REPUBLIC OF KENYA
IN THE ENVIRONMENT AND COURT AT MEU
ELC L [JR] E022 OF 2025

JACOB M'LIBIURU M'MURAGA …….1ST APPLICANT

SAMUEL MBITI LIBURU……...…… 2ND APPLICANT

VERSUS

DEPUTY COUNTY COMMISSIONER

TIGANIA CENTRAL SUB COUNTY …….…….. …...RESPONDENT

STELLA NKOYAI …….…….INTERESTED PARTY

JUDGMENT

1. Before me is the Notice of Motion Application [*otherwise referenced as the substantive application]* dated the 22nd of January, 2026; and brought pursuant to the Provisions of **Sections 8 and 9 of Law Reform Act, Chapter 26 Laws of Kenya; order 53 Rule 3 of the Civil Procedure Rules** and the Inherent Jurisdiction of the court.
2. The reliefs sought at the foot of the application are as hereunder:

    i. That an order of Certiorari be issued, quashing the decision of the Respondent delivered on the 17th July, 2025 which allowed the Interested Party's Appeal to the Minister No. 201 of 2024.

    ii. That the costs of this application and the exparte chamber summons for leave be borne by the Respondents and Interested Partly jointly and severally.

3. The application is premised on the statements of facts dated 22.01.2026; the affidavit in verification of the statement of facts sworn on the 22.01.2026; and the annextures thereto.

4. Briefly, the exparte Applicant has posited that the Respondent failed to exercise his Jurisdiction rationally and thereby arrived at un-irrational conclusion. In addition, it has been contended that the decision of the Respondent was procedurally flawed and thus illegal.

5. Furthermore, the Exparte Applicant has posited that the Respondent failed to take into account; and disregarded crucial evidence that had been tendered by the Exparte Applicant had his witnesses. Moreover, it has been contended that the Respondent also disregarded the decision of the Land Committee and the Arbitration Board, which had found that the Exparte Applicant and family had been in occupation of the designated portion of the suit property. In any event, it has been posited that the Respondent ignored the decisions and findings of the Land Committee and the Arbitration Board without giving any rational basis/reason.

6. The Exparte Applicant has repeated the same averments in the body of the affidavit. In addition, the Exparte Applicant has also annexed assorted documents, including a copy of the objection proceedings; the decision of the Land Adjudication Officer; the proceedings before the Minister [DCC] and the decision of the Minister which is the subject of the suit proceedings.

7. The Respondents filed grounds of opposition dated the 29/01/2026 and wherein same have contended that the subject application is premature; misconceived; unwarranted; and devoid of merits. To this end, the Respondents have invited the court to find and hold that the application does not meet the threshold for the grant of the orders sought.

8. The application came up for hearing on 10.02.2026 and whereupon the advocates for the parties agreed to canvass and dispose of the application by way oral submissions. In this regard, the court ventured forward and issued directions pertaining to the hearing of the application. In particular, the court directed that the application shall proceed on the basis of oral submissions.

9. Learned counsel for the Exparte Applicant adopted the grounds at the foot of the application; the contents of the statements of facts; the averment in the body of the affidavit in verification of the statement of facts and; the annextures thereto. Moreover, learned counsel thereafter highlighted three key issues. The issues are: the decision of the Respondent is contrary to the principle of legality and fairness; the decision of the Respondent was/is irrational; and the decision of the Respondent was/is procedurally flawed.

10. Regarding the first issue, learned counsel for the Exparte Applicant has submitted that the principle of legality and procedural fairness requires that the administrator acts and conducts himself/herself fairly and in accordance with the law. Moreover, it was contended that the where the administrator conducts himself/herself without due regard to the law, then the decision arrived at is vitiated and thus becomes illegal.

11. Secondly, learned counsel submitted that the Respondent herein acted irrationally by disregarding the decisions of the Land Committee and the Arbitration Board. In particular, it was submitted that both the Land Committee and the Arbitration Board had found and established that the

Exparte Applicant and family have been residing on the suit property for more than 50 years.

12. Nevertheless, it was posited that the Respondent disregarded the said decisions without assigning any rational basis. To this end, it has been submitted that the decision of the Respondent was therefore irrational.

13. Thirdly, learned counsel for the Exparte Applicant has submitted that the impugned decision is also procedurally flawed. In this respect, it has been submitted that the Respondent ignored and disregarded crucial evidence that was tendered and provided by/on behalf of the Exparte Applicant. Furthermore, Learned Counsel has contended that it was the duty of the Respondent to objectively evaluate and analyze the evidence tendered and not to disregard portions of the evidence.

14. Flowing from the foregoing, learned Counsel for the Exparte Applicant has submitted that the actions; conduct; and decision of the Respondent are therefore unlawful and constitutes a violation of the Exparte Applicant's right to fair administrative action and right to property. In this regard, the court has been implored to allow the application and to quash the proceedings; and decision of the Minister.

15. Learned counsel for the Respondents adopted/relied upon the grounds of opposition dated 29.01.2026 and thereafter highlighted four [4] key issues. Firstly, learned counsel for the respondents has submitted that the minister [DCC] is granted the mandate and jurisdiction to entertain and adjudicate on appeals by virtue of the provisions of **Section 29 of Land Adjudication Act, Chapter 284 Laws of Kenya.** In addition, it was submitted that the minister is vested with absolute discretion subject only

to the law. Besides, it was submitted that the minister is not bound by or tied to the decisions of the Land Committee and the Arbitration Board. On the contrary, it was contended that the minister exercises his/her jurisdiction independently.

16. Secondly, learned counsel for the Respondent has submitted that the minister acted in accordance with the law and in particular, the parameters of **Section 29 of the Land Adjudication Act;** and that the contention that the minister acted *ultra vires,* is based misapprehension of the scope of the law. Furthermore, it was submitted that the minister rendered a reasoned decision, capturing the salient features of the cases by the parties.

17. Regarding the question of procedural fairness, learned counsel for the Respondent that the minister afforded all the parties an opportunity to call witnesses; to tender evidence; and cross examine the witnesses. In this regard, it has been submitted that the manner in which the minister heard and dealt with the case demonstrates procedural fairness. To this end, it has been submitted that the minister complied with and adhered to the tenets of natural justice.

18. Finally, it has been submitted that the decision of the minister was arrived at independently and impartially. In particular, it was submitted that the decision of the minister was pegged on the evidence tendered by the parties; the record that was placed before him; and the applicable law. Moreover, it was submitted that the decision was not influenced by any extraneous factors. In any event, it was contended that the applicant has

not demonstrated any basis to warrant the interference with the decision of the minister.

19. In the circumstances, it has been submitted that the entire application before the court is premature; misconceived and legally untenable. To this end, the Respondents have invited the court to find and hold that the Application is devoid of merit[s]; and to dismiss the subject application.

20. Having reviewed the Notice of Motion Application; the statements of facts; the affidavit in verification of the statement of facts; the annextures attached thereto; and upon consideration of the oral submissions canvassed by the respective parties, I come to the conclusion that the determination of the subject application turns on three [3] key issues.
21. The issues are: Whether the minister acted irrationally or otherwise; Whether the decision of the minister ultra vires or otherwise; and Whether the decision of the minister is procedurally flawed or at all.

22. Regarding the first issue, it is important to underscore that all the administrators or such persons /bodies chargeable with the statutory/administrative duty to determine matters/disputes, which impacts on parties are called upon to act rationally, fairly, objectively, reasonably and without bias. Furthermore, the decision arrived at must also be one that can be expected to be reasonable, as opposed to arbitrary or whimsical.

23. The Exparte Applicant has contended that the Respondents acted irrationally. The foundation of the said contention is to the effect that the Respondent disregarded or ignored the decisions of the Land Committee

and the Arbitration Board. Suffice it to state that the appeal, which was heard by the minister was against the impugned decision[s] of the Arbitration Board. In this regard, the minister was duty bound to review the proceedings before the Arbitration Board and the objection; and to consider the Law; and thereafter apply same to the evidence taken before him/her [if any] and the applicable law.

24. Though the Exparte Applicant has contended that the Minister disregarded or ignored the decisions of the Land Committee and the Arbitration Board, the Exparte Applicant has failed to appreciate that the minister actually conducted a hearing and that the parties tendered evidence; were cross examined; and called witnesses. The evidence that was tendered by the parties and their witnesses were elaborate; comprehensive and duly recorded by the minister. I did not hear learned counsel to challenge the authenticity of the proceedings and the evidence.
25. Additionally, it is not lost on me that after the minister had recorded the evidence of the parties; the minister proceeded to and analyzed the crux of the parties cases and thereafter distilled the issues for determination. In the course of undertaking the analysis, the minister made several observations and pointed out several errors; mistakes and infractions that had been committed by the Arbitration Board and the Land Adjudication Officer.

26. I have reviewed the decision of the minister and juxtaposed same against the conclusion that was arrived at and I find and hold that the minister has provided a rational and reasonable basis for the conclusion.

27. I beg to state that it is not the mandate of this court to substitute its will and thinking for that of the minister. Moreover, it is not the duty of the

court to usurp the mandate of the minister in assessing the merits of the claims by the respective parties.

28. On the contrary, the mandate of this court is to review the decision and to ascertain whether the minister took into account the evidence that was tendered before him/her, in arriving at the final conclusion/decision. Pertinently, the minister made observations at paragraph 10 and pointed out that it was not conceivable for the Arbitration Board to have granted land to the Exparte Applicant herein, yet same had not established the root of his claim to the land.

29. Flowing from the foregoing, I am unable to discern the basis or foundation of the contention that the minister's decision was irrational. For good measure, no evidence has been tendered to demonstrate or substantiate the proposition of irrationality. It is not enough to make an assertion. The party chargeable with the assertion must go the extra mile. The same must prove the assertion. Nothing Less.

30. The legal import and tenor of the principle of irrationality was expounded in the case of **Pastoli vs Kabale District Local Government Council & Others, (2008) 2 EA 300.**

The court proceed to stated as hereunder:

> ***"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: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also, Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR).***

Illegality is when the decision-making authority commits an error of law in the process of taking the decision 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: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph "E".

Procedural impropriety is when there is 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. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."

31. In my humble view, the decision that was arrived at or reached by the minister was in line with the evidence that was tendered. It can not be said that the decision was unreasonable, absurd, out of place and obnoxious. On the contrary, the decision appears to flow from the totality of the evidence that was tendered.

32. Turning to the second issue, namely; Whether the minister acted *ultra vires* his mandate/jurisdiction. The term ultra vires denotes that the administrator or statutory body, has acted outside its jurisdiction. In such a situation, the decision reached and the proceedings undertaken are a *nullity ab initio.*

33. The Exparte Applicant has submitted that the Respondent herein acted ultra vires [outside his jurisdiction]. However, even though the Applicant made the foregoing submissions, no evidence was provided or justification supplied to underpin the contention.

34. It is instructive to note that the mandate of the minister is prescribed by the provisions of Section 29 of the Land Adjudication Act, Chapter 284, Laws of Kenya; and which section allows the minister to hear and determine the appeals.

35. Suffice it to state that the section does not stipulate whether the minister is only to review the record of proceedings taken before the Land Adjudication Officer and the decision made thereunder; or whether the minister is at liberty to call and hear evidence. Insofar as the provision is silent, it is therefore open for the minister to undertake his/her mandate in such a manner, provided that same observes and adheres to the rules of natural justice; fair hearing; due process of the law; and the rule of law.

36. To my mind, the minister duly adhered to and complied with the legal prescription *vide* Section 29 of the Land Adjudication Act. In any event, no departure from the provisions of section of the Land Adjudication Act was pointed out or highlighted. Be that as it may, it is imperative to observe that it is not enough to make assertions. Notably, the person propagating the assertion is called upon to prove same, albeit on a balance of probabilities.

37. Sadly, learned counsel for the Exparte Applicant invoked and deployed the concept of ultra vires, but failed to apply same to the facts of the matter. In my humble view, the concept was invoked in *vacuum.*

38. Moving on to the third issue, namely; whether the decision of the minister was procedurally flawed or otherwise. The Exparte Applicant has submitted that the minister disregarded crucial evidence that was tendered by the applicant and the evidence of long standing occupation. In particular, it was submitted that the minister did not take into account the fact that the Exparte Applicant had been in occupation of the suit property for more than 50 years.

39. On the other hand, learned counsel for the Respondents has submitted that the decision of the minister was procedurally fair; coherent and consistent. Furthermore, it has been submitted that the minister was not bound by or tied to the decisions of the Land Committee and the Arbitration Board. Suffice it to state that learned counsel contended that the minister acted independently and provided reason[s] for the decision arrived at.

40. I have reviewed the proceedings taken before the minister and the decision arrived at. Firstly, I beg to point out that the minister indeed afforded the parties an opportunity to testify; call witnesses; and to cross examine the witnesses. In doing so the minister was complying with the tenets of Article 47 of the Constitution, 2010; which highlight the need for every administrative decision to be fair, expeditious, and efficient.

The terminology fair, expeditious and efficient, touch on and concern the procedure deployed in arriving at the decision.

41. Other than the requirement that the administrative decision be fair, expeditious; efficient and procedurally fair [*which relates to procedural propriety*], there is also the aspect that requires the administrative action to be reasonable and lawful.

42. To this end, the administrator is not only to be procedurally fair, but same must also be minded about the legality and reasonableness of the decision reached.

43. What constitutes procedural fairness, or better still procedural impropriety was considered and highlighted in the case of **Pastoli vs Kabale District Local Government Council & Others, (2008) 2 EA 300.**

44. For coherence the court stated thus:

> *Procedural impropriety is when there is 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. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876).”*

45. Furthermore, it is instructive to take cognizance of the provisions of **Article 47 of the Constitution**, which underpin the rights to fair administrative action.

46. The provision stipulates thus:

> ***Fair administrative action.***
>
> ***47. (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***
>
> ***(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.***
>
> ***(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—***
>
> > ***(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and***
> >
> > ***(b) promote efficient administration***.

47. The proceedings that were taken before the minister clearly show that the parties were afforded opportunity to testify; same were afforded opportunity to call witnesses; and same were afforded opportunity to cross examine the witnesses.

48. Other than the foregoing, the minister thereafter rendered a considered decision. The decision may have gone against the Exparte Applicant, but the fact that the decision went against the Exparte Applicant, does not connote that there was procedural flaw. On the contrary, the proceedings and the resultant decision speak to a process that accords with the right to fair trial.

49. Before concluding on this issue, I beg to highlight the holding of the Court of appeal in the case of **County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] KECA 397 (KLR)** where the court stated thus:

"Whereas the right to a fair hearing varies from one case to another depending on the subject of the matter in issue, its irreducible minimum is now well settled. In granting that right, the court or the administrative body or person concerned should not make it a charade by taking perfunctory actions for the sake of running through the motions to be seen to have complied with it. The person charged is entitled to what, in legal parlance is referred to as the right to "notice and hearing." That means he must be given written notice which must contain substantial information with sufficient details to enable him ascertain the nature of the allegations against him. The notice must also allow sufficient time to interrogate the allegations and seek legal counsel where necessary. In the epigram of the indomitable Lord Denning in ***Kanda v. Government of Malaya***

> "***If the right to be heard is to be a real right which is worthy anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them***."

50. The procedural fairness depends on various factors. The factors that underpins procedural fairness include: reasonable notice; reasonable opportunity; opportunity to be heard; opportunity to present evidence and opportunity to cross examine. The Exparte Applicant herein partook of and benefited from the ingredients that underpin procedural fairness.

51. I beg to state that the ground as pertains to procedural flaw [procedural impropriety] is without merit and was equally mounted *in vacuum.*

Disposition

52. From the foregoing analysis, it must have become apparent that the notice of motion application dated the 22/01/2026, is meritless. Moreover, there is no gainsaying that the applicant herein was merely intent on inviting the court to substitute its decision in lieu of the decision of the minister.

53. The court could only review the decision in an endeavor to ascertain procedural fairness; rationality; reasonableness and legality. The court

however, cannot undertake wholesome merit review; and substitute its decision on merit in lieu of the Decision of the Minister. That would amount to usurpation of the Powers of the Minister.

Final Orders

54. In the premises, the final orders of the court are:

i. **The Notice of Motion Application dated the 22nd of January, 2026 be and is hereby dismissed.**

ii. **Costs of the application be and are hereby awarded to the Respondents only.**

iii. **The costs in terms of clause [ii] above shall be agreed upon and in default be taxed in the conventional manner.**

55. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF FEBRUARY, 2026.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of-:

Hussein - Court Assistant

Ms. Mugo for the Exparte Applicant

Ms. Miranda [Senior litigation Counsel] for the Respondents