

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC JUDICIAL REVIEW NO. E002 OF 2025

**IN THE MATTER OF AN APPLICATION FOR ORDERS
CERTIORARI, PROHIBITION AND MANDAMUS
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010
BETWEEN**

REPUBLIC.....APPLICANT
VERSUS
**THE DEPUTY COUNTY COMMISSIONER,
KILUNGU.....1ST RESPONDENT**
**THE COUNTY LAND REGISTRAR, MAKUENI..... 2ND
RESPONDENT**
THE HON. ATTORNEY GENERAL..... 3RD RESPONDENT
AND
**JOSEPH WAMBUA.....INTERESTED
PARTY**
**MARGARET NDETE NZYOKA..... EXPARTE
APPLICANT**

JUDGMENT

1. The Ex-parte Applicant filed a notice of motion dated 7th February, 2025 in which she sought the following reliefs:
 - 1) **An order of certiorari do issue to removing into this honourable court and quash the decision dated 8th June issued by the 1st Respondent on behalf of the Minister in Appeal to the Minister case NO. 671/2022 relating to plot No. 1460 Musalala Adjudication Section.**
 - 2) **An order of mandamus do issue compelling the Respondents to rescind the decision dated 8th June, 2023 issued by the 1st Respondent and direct the 3rd Respondent to issue the certificate of title deed to the Ex-parte Applicant solely for the parcel of land known as plot No. 1460 Musalala Adjudication Section.**
 - 3) **An order of prohibition do issue to forbid the Respondents and the Interested Party herein from relying on the decision and**

demarcate, subdivide, transfer and issue title deeds with regards to the resultant parcels of land that shall emanate from the parcel of land known as plot No. 1460 Musalala Adjudication Section and further prohibit them from interfering in any manner with the Applicant's use, ownership and occupation of all that parcel of land known as plot No. 1460 Musalala Adjudication Section.

4) That costs of this application be borne by the Respondents.

2. The Ex-parte Applicant is the widow of Samuel Musyimi Kimwe (Samuel) who was allocated plot No. 1460 at Musalala Adjudication as part of his share of his father's land. Samuel was son to Kimwe Muisyo. The Interested Party Joseph Wambua Suva (Joseph) is son to Suva Muisyo who was brother to Kimwe Muisyo.
3. In a decision rendered on 8th June, 2023, the Minister found that Joseph was entitled to a share of plot 1460. It is the contention of the Ex-parte Applicant that Joseph was not entitled to a share of plot 1460 as he should have claimed his share from his father's land at Masokoni. The Ex-parte Applicant further contends that Joseph is not a child of Suva Muisyo as his mother was married to one Mbova Ngeta and that as such his mother was not legally married to Suva Muisyo.
4. The Ex-parte Applicant states that during the hearing of the appeal to the Minister, she was not in good state of mind to handle the appeal in which her husband was involved as her husband had just passed away. Her husband had just subdivided his father's land in which he took plot 1460 and his brother Mathew Mutisya took plot 1459.
5. The Ex-parte Applicant contends that the Minister was unfair when he ordered that her husband's land be shared with Joseph when he left Joseph's father's land intact. She stated that her husband got a bigger share because he is the one who took over the cases which his father had started and completed them without any input from family members. She stated that her husband was compensated for his efforts by being given a larger share.

6. The Ex-parte Applicant states that Joseph does not use the suit property (plot 1460) and that he is only out to cause chaos in the Ex-parte Applicant's family.
7. The Respondents opposed the Ex-parte Applicant's application based on grounds of opposition dated 18th March, 2025. The Respondents contend that the application by the Ex-parte Applicant is misconceived, untenable, bad in law and is an abuse of the process of the court.
8. The Respondents state that the Ex-parte Applicant is appealing against the decision of the Minister which is not a function of judicial review. The Respondents further state that the Ex-parte Applicant's application is incurably defective, devoid of substance and is unsupported and that it is only meant to hoodwink the court.
9. The Respondents further state that the Ex-parte Applicant has not demonstrated any irrationality, illegality or procedural unfairness that would warrant this court to overturn the Minister's decision.
10. The Interested Party did not file any grounds of opposition or replying affidavit. The parties were directed to file written submissions on 5th May, 2025. As at 7th July, 2025, the Ex-parte Applicant had not filed submissions. Her counsel indicated that he would file submissions within 3 days. The court granted him the time requested. The matter was set for mention on 22nd September, 2025.
11. As at 22nd September, 2025, the Ex-parte Applicant had not filed submissions. She sought 3 days to file submissions which was granted. The Respondents in the meantime had filed their submissions dated 29th July, 2025. As at the time of writing this judgment on 10th December, 2025, the Ex-parte Applicant had not filed submissions.
12. The Respondents submitted that the 1st Respondent discharged her duty in accordance with the law. The Ex-parte Applicant was given opportunity to be heard. She cross examined the witnesses and that there were no procedural improprieties. The Respondents relied on the case of **Municipal**

Council of Mombasa –vs- Republic and Umoja Consultants Ltd Civil Appeal No. 185 of 2001 where the court of Appeal set out the parameters of judicial review where they stated as follows:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or di take into account irrelevant matters..... The court should not act as a Court of Appeal over the decider which 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”.

13.I have considered the Ex-parte Applicant’s application as well as the opposition to the same by the Respondent. This application is incurably defective. Though the Ex-parte Applicant stated that the notice of motion was based on the statutory statement accompanying the application for leave and the verifying affidavit accompanying the application for leave, there was no verifying affidavit which was field in the CTS to accompany the application for leave. This being the case, the Ex-parte Applicant’s application remained bare and there is no way the court would consider whether the allegations she is making are true or not.

14.Even if there was a verifying affidavit, the application would not have seen the light of the day as the issues being raised by the Ex-parte Applicant that Joseph was not son of Suva Muisyo are not matters for judicial review. I therefore find that the Ex-parte Applicant’s application is incurably defective for failure to have a verifying affidavit accompanying it. I proceed to dismiss the motion dated 7th February, 2025 with costs to the Respondents.

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HON. E. O. OBAGA

JUDGE

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 11TH DAY OF DECEMBER, 2025.**

IN THE PRESENCE OF:

Mr. Munyaka for Mr. Muli for Applicant.

Court assistant – Steve Musyoki_

ORIGINAL