT
JOHN GITHIGA MACHARIA 5TH RESPONDENT
ESTHER NYOKABI NJANG'IRU 6TH RESPONDENT
LUKAS MACHARIA 7TH RESPONDENT
JANE WANJIRU MACHARIA 8TH RESPONDENT**

JUDGMENT

1. The Applicants on 11th September 2024 were granted leave to institute Judicial Review proceedings. They filed the substantive Notice of Motion dated 17th September 2024 inter alia praying for an order of certiorari to quash the decision of the Arbitration Committee dated 4th June 2024; an order of Prohibition barring the implementation of the decision; a declaration that the Arbitration Committee's decision was null and void; and for special and general damages.
2. The application was premised on the grounds set out on the body of the application; the statements of the Applicants in support of the application; the Supporting Affidavit sworn in support of the



application by Dorcas Kabura Kimani, the 1st Applicant herein, and the Supplementary Affidavit sworn by the 1st Applicant on 27th December 2024. The 2nd to 8th Respondents opposed the application vide a Replying Affidavit dated 18th October 2024 sworn by John Githiga Macharia, the 5th Respondent herein on their behalf.

The Applicants case.

3. Briefly, the Applicants case was that the Arbitration Committee's decision was unlawful, illegal and unreasonable. The Applicants averred that the Arbitration Committee based its decision on a purported Will allegedly made by Margaret Wanjiru Macharia (deceased) that had not been proved. The Applicants contended the Will had not been proved and that the Arbitration Committee in placing reliance on the purported invalid Will to distribute the deceased assets resulted in the Applicants being denied their rightful shares as beneficiaries of the deceased estate. They contended the acts by the Respondents to base their claim to the deceased property particularly the distribution of the riceholding was an act of fraud. They argued the deceased did not leave any valid Will at the time of her death and that the Respondents hoodwinked the Arbitration Committee to believe the deceased had left a valid Will which was not factual. They averred that by the Committee relying on the invalid Will, the Applicants were discriminated against as they were allocated far smaller portions of the riceholding than the Respondents which constituted discrimination contrary to Article 27 of *akn ke act 2010 constitution the Constitution*.
4. The Applicants thus sought orders of Judicial Review of certiorari, prohibition and mandamus to have the decision of the arbitration Committee quashed and to compel the Respondents to have the riceholding distributed equally amongst all the beneficiaries of the deceased. As the Applicants complained that the Respondents had appropriated portions of the riceholding that the Applicants were hitherto utilizing and allegedly damaged the Applicants crops, the Applicants sought to be compensated for the damage which they quantified at Kshs 40,000 - special damages and Kshs 200,000 - general damages.
5. The 2nd to 8th Respondents in their response to the application vide the Replying Affidavit sworn by the 5th Respondent averred inter alia that the application was misconceived and offended the mandatory provisions of the law and ought to be struck out. The Respondents have contended that the Applicants did not approach the Court with clean hands as they had clear information that the riceholding No. 1995 belonged to their late mother, Margaret Wanjiku Macharia (deceased) and that she had before her death made a valid Will and had through the Will provided how the riceholding was to be shared and that she appropriately provided for the Applicants in the said Will. The Respondent aver that the Applicants and all the other beneficiaries were all each given their respective shares of the riceholding and issued tenant cards by the 1st and 2nd Respondents. The Respondents thus argue the Advisory Committee merely gave effect to the wishes of the deceased. In the premises the Respondents contend the application is devoid of merit and ought to be dismissed.
6. The application was argued by way of written submissions. The 1st Applicant filed her submissions dated 20th March 2025 and the Respondents filed theirs dated 27th June 2025. The Applicants in their submissions reiterated the contents of their statement of facts and the Supporting and Supplementary Affidavit. The Applicants contended, their respective mothers Magdalene Wambui Irungu and Mary Wangari Moko (both now deceased) who were children of Margaret Wanjiru Macharia (deceased), were entitled to inherit the shares of their deceased mothers which should be equal to the shares of the other children of the deceased. They argued being allocated only 0.25 acres each while the Respondents were each allocated 1 ½ acres was discriminatory and contrary to Article 27 of *akn ke act 2010 constitution*



the Constitution. They argued that rendered the decision of the Arbitration Committee irrational and unreasonable and therefore null and void and amenable to being quashed.

