Brek v Principal Kadhi – Malindi & 2 others (Civil Appeal E051 of 2022) [2026] KECA 55 (KLR) (30 January 2026) (Judgment)

Neutral citation: [2026] KECA 55 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MALINDI

CIVIL APPEAL E051 OF 2022

AK MURGOR, KI LAIBUTA & GW NGENYE-MACHARIA, JJA

JANUARY 30, 2026

BETWEEN

AISHA BREK ..... APPELLANT

AND

THE PRINCIPAL KADHI – MALINDI ..... 1ST RESPONDENT

AISHA MOHAMED NZAWA ..... 2ND RESPONDENT

ATTORNEY GENERAL ..... 3RD RESPONDENT

(Being an appeal from the Ruling of the High Court of Kenya at Malindi Family division (S. M. Githinji, J.) delivered on 26th October 2022inJudicial Review Misc. Application No. 007 of 2021)

JUDGMENT

1. This second appeal was commenced by the appellant, Aisha Brek, and she seeks to challenge the Ruling dated and delivered on 26th October 2022 by Githinji, J. in Malindi Judicial Review Misc. Application No. 007 of 2021.

2. As a background which, we add, is interesting, the dispute revolved around the administration of the Estate of Said Abdulraman Ahmed Said (the deceased). The 2nd respondent, Aisha Mohamed Nzawa, the mother to the deceased, commenced succession proceedings before the 1st respondent, being Malindi Kadhi Court Succession Case

   No. 19 of 2013. One Saad Said filed an application seeking to be joined in the proceedings as the deceased's widow, which application was allowed.

3. The learned Kadhi isolated the issues that fell for determination before him to be: appointment of the petitioners as administrators of the estate of the deceased; determination of heirs of the estate;

distribution of the estate according to Islamic Law; any other relief the court may issue; and the costs to be borne by the estate.

4. As to who would be the administrator of the deceased's estate, the court (Hon. Salim S. Mohamed, SRM), in a Judgment delivered on 26th October 2016, appointed the mother of the deceased (the 2nd respondent) while noting that "I find it prudent to choose the mother to administer her late son's estate as her share in Islamic Sheria Law is bigger than that of the wife or wives for that matter. The mother's share is one sixth (1/6) while that of the wife or wives is one eight (1/8)"

5. The Court then identified the deceased's estate to comprise the following assets:

    i. Cash at bank- Gulf African Bank;

    ii. Swiss Francs 18,000 an equivalent of Kshs.1,710,000;

    iii. House at Malindi Central;

    iv. and Plot No. 309 at Malindi approximately 12 Acres or

    60. 3 Acres;

    v. Kwa Chocha Villa.

6. After identifying the heirs, the deceased's estate was then distributed as follows:

    a. Aisha Mohammed Nzawa – Mother (6 of 36 shares – (1/6).

    b. Aisha Brek -Widow – (2.25 of 36 shares – 1/6).

    c. Saada Said - Widow - (2.25 of 36 shares – 1/6).

    d. Samir Said - Son (8.5 of 36 shares)

    e. Manar Said - Daughter (4.25 shares of 36 shares)

    f. Abdul Said - Son (8.5 of 36 shares)

    g. Samira Said - Daughter (4.25 shares of 36 shares)

7. Aggrieved by the trial court's decision, the appellant preferred an appeal to the High Court at Malindi in Succession Appeal No. 35 of 2016. Before the main appeal was set down for hearing, the 2nd respondent filed an application dated 17th September 2018 seeking to adduce additional evidence, being an indenture to Malindi Parcel No. 3659 so as to prove that it was not the parcel of land where the Kwa Chocha Villa stood. The 2nd respondent's contention was that Malindi Parcel No. 3659 was duly registered in the names of Samira Said Abdulrahman and Abdulrahaman Said Abdulrahamn, the deceased's children after they purchased it and that, therefore, it ought to be excluded from the deceased's list of assets.

