



Mithika v District Land Adjudication and Settlement Officer Tigania East/West District & another (Civil Appeal 105 of 2018) [2026] KECA 355 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KECA 355 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 105 OF 2018
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA
FEBRUARY 27, 2026**

BETWEEN

SAVERIO