7. The Applicants reiterated the Will tendered by the Respondents was invalid and the Respondents intent on seeking to rely on the same was merely to disinherit them.
8. The Respondents in their submissions asserted that the 1st and 2nd Respondents in reaching the decision that they did adhered to due process and were not guilty of any misconduct and or impropriety. The Respondents emphasized that Judicial Review was basically concerned with determining whether due process was followed before the impugned decision was arrived to but not with the merits of the decision. The Respondents in support of their submissions placed reliance on the case of *Pastoli –v-s Kabal District Local Government Council & Others* (2008) 2 EA 300 where the Court held that for an Applicant to succeed in a Judicial Review application the Applicant need to demonstrate the decision complained about was tainted with illegality, irrationality and or procedural impropriety. The Applicants in the instant application brought their case under Order 53 Rule 3(1) & (2) of the Civil Procedure Rules which required that they obtain leave which they did. The provisions of the law that the Applicants invoked thus did not require the Court to review the merits of the decision as would have been the case if the application had been predicated under the provisions of the Fair Administrative Act, 2015 which under Section 7 provides for merit review of the decision that is under challenge.
9. The Respondents submitted that the Applicants were given a fair hearing before the Arbitration Committee and there was no basis to fault the Committee in reaching the decision that it did. The Applicants did not allege any bias or misconduct on the part of the Arbitration Committee and no evidence was adduced to support the existence of any bias or misconduct. The Respondents argued that on the basis of the evidence and material before them, the decision was fair, legal and rational and that they followed due process in reaching the decision that they did. The Respondents in support of their submissions placed reliance on the case of *Republic –vs- NIA (Mwea Irrigation Scheme); Murithi Exparte; Wanoi & 3 Others (Interested parties)* 2023 KEELC 18491 (KLR). *Republic & 3 Others – vs- Manager National Irrigation Scheme & Another; Gitau (Interested Party)* (2024) KEELC 5289 (KLR) and *Njoroge –vs- Mwea Irrigation Scheme Manager & Another* (2025) KEELC 1419(KLR).
10. The Respondents further submitted the deceased made a valid Will dated 5th January 2015 and that she legally made nomination of the persons who would succeed her in respect of riceholding No. 1995 that she was the licensee of. The applicants submitted that the Will was validly executed as required under the *akn ke act 1972 14 Law of Succession Act*, Cap 160 Laws of Kenya. The Applicants relied on the case of *Karanja & Another –vs- Karanja* (2002) KLR 22 to support the proposition that once the Respondents had demonstrated that on the face of it there was a valid Will, the burden was on the Applicants to prove the Will was invalid, which they did not do. The Respondents submitted that the Arbitration Committee was justified to come to the decision that they did. The Respondents thus urged the Court to dismiss the application for Judicial Review with costs.
11. Having reviewed and considered the pleadings and the submissions made by the parties the issues for determination is whether there was any misconduct and or impropriety on the part of the 1st and 2nd Respondent in reaching the decision they did, to warrant the Court to interfere; whether the 1st and 2nd Respondents relied on an invalid Will in reaching the decision they did; and whether the Applicants are entitled to the prayers they have sought.
12. The 1st and 2nd Respondents under the provisions of the *akn ke act 2019 14 Irrigation Act*, 2019 and the Regulations made thereunder have the mandate to deal with all disputes that relate to ownership,



beneficial entitlement and use of riceholdings within the Mwea Irrigation Scheme Section 25 of the *akn ke act 2019 14 Irrigation Act* provides as follows:-

25. (1) Disputes related to irrigation and drainage scheme development, management, water allocations and delivery, financing, operation and maintenance and other matters shall be resolved within the Irrigation Water User's Association or at irrigation scheme level wherever possible.
 - (2) Each association which is legally registered shall have a Dispute Resolution Committee that consists of at least three members selected by its governing body.
 - (3) Decisions regarding any dispute contemplated under this section shall be made by the relevant Dispute Resolution Committee within thirty days of the hearing of the dispute in question.
13. The Irrigation (General) Regulations, 2021 under Regulations 37 provides procedure through which a deceased rice holder permit holder maybe succeed. A permit holder is at liberty to nominate a successor in the event of death or where he dies without making a nomination of a successor, an authorized dependant within 30 days of the death of the permit holder may in writing to the Authority make a nomination which however must be approved by the Scheme Management Committee. The nominee by the permit holder of a successor equally has to be approved by the Scheme Management.
 14. In the instant case the Applicants complaint is that the deceased who was their grandmother was licensee of riceholding No. 1995 Unit M16 Mwea and that when she died the riceholding was not fairly distributed to her children. The Applicants claim through their mothers who were daughters of the deceased. The Applicants argue the riceholding ought to have been shared equally among all the children including their mothers. The Respondent assert that before the deceased died, she had left a valid Will which clearly provided how the subject riceholding was to be distributed. The Respondents contended the deceased made provision for the Applicants in the Will. The 1st and 2nd Respondents basically gave effect to the wishes and intentions of the deceased and thus did not act unfairly and or unreasonably.
 15. The record shows the deceased, Margaret Wanjiku Macharia passed away on 15th June 2021 as per the exhibited death certificate. Though it is unclear whether the dispute before the Arbitration Committee related to nomination of successor, it is apparent the Committee dealt with who was entitled to the ownership and use of the riceholding No. 1995. On 15th May 2014, the record shows Margaret Wanjiku (deceased), Lucy Nyambura, Loise Waitherero, John Githiga and George Muriithi were registered as Licensees of riceholding No. 1995 and were issued with rent cards. The deceased was registered as owner of one acre and was issued a card for plot riceholding No. 1995 (A) measuring 1 Acre. Thus upon her death only 1 acre was available for distribution to the beneficiaries as the other portions of riceholding No. 1995 had been distributed to other persons.
 16. The members of the Arbitration Committee of the 1st and 2nd Respondents did not base their decision on the contested Will made by the deceased on 5th January 2015 and it is not evident whether infact the alleged Will was tendered as part of the evidence. What is clear from the record of the proceedings is that all the parties were accorded a hearing. There is no demonstrated evidence of any bias, misconduct or impropriety on their part. At the time the purported Will is stated to have been made on 5th January 2015 the riceholding No. 1995 had already been distributed to among others the 3rd to 5th Respondents.
 17. The Arbitration Committee from the record of proceedings before them, gave both the Applicants and Respondents the opportunity to present their case. The rule of natural justice that requires every person to be given an opportunity of being heard in their case was adhered to and the Arbitration Committee cannot be faulted in that respect. In my view the Arbitration Committee did what the



law required of them. The riceholding 1995 was not before the Arbitration Committee for succession purposes because the riceholding had been distributed during the lifetime of Margaret Wanjiku (deceased) in 2014. The only portion that fell for succession was the portion of 1 Acre that the deceased held under her name at the time of her death. This is the portion the Arbitration Committee distributed amongst the Applicants.

18. Upon review of the proceedings before the Arbitration Committee I find that the Committee acted procedurally and was not guilty of any impropriety. The decision reached by the Committee cannot be said to be irrational, unfair or unreasonable. I find no basis upon which I can fault the decision. The Committee acted procedurally and fairly.
19. The upshot is that I do not consider that the process that the Arbitration Committee adopted was flawed to the extent of rendering the Committee's decision irrational, unreasonable or unfair. It is therefore my determination that the Notice of Motion application dated 17th September, 2024 is without merit and I dismiss the same.
20. I have taken note that the Applicants and the 3rd to 8th Respondents are relatives and for that reason and in exercise of my discretion, I order that each party shall bear their own costs of the suit.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 13TH DAY OF NOVEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