8. In his ruling dated 19th April 2019 but delivered by Nyakundi, J. on 25th May 2019, the learned Judge (Korir, J.) (as he then was), dismissed the 2nd respondent's application on finding that the 2nd respondent had not succinctly stated when the said evidence came into her possession, but that, rather, she was attempting to re-litigate the matter at the appellate stage on an entirely new direction; that the 2nd respondent had not preferred a cross-appeal challenging the decision of the Kadhi's Court; and that, therefore, introduction of new evidence would not add any value to the appeal.

9. The main appeal proceeded for hearing and a Judgement of Njoki Mwangi, J. was delivered on 28th February 2020. The decision of Hon. Salim S. Mohamed (SRM) was upheld, save that the heirs of the

deceased's estate were now identified as the appellant, the 2nd respondent, Abdulrahman Said (son) and Samira Said (daughter). The learned Judge also directed that the deceased's estate constituting both movable and immovable properties be distributed in accordance with the Islamic Law; and that each party do bear their own costs.

10. No review or appeal of Njoki Mwangi, J.'s decision was preferred by any of the parties. Instead, the 2nd respondent filed an application dated 31st March 2021 before the 1st respondent seeking, among others, an order directing that Malindi Plot No. 3659 be excluded from the list of the deceased's estate. In opposing the application, the appellant asserted that there already existed judicial pronouncements in respect of Malindi Plot No. 3659 and, specifically, that it was part of the deceased's estate; and that revisiting any issue touching on the subject property would offend the doctrine of res judicata.

11. In his ruling dated 5th May 2021, Hon. Sheikh Twalib B. Mohamed (Senior Principal Kadhi) held that Malindi Plot No. 3659 was not mentioned among the deceased's

properties; and that there was only a mere mention of a property known as 'Kwa Chocha Villa' with no title attached to it. After perusing what he referred to as 'Certificate of Postal Search' for Malindi Plot No. 3659, the learned Kadhi held that the deceased's name did not reflect on the title as one of the registered owners; that, unless there was another 'Kwa Chocha Villa', then Malindi Plot No. 3659 did not form part of the deceased's estate; and that neither could it be subjected to valuation nor distribution to the deceased's heirs.

12. Aggrieved, the appellant challenged Hon. Sheikh Twalib B. Mohamed's decision through Judicial Review proceedings in Malindi High Court vide Judicial Review Misc. Application No. 007 of 2021. She sought an order of certiorari to quash the ruling and order made on 5th May 2021 excluding Malindi Parcel No. 3659 from the list of the deceased's immovable properties. The appellant maintained in her application that, in the decision of 15th April 2019, the High Court (W. Korir, J.) (as he then was), declared Malindi Parcel No. 3659 - Kwa Chocha Villa to constitute part of the deceased's estate; that the Kadhi's Court was bound by the doctrine of stare decisis; and that its decision amounted to an abuse of power intended to embarrass and harass the appellant.

13. The 2nd respondent opposed the application through a replying affidavit dated 8th November 2021 in which she contended that Malindi Parcel No. 3659 was duly registered in the names of Samira Said Abdulrahman and Abdulrahaman Said Abdulrahamn, the deceased's children by virtue of having purchased it; and that the fact of referring to Malindi Parcel No. 3659 as Kwa Chocha Villa was meant to hoodwink the Court, and thus tilt the decision in favour of the appellant.

14. The learned Judge (Githinji, J.) held that Judicial Review proceedings concern themselves with decision-making process as opposed to the merit of the impugned decision. While referring to the special jurisdiction donated to it (the High Court) under Order 53 of the Civil Procedure Rules, 2010, the Judge held that, where an applicant is aggrieved with a decision, Judicial Review proceedings would not be an appropriate channel through which to ventilate the grievance, but that an appeal in the normal way would obtain in the circumstances; that, as such, he was bereft of jurisdiction to entertain the appellant's application; and that the issue of administration and distribution of the deceased's estate cannot be properly determined in a Judicial Review process. Consequently, the application was dismissed with costs against the appellant.

15. Further aggrieved, the appellant is now before this Court on appeal against the ruling and orders of Githinji, J. dated 26th October 2022 on the grounds that:

> " 1. The learned Judge erred in law and in fact by dismissing the judicial review subject of this appeal for want of proper remedy thereby

i. justifying the ultra vires move by the Principal Kadhi Malindi in excluding Plot Number 3696 (Kwa Chocha Villa Malindi) from the list of the property of the Estate of the deceased Said Abdulraman Ahmed Said.

ii. Failing to notice and appreciate that the 2nd Respondent Aisha Mohamed Nzawa, by her application dated 17th September 2018 made in HC SUCC. APPEAL NO. 35 OF 2016 had called upon the High Court to remove the said property from the list of the properties of the estate, which by a ruling dated 25th May 2019 delivered by Hon. R. Nyakundi J. for Justice W. Korir was declined.

iii. Failing to note and appreciate that the Principle Kadhi Malindi was only directed by the High Court through the Judgment delivered in the said succession cause appeal No. 35 of 2016 to apportion shares of the beneficiaries and not undertake additional proceedings since the Kadhi's court had become functus (sic) after the Judgment dated 26th October, 2016.

2. The learned Judge erred in law and in fact in failing to note and appreciate that once the Principle Kadhi-Malindi had by his Judgment delivered on 26th October, 2016, included the subject property as part of the estate, and an attempt to remove it in Succession Cause Appeal no. 35 of 2016 was denied, the Principal Kadhi's act of entertaining a similar application and allowing the same is ultra vires his statutory and constitutional powers which can only be checked by High Court of Kenya through Judicial Review proceedings.

3. The learned judge erred in law and in fact in holding that the matters which were brought before him were contested matters;

4. The learned judge erred in law and in fact in holding that he doesn't have jurisdiction over the subject judicial review contrary to the provisions of *the Constitution* which gives the High Court unfettered jurisdiction over all civil and criminal matters;

5. The learned judge erred in law and in fact by failing to consider that an appeal had been filed earlier and a judgment delivered in Succession Appeal Cause No. 35 of 2016; and

6. The learned Judge erred in law and fact by misdirecting himself when he purported to confer appellate jurisdiction to the Kadhi's Court."

16. The appellant prays that the appeal be allowed; that the ruling in Malindi Judicial Review Misc. Application No. 007 of 2021 delivered on 26th October 2022 be set aside; and that costs of this appeal and of Judicial Review Misc. Application No. 007 of 2021 be awarded to her.

17. The 2nd respondent, pursuant to rule 9 of the Appellate Jurisdiction Rules, opposed the appeal vide eight (8) grounds in the Notice of Grounds for affirming the decision dated 23rd January 2023 as follows:

"i. Judicial Review procedure is not applicable in a succession matter;

ii. The Family Court lacks jurisdiction to hear and determine applications brought under Order 53 of the Civil Procedure Rules;

iii. The application before the Superior Court was fatally defective;

iv. No appeal has been lodged against the ruling of the Kadhi Court;

v. The application in the Superior Court contested matters of facts but not the mandate of the Kadhi Court;

vi. The orders prayed in the application in the superior court cannot be issued by the Family Court;

vii. The appropriate way the appellant ought to have approached the superior court was by way of an appeal of the ruling of the Hon.

Kadhi; and

viii. The Succession Act does not provide special jurisdiction to donate the Family Court to sanction provision of Order 53 of the Civil Procedure Rules."

18. When the appeal came up for hearing on 27th May 2025, learned counsel Mr. Simiyu was present for the appellant. The respondents, though served with a hearing notice, did not appear. Equally, only the appellant filed written submissions dated 29th January 2025, which Mr. Simiyu highlighted.

19. Counsel assailed the decision of the learned Judge by submitting that he erred in finding that the matters before him were contested, and that the matter in contention had already been settled by a ruling delivered by the Kadhi Court on 26th October 2016 when it determined that Malindi Parcel No. 3659 also known as Kwa Chocha Villa formed part of the deceased's estate, and which decision has not been set aside.

20. According to Mr. Simiyu, the 2nd respondent sought to introduce new evidence before the High Court in Succession Appeal No. 35 of 2016, but that Korir, J. dismissed the application and ordered that the deceased's estate be distributed by the Kadhi Court; that it was at this stage that the 2nd respondent raised issues that the contested property did not form part of the deceased's estate; and that, by re- opening a matter that had already been determined by the High Court on 25th May 2019, the learned Kadhi acted ultra vires his jurisdiction. Reliance was placed on the findings of Lord Atkin in Rex v Electricity Commissioners (1924) 1KB 171 for the proposition that, 'wherever anybody or persons having legal authority to determines questions affecting the rights of subjects and having to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in the writs of Judicial Review'; and the Ugandan High cOurt case of Pastoli .vs Kabale District Local Government Council & Others (2008) 2 EA 300 where it was held that, for a Judicial Review application to succeed, it must be shown that the decision complained of was tainted with illegality, irrationality and procedural impropriety, and that the court that issued that decision acted ultra vires its jurisdiction; and this Court's decision of Suchan Investment Limited v Ministry of National Heritage & Culture & 3 Others (2016) KECA 729 (KLR) where it was held that the provisions of Article 47 of *the Constitution* and Section 7 of the *Fair Administrative Action Act*, Cap 7L reveal an implicit shift of judicial review to include aspects of merit review of administrative action, even though the reviewing court has no mandate to substitute its decision for that of the administrator.

21. Counsel faulted the learned Judge for failing to appreciate that Article 165(6) of *the Constitution* gives him authority to supervise the 1st respondent by checking on its excesses.

22. The appellant urged us to find that the 1st appellate court's ruling was made in error and, as such, this appeal should be allowed as prayed.

23. This is a second appeal in which our limited jurisdiction is based on Section 72(1) of the *Civil Procedure Act* which provides for the circumstances under which a second appeal shall lie from the High Court. Primarily it must be on matters of law only. It provides thus:

> 1. Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely-
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> a. the decision being contrary to law or to some usage having the force of law;
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> b. the decision having failed to determine some material issue of law or usage having the force of law;
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> c. a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits

24. In Kenya Breweries Ltd v Godfrey Odoyo (2010) KECA 498 (KLR), it was succinctly put as follows on the role of a second appellate court:

> " In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of a retrial and facts must be revisited and analysed a fresh, - see Selle and Another v Associated Motor Boat Company Ltd and Others (1968) EA."
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> 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse."

25. Further, in Charles Kipkoech Leting v Express (K) Ltd & Another (2018) KECA 187 (KLR), this Court stated as follows:

> " This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the Court. See – (Maina v Mugiria (1983) KLR 78, Kenya Breweries Ltd v Godfrey Odongo, Civil Appeal No. 127 of 2007 and Stanley N. Muriithi & Another v Bernard Munene Ithiga (2016) eKLR), for the holdings, inter alia, that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the Courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See also the English case of Martin v Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 where it was held inter alia that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first

appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law."

26. We have considered the record of appeal, the submissions and the authorities cited in support of the appeal, the grounds affirming the decision of the first appellate court and the law. This appeal turns on the question as to whether it was appropriate for the appellant to challenge the ruling of 5th May 2021 delivered by Hon. Sheikh Twalib B. Mohamed-Senior Principal Kadhi through a judicial review process.

27. In distributing the deceased's estate, the Kadhi's Court (Hon. Salim S. Mohamed – SRM) confirmed that Kwa Chocha Villa was part of the deceased's estate. We note that there was no clear indication as to the number of the parcel of land that the said Kwa Chocha Villa was erected.

28. While the appellant maintains that Malindi Parcel No. 3659 is one and the same as Kwa Chocha Villa, the 1st respondent took a divergent view, maintaining that the said parcel of land was purchased by Samira Said Abdulrahman and Abdulrahman Said Abdulrahman, the deceased's children, and that, therefore, it does not form part of the deceased's estate. The Kadhi Court referred to a Certificate of Postal Search of 22nd January 2021 to arrive at this conclusion.

29. The appellant lodged an appeal against the decision of Hon. Salim S. Mohamed - SRM in Malindi Succession Cause Appeal No. 35 of 2016. To recap, before the appeal was set down for hearing, the 2nd respondent filed an application dated 17th September 2018 seeking to adduce additional evidence, namely an indenture to Malindi Parcel No. 3659 to prove that it was not one and the same parcel of land where the Kwa Chocha Villa stood. In his ruling dated 19th April 2019 but delivered by Nyakundi, J. on 25th May 2019, the learned Judge (Korir, J.) (as he then was) dismissed the 2nd respondent's application on the findings which we have alluded to hereinabove.

30. The appeal was finally heard and determined on 28th February 2020 by Njoki Mwangi, J. and the decision of Hon. Salim S. Mohamed - SRM was partly upheld. The Kadhi's Court was directed to distribute the deceased's estate to the identified heirs and in accordance with Islamic Law.

31. The 2nd respondent's attempt to prove that Malindi Parcel No. 3659 was not part of the deceased's estate was derailed by the ruling of Korir, J. (as he then was). As at that point, any further litigation as to the entitlement to Malindi Parcel No. 3659 could not be relitigated before any court of subordinate jurisdiction to the High Court. Any further grievance fell for determination by this Court in an appeal.

32. At this juncture, we make a critical observation that it was improper for Hon. Sheikh Twalib B. Mohamed - Senior Principal Kadhi - to proceed and pronounce himself on an issue which had already been settled by the High Court on two different occasions. All he had to do was follow the directions given in the Judgement of 28th February 2020 by Njoki Mwangi, J. to distribute the deceased's estate to the heirs.

33. It matters not how strongly the Kadhi Court felt about the dispute that would have motivated it to correct a perceived wrong made by the High Court. The fact is that it was bound by the decision of the High Court, which is superior to it. This is the essence and letter and spirit of the principle of stare decisis. This Court in Ferdinand Ndung'u Waititu v

Independent Electoral & Boundaries Commission (IEBC) & 8 others (2014) KECA (615) KLR addressed itself on the rationale of the principle of stare decisis as follows:

"It is common place that we are bound by stare decisis, and cannot depart from sound precedents of law unless there is reason to distinguish it. The doctrine of precedent is of

paramount importance to our jurisprudence. It is incumbent on lower courts to adopt and follow the principles set out by higher courts, unless there are good reasons to depart."

34. Emphasizing the significance of the doctrine of stare decisis,Singh & 4 Others (2013) KESC of Jasbir Singh Rai the Supreme Court in the case & 3 Others v Tarlochan 21 (KLR) explained that the rule of precedent promotes predictability, diminishes arbitrariness, and enhances fairness, by treating all cases alike.

35. In view of the foregoing, our finding is that the Hon. Sheikh Twalib B. Mohamed - Senior Principal Kadhi was in error in commencing additional proceedings and determining an issue in respect of which he was bereft of jurisdiction. Therefore, his decision was certainly amenable to being challenged.

36. What then was the appellant's recourse? The appellant decided to challenge the Kadhi's Court decision through a Judicial Review application. It is trite law that judicial review proceedings are exceptional in nature as they seek to prevent abuse of power and arbitrariness by interrogating a decision-making process. They certainly are not concerned with the merits of a case. Further, a Judicial Review application is not an appeal from a decision, but a review of the manner in which the decision thereon was arrived at. Therefore, a court sitting to determine questions in judicial review proceedings will not be purely interested in the merits of the decision which would result in substituting the impugned decision for its own as if it were sitting as an appellate court.

37. The Supreme Court of Kenya in Kiliswa v Independent (2015) KESC 17 (KLR) held that:

> " The well-recognised principle in such cases, is that the Court's target in judicial review, is always no more than the process which conveyed the ultimate decision arrived at. It is not the merits of the decision, but the compliance of the decision-making process with certain established criteria of fairness. Hence, an applicant making a case for judicial review has to show that the decision in question was illegal, irrational or procedurally defective."

38. In Municipal Council of Mombasa v Republic & Umoja Consultants Ltd (2022) KECA 8 (KLR), this Court set out the parameters of judicial review by holding 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 did 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."

39. We also find succour in the findings of Odunga, J. (as he then was) in Nairobi Civil Misc Appl. 327 of 2011 Republic v Chief Magistrate's Court Nairobi & 4 others ex parte Beth Wanja Njoroge (2013) eKLR where the learned Judge rendered himself thus:

> " 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 impropriety. Illegality 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. 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 logic 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."

40. To add his voice on this subject, Majanja, J. in Republic v Retirement Benefits Appeals Tribunal Ex Parte Augustine Juma & 8 others (2013) KEHC 1696 (KLR) held that:

> " Judicial review is not an appeal from a decision, but a review of the manner in which the decision was made. Once a body is vested with the power to do something under the law, then there is room for it to make that decision, wrongly as it is rightly. That is why there is the appellate procedure to test and examine the substance of the decision itself. It follows, therefore, that the correctness or the 'wrongness' or error in interpretation or application of the law is not appropriately tested in a judicial review forum. In simple terms, a 'wrong' decision done within the law and in adherence to the correct procedure can seldom be said to be ultra vires as to attract remedy for the prerogative writs."

41. Certainly, the decision rendered on 5th May 2021 by Hon. Sheikh Twalib B. Mohamed - Senior Principal Kadhi, did not adhere to the tenets of the doctrine of stare decisis, and he thereby acted ultra vires his powers by purporting to sit on appeal of a decision of the High Court. Also, paramount to note is that the dispute between the parties was primarily under the realm of private and not public law. The decision of the Hon. Kadhi was judicial in nature, and not one made in the process of an administrative function. Our judicial hierarchical system provides an elaborate appellate procedure which a party should follow to ventilate its grievance when disputing or aggrieved by a judicial pronouncement.

42. For sure, a Judicial Review application is not the proper avenue that a party should undertake to test the correctness or wrongfulness of a judicial decision. In simple terms, as per Majanja, J. in Republic v Retirement Benefits Appeals Tribunal Ex Parte Augustine Juma & 8 others (supra), a wrong decision can seldom be said to be ultra vires so as to attract a remedy for prerogative writs. This Court in Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 others (2012) KECA 104 (KLR) succinctly addressed itself on this issue as follows:

> " Moreover, where the proceedings are regular upon their face and the inferior tribunal has jurisdiction in the original narrow sense (that is, to say, it has power to adjudicate upon the dispute) and does not commit any of the errors which go to jurisdiction in the wider sense, the quashing order (certiorari) will not be ordinarily granted on the ground that its decision is considered to be wrong either because it misconceived a point of law or misconstrued a statute (except a misconstruction of a statute relating to its own jurisdiction) or that its decision is wrong in matters of fact or that it misdirects itself in some matter."

43. Accordingly, we find nothing for which to fault the learned Judge (Githinji, J.) in his finding that the Kadhi's Court decision would have been appropriately challenged by way of an appeal, and that matters distribution of an estate of a deceased person cannot be adequately dealt with in a judicial review application.

44. For the foregoing reasons, we find this appeal unmeritorious and the same is hereby dismissed. We accordingly uphold the Ruling of the learned Judge (Githinji, J.) dated and delivered on 26th October 2022. Each party shall bear their own costs of the appeal.

DATED AND DELIVERED AT MOMBASA THIS 30TH DAY OF JANUARY, 2026.

A. K. MURGOR

JUDGE OF APPEAL

.....

DR. K. I. LAIBUTA CArb, FCIArb.

JUDGE OF APPEAL

.....

G. W. NGENYE-MACHARIA

JUDGE OF APPEAL