

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC MISC. APPL. NO. E023 OF 2025

IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI & PROHIBITION BY BENEDICTO
YARANGOLE CHEPOROKUT

AND

IN THE MATTER OF ARTICLE 60 OF THE
CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE ENVIRONMENT & LAND
COURT ACT 2011

AND

IN THE MATTER OF ORDER 53 RULES 1, 2, & 3 OF
THE CIVIL PROCEDURE RULES, 2010

BETWEEN

BENEDICTO YARANGOLE CHEPOROKUT-----
APPLICANT

AND

THE DIRECTOR OF LAND
ADJUDICATION & SETTLEMENT-----1ST
RESPONDENT

JACOB YARANGOLE-----2ND
RESPONDENT

JUDGMENT

- 1.** What is before the court is a notice of motion dated **16/9/2025**, supported by a statutory statement of facts, and a verifying affidavit sworn by Benedicto Yarangole Cheporokut.
- 2.** The exparte applicant asks the court to call for and to quash the proceedings, directions, decisions, and prohibit the respondents from carrying out any proceedings to implement the decision dated **23/6/2025**, by evicting and injunctioning him from the land parcel No. **396** Shalpogh Adjudication Section. The applicant says the effect of the implementation of the decisions is that the 2nd respondent, who is his brother, may now proceed to obtain a title deed for the land, dispossess or evict him from the portions he has always lived on.
- 3.** The grounds are that the parcels No. **396** and **397** Shalpogh Adjudication Section belonged to the late parents of the exparte applicant and the 2nd respondent, who had initially agreed on whom to take which parcel of the two parcels, until a dispute arose on **11/3/2020**, whereby the 2nd respondent's objection was dismissed as per annexure marked **BYC-1**, leading to a minister's appeal.

4. The exparte applicant deposes that the appeal was heard and determined on **23/6/2025** in favour of the 2nd respondent, as per annexure marked **BYC-2**. The exparte applicant faults the proceedings and the decision. since he was not accorded a fair hearing to call crucial witnesses, and the Minister did not consider that he had been in occupation of the parcel No. **396**, while the 2nd respondent had been in occupation of parcel No. **397**.
5. The exparte applicant says that the said occupation is what had formed the basis of the demarcation on **7/11/2016**. He faults the Minister for hearing the matter when the initial owners of the land parcels were deceased, and went ahead to issue directions in favour of the 2nd respondent, who did not have capacity or *locus standi*. The exparte applicant is apprehensive that the 2nd respondent will obtain a title deed for the parcel.
6. The application is opposed through a replying affidavit of Jacob Yarangole, sworn on **27/10/2025**. He deposes that in **1997** or thereabout, the land was demarcated and boundaries established after the area was declared an adjudication section, as per the letter of allotment date **21/11/1997** and a

demarcation card dated **312-18** attached **AS JY-1(a)** and **(b)**.

- 7.** The 2nd respondent deposes that at the time, there was no dispute as to what was done in the presence of the exparte applicant. However, the 2nd respondent says that during the inspection of the map, he discovered that the applicant had demarcated his land to include his portion yet one Lovikahyo was in between their parcels, leading to an **Objection No. 1 of 2019** which was hurriedly heard during corona virus time, without allowing him to present his objection, hence the dismissal as per annexure marked **JY-2**.
- 8.** The 2nd respondent deposes that he appealed to the Minister vide Appeal **No. 93 of 2025**, where the hearing on **23/6/2025** each of the parties was allowed to call two witnesses and that the applicant in the course of the proceedings did not mention that he intended to call any other witnesses and cannot therefore turn around to say that his crucial witnesses were not availed or given a chance to present their evidence.
- 9.** Further, the 2nd respondent deposes that the suit land was never family land, given that the family

land is situated at the Kamatepon area demarcation as parcel No. **118**. The 2nd respondent deposes that the issue of *locus standi* is an afterthought, was not raised at the hearing before the Minister, and the court has no mandate at this stage to determine the same.

- 10.** The 2nd respondent deposes that, whereas there is no legal obligation for the Minister to make a site visit of the disputed land, there is evidence that the same was conducted in which the applicant was present, and he did not request to call for additional witnesses. The 2nd respondent takes the view that the Minister acted in line with the law, and the same cannot be faulted. Although the 1st respondent was allowed to put in a response, none was filed by **15/1/2026**.
- 11.** The exparte applicant relies on written submissions dated **20/11/2025**, isolating three issues for determination.
- 12.** The exparte applicant submitted that he owns parcel No. **396**, Shalpogh Adjudication Section; he was not accorded a fair hearing under **Article 47** of the Constitution, and that the court should grant the reliefs sought. Reliance is placed on **M'Thiringi -vs-**

District Land Adjudication and Settlement Officer Karama Adjudication Scheme & Another [2022] KEELC 2590 [KLR].

- 13.** The 2nd respondent relies on written submissions dated **21/11/2025**, isolating three issues for the court's determination. On locus standi, the 2nd respondent submits that parcel No. **396** was not family land initially belonging to their parents, to which he allegedly colluded with the 1st respondent to deprive the exparte applicant of the same; otherwise, the issue was not raised before the Minister at all.
- 14.** On whether the Minister's proceedings were procedurally fair, the 2nd respondent submits that the Minister complied with **Article 47** of the Constitution as read together with **Sections 4(4)** and **7(2)** of the Fair Administrative Action Act. In this case, it is submitted that the proceedings neither show the exparte applicant having raised any such issue before the Minister, nor did he request an adjournment, based on the lack of crucial witnesses.
- 15.** The 2nd respondent submits that the Minister acted fairly before arriving at the decision dated **16/7/2025**, at the participation of the exparte

applicant, hence meeting the constitutional and statutory threshold alluded to above.

- 16.** The 2nd respondent submits that the notice of motion dated **9/10/2025**, therefore, lacks merit; otherwise, the proceedings and decision by the minister met the requirements of expedition, efficiency, lawfulness, reasonableness, and fairness. The 2nd respondent submits that the exparte applicant has failed to demonstrate how the Minister acted *ultra vires*, there was a lack of capacity on his part, and that the proceedings and decision were against the constitution or statute.
- 17.** Further, the 2nd respondent submits that in judicial review, the court does not look at the merits of the matter, but whether the Minister acted procedurally and fairly. Reliance is placed on **Ephantus Njuki Kamumo -vs- District Land Adjudication & Settlement Officer Igamba Ngombe Subcounty & Others ELC No. E022 of 2024**. The 2nd respondent urges the court to dismiss the notice of motion with costs and affirm the Minister's decision.
- 18.** The court has carefully looked at the application, the response by the 2nd respondent, and the written

submissions. The issues calling for my determination are:

(1) Whether the Minister's proceedings and decision met the statutory and constitutional test of fair hearing and the application of the law.

(2) If the ex parte applicant's rights to a fair hearing and the application of the law were infringed.

(3) If the ex parte applicant is entitled to the reliefs sought.

19. Land adjudication is a process where community land rights and interests in land are ascertained and recorded before registration. It is governed by the Land Adjudication Act and Consolidation Act, **Cap 284 and 283**, Laws of Kenya, respectively. During the process of land adjudication, persons with rights and interests go through the process, which has an elaborate dispute resolution mechanism culminating in a Minister's appeal and in court, before a title deed is issued. **Sections 19(2) and (3), 21(3), 26, and 29** of the Land Adjudication Act provide for those processes starting with the Arbitration Board, Committee, Objection to Adjudication Register, and then the Minister's Appeal, which is final.

20. During the process, the power of the court is limited, as held in **Tobias Achola Osindi & 13 others -vs- Cyprianus Otieno Ogalo & 6 others [2013] KEHC 2165 (KLR)**. In **Bhaijee & another -vs- Nondi & another (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (18 February 2022) (Judgment)**, the court observed that the power and jurisdiction of the court to hear and determine disputes on land falling under Caps **283** and **284** is restricted until the mechanisms in the Acts are exhausted.
21. In **Stanley Gitonga -vs- Gerald Mwithia [2013] eKLR**, the court said that the elaborate procedure under the Land Adjudication Act ensures that the disputes are settled within the dispute resolution mechanisms therein up to the Minister's appeal stage.
22. **Section 29(3)** of the Act provides that an appeal to the minister under **Section 26** be lodged within **60** days after the Adjudication Register objection decision. The appeal has to be filed in writing, setting out the grounds of appeal. A copy of the same has to be sent to the Director of Land Adjudication. , who may restrict any dealings on the parcel until the

appeal is heard and determined. The Minister is supposed under **Section 29(1) (b)** of the Land Adjudication Act, to determine the appeal and make such order thereon as he thinks just.

- 23.** The ex parte applicant faults both the proceedings and the decision of the Minister and urges the court to quash them, for he was denied an opportunity to be heard, among other infractions of the law. In **Municipal Council of Mombasa -vs- Republic & Another [2003] eKLR**, the court said that in judicial review, the court is supposed to consider if the decision makers had jurisdiction, whether the persons affected by the decision were heard before it was made, whether the decision maker took into account relevant matters, or did take into account irrelevant matters.
- 24.** In **Republic vs Kenya National Examination Council Ex parte Gathenji & Another Civil Appeal No. 266 of 1996**, the court said that the court must satisfy itself that the public officers have acted procedurally, the decision was reasonable and legal.
- 25.** To succeed in an application for judicial review, the ex parte applicant must therefore satisfy the court

that the decision made was tainted with illegality, irrationality, and was out of procedural impropriety on the part of the decision maker.

- 26.** In **Pastoli -vs- Kabale District Local Government Council and Others [2008] 2 EA 300**, an illegality was defined as when the decision-making authority commits an error of law in the process of making the decision, acts without jurisdiction or *ultra vires*, or contrary to the provisions of the law or its principles.
- 27.** In **Simba & another -vs- District Land Adjudication Officer & 3 others; M'Itonga & 2 others (Interested Parties) [2022] KEELC 15050 (KLR)**, the court said that the scope of judicial review post **2010** is wider and governed by **Article 47** of the Constitution and the Fair Administrative Action Act. The court said that under **Section 4** thereof, an administrator has to comply with the law; otherwise, **Sections 7, 10, 11,** and **13** thereof grant the court powers to determine compliance with both the statutes and the Constitution by the administrators.
- 28.** In this application, the 1st respondent, despite service with the application, opted not to respond to the complaints set out and tell the court when the

Minister became seized of the appeal, and the grounds of appeal which the 2nd respondent had preferred. Jurisdiction is everything, and without it, a court or an organ cannot make a move at all. There must have been a validly filed appeal to invoke the Minister's jurisdiction.

- 29.** The 2nd respondent has not annexed his grounds of appeal, receipt of payments, which would have confirmed whether the appeal was filed on time or not. **Section 29** of Cap **284** has to be read alongside **Section 14** of the Fair Administrative Action Act and **Article 47** of the Constitution. **Section 29(4)** of Cap **284** allows the Minister to delegate, through a gazette, his powers to hear the appeal. In this matter, there is no evidence that Sheila M. Ibunga, who heard the appeal, had delegated authority from the Minister and was seized of a legally filed appeal by the 2nd respondent.
- 30.** It is not clear which grounds of appeal were before the Minister, and if the grounds were prosecuted and determined. The reasons for the decision must accord with **Section 6(4)** of the Fair Administrative Action Act. Errors of law include hearing and admitting an appeal that is filed outside the time and

not considering the grounds of appeal. Acting ultra vires includes acting when one has no jurisdiction or authority to hear and determine the appeal.

- 31.** The ex parte applicant has raised the issue of locus standi. In **Dominic Musei Ikombo -vs- Kyule Makau [2019] eKLR**, the court held that proceedings under Cap **284** are not akin to the Civil Procedure Act and that **Section 13** of Cap **284** talks of a guardian or representative according to African customary law and not a legal representative as per the law of the Succession Act. I find the ground lacking merits.
- 32.** In **Pashito Holdings Limited & Another -vs- Paul Nderitu Ndungu & 2 Others [1997] KECA 423 (KLR)** and in **Judicial Service Commission -vs- Mbalu Mutava & Another [2015] eKLR**, the Court of Appeal held that **Article 47** of the Constitution marks an important and transformative development of administrative justice by laying a constitutional foundation for control of the powers of state organs and other administrative bodies, which is reflective of the national values set out under **Article 10** of the Constitution, one of which is good governance.

33. In **Republic -vs- Deputy County Commissioner Igembe Sub-County & 2 others Ex parte Boniface Kangentu Kaberia; JK & another (Interested Parties) [2021] eKLR** and **Kimwele Kithoka & Others vs DCC Kyuso Subcounty & Others [2022] eKLR**, the court said that a Minister must adhere to **Article 47** of the Constitution, since they decide on matters of land, touching on the law and the rights of citizens, whose decision(s) are final, with serious implications on the interest holders to the land. A Minister must first establish if the appeal was filed on time, the grounds of appeal, and lastly, look at or make a consideration of the history of the dispute right from inception.
34. The exparte applicant has invoked **Article 60** of the Constitution. It speaks to the principles of Kenyan land policy, including the security of land rights, equitable access to land, dispute settlement mechanisms, and the implementation of the policies through national legislation. The court, under **Article 47** of the Constitution, and **Section 11(1) (2)** of the Fair Administrative Action Act, has powers to ensure that Ministers' appeals are heard and determined in line with the law, and an excess of jurisdiction

includes hearing an appeal filed out of time or not considering the grounds of appeal.

- 35.** Judicial review examines procedural fairness, jurisdiction, compliance with rules of natural justice, and acting ultra vires. The exparte applicant says that he was not allowed to call crucial witnesses. Regulation **4(4)** of the Land Adjudication Regulations allows a party with leave of the Minister to call witnesses. Regulation **4(1)** provides that a person submitting an appeal to the Minister must attach a tracing from the demarcation map of the borders of the holdings in dispute.
- 36.** Looking at the proceedings and the decision of the Minister, it is not clear if the 2nd respondent had complied with the rules on appeal and if the Minister called for and reviewed the previous proceedings over the dispute under **Sections 19, 21, and 26** of the Act, before arriving at her decision, including looking at the demarcation map.
- 37.** It is a requirement of the rules of justice that a party accused of something be informed of the grounds of the appeal. There is no evidence that the exparte applicant was served with any grounds of appeal, and that those grounds of appeal by the 2nd

respondent formed the basis of the proceedings and were considered in arriving at the decision dated **16/7/2025**, site visit proceedings, observations and the persons present for the site visit are not attached to the decision, yet they seem to have played a critical role in the decision. See **M'Thiringi -vs- District Land Adjudication and Settlement Officer Karama Adjudication Scheme**, (*supra*) and **Republic -vs- Machakos District Commissioner [2009] eKLR**

- 38.** The 2nd respondent has urged the court to find that it has no jurisdiction to look at the merits of the decision. That submission is not merited. In **Dande & 3 others -vs- Inspector General, National Police Service & 5 others [2023] KESC 40 (KLR)**, the court said that judicial review under the **2010** Constitution has been elevated by embedding rights-based consideration to ensure that administrative decisions align with constitutional values and principles. The court said that the implication is that the court is allowed to examine the merits of an administrative decision where constitutional rights are invoked, through a substantive inquiry to ensure that justice is achieved.

- 39.** In this matter, the exparte applicant in his application has invoked **Articles 47** and **60** of the Constitution. Guided by the **Dande & 3 others -vs- Inspector General, National Police Service** (*supra*), I therefore believe this court has jurisdiction to scrutinize the substance and the fairness of the Minister's proceedings and the decision to balance administrative autonomy with constitutional administrative law justice.
- 40.** In **Dande & 3 others -vs- Inspector General, National Police Service**, (*supra*), the court held that public and administrative office holders must ensure not only procedural compliance, but also substantive fairness in their decision-making. See also **Mumo Matemu -vs- Trusted Society for Human Rights Alliance & Others [2015] KECA 445 [KLR]**, and in *Odhiambo John Dudley Ochel Transformation of Judicial Review in Kenya under 2010 Constitution* <http://www.erepository.monbi.ac.ke>.
- 41.** Having looked at the application and the proceedings leading to the Minister's decision, I find that the same falls short of the constitutional and statutory framework on filing, hearing, and determination of

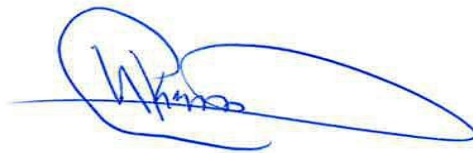
the Minister's appeal under the Land Adjudication, Cap **284**.

- 42.** The upshot is that I proceed to quash the proceedings, directions, and decisions in the **Minister's Appeal No. 93 of 2025** over parcel No. **396 Shalpogh Adjudication Section** involving the exparte applicant and the 2nd respondent. The 1st respondent is prohibited from implementing the same to the detriment of the exparte applicant.
- 43.** Costs to the exparte applicant.
- 44.** Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **4th** day of **March 2026**.

In the presence of:

Court Assistant - Dennis
Bororio for the applicant present
Sugut for the 2nd respondent present
No appearance for the A.G.



**HON. C.K. NZILI
JUDGE, ELC KITALE.**