



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC JUDICIAL REVIEW CASE NO. E020 OF 2025**

**KITHELA M'IKIAO.....1ST**  
**APPLICANT**

**SUSAN THIRINDI .....2ND**  
**APPLICANT**

**STANLEY RUUNCI.....3RD**  
**APPLICANT**

**=VERSUS=**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT**  
**OFFICER - KARAMA ADJUDICATION SECTION.....1ST**  
**RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2ND**  
**RESPONDENT**

**RULING**

1. Through the chamber summons dated 23/10/2025, the three applicants seek leave under **Order 53 rule 1** of the **Civil Procedure Rules** to bring a judicial review motion seeking an order of mandamus compelling the District Land Adjudication and Settlement Officer, Karama Adjudication Section, to issue to them a consent under **Section 8(1)** of the **Land Consolidation Act** and **Section 30** of the **Land**

**Adjudication Act** to initiate a suit relating to land parcel number **364** located in Karama Adjudication Section. They also pray that the said leave do operate as a stay of any further dealings, transactions or subdivisions relating to the said parcel of land and/or its subdivisions, namely, parcel numbers **15582** and **15583**, pending the hearing and determination of the substantive motion.

2. The application was premised on the grounds outlined in the chamber summons and in the affidavit of **Kithela M'Ikiao** dated 23/10/2025 and the supplementary affidavit of the same deponent, dated 4/11/2025. It was canvassed through oral submissions tendered in the virtual court on 6/11/2025.
3. The case of the applicants is that the 1st respondent has unlawfully usurped the powers of a succession court by purporting to distribute the estate of their late father without jurisdiction. They want to initiate civil proceedings to challenge the actions of the 1st respondent. They require the consent of the 1st respondent. The 1st respondent has, however, completely declined to give them the consent. They urge the court to grant them leave to initiate judicial review proceedings seeking an order of mandamus compelling the 1st respondent to issue a consent to them.
4. The respondents opposed the application through a replying affidavit sworn on 29/10/2025 by **Mureithi D Anthony**, the Land Adjudication and Settlement Officer for **Tigania East Sub-County**. In addition, the respondents filed grounds of

opposition dated 27/10/2025. They also tendered oral submissions at the hearing of the application.

**5.** The case of the respondents is that the applicants have deliberately concealed material facts relating to previous suits and previous determinations which render the intended judicial review proceedings res-judicata. They point out the following as the preceding suits and determinations:

(i) *Meru ELC JR Application No. 19 of 2018 in which the*

*applicants sued the 1st respondent and named Mary Makena as an interested party, seeking an order quashing the objection proceedings that culminated in the creation of the suit properties. The said suit was dismissed for both non-compliance and non-attendance.*

(ii) *Meru ELC Petition No. E004 which was struck out by Oguttu J on 3/7/2025 for, among other reasons, being res judicata.*

(iii) *Meru ELC judicial review application No. 17 of 2017 which was struck out on 22/10/2025.*

**6.** It is the respondents' case that while aware of the preceding suits and outcomes, the applicants have disingenuously concealed the outcomes of the judicial review cases and the petition. They term the conduct of the applicants as an abuse of the process of the court.

**7.** The respondents add that the plea for leave is pre-mature, pointing out that no formal request has been made to the

Land Adjudication and Settlement Officer for his consideration. They further point out that the exhibited letter dated 14/8/2025 does not bear any evidence of its delivery to the 1st respondent. They urge the court to reject the application.

**8.** The court has considered the application, the response to the application and the parties' respective submissions. The key issue to be determined in this ruling is whether the application meets the criteria for granting leave to initiate judicial review proceedings under **Order 53 rule 1** of the **Civil Procedure Rules**.

**9.** The purpose of leave under Order 53 of the Civil Procedure Rules was explained by Waki J (as he was then) in **Republic v County Council of Kwale & another ex-parte Kondo & 57 others HCMCA No. 384 of 1996** as follows:

***“ The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. Leave may only be granted, therefore, if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant, the test being whether there is a case fit for***

***further investigations at a full inter parties hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially."***

- 10.** First, **Section 30(3)** provides the statutory remedy available to a person who is aggrieved by the refusal of the Adjudication Officer to give consent. It provides thus:

***Any person who is unhappy with the Adjudication Officer's refusal to give consent or a direction under subsections (1) or (2) may, within twenty-eight days of the refusal, appeal in writing to the Cabinet Secretary (formerly the Minister) for Lands. The Cabinet Secretary's decision on this matter is final."***

- 11.** At this point, there is not evidence to suggest that the applicants have exhausted the statutory remedy provided under the Act. They have not told the court the outcome of their appeal to the Minister, if at all they exercised their right under the above framework.
- 12.** Secondly, from the materials presented to the court, it does emerge that the impugned decision of the Land Adjudication Officer has been the subject of two judicial review applications and one petition. The first judicial review application was dismissed, for non-compliance and non-attendance. The applicants' application to reinstate the application was rejected for lack of merit. The petition was

struck out for being res judicata and an abuse of the court process. The second judicial review application was, similarly, struck out.

**13.** Clearly, given the above factual background, the present application is an abuse of the process of the court.

**14.** For the above reasons, it is the finding of this court that the application dated 23/10/2025 does not meet the criteria for granting leave to initiate judicial review proceedings under **Order 53 rule 1** of the **Civil Procedure Rules**. The result is that the application is rejected and dismissed.

**15.** In tandem with the general principle in **Section 27** of the **Civil Procedure Act**, the ex-parte applicants shall bear costs of the application.

**DATED, SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF DECEMBER, 2025**

**B M EBOSO [MR]**

**ELC JUDGE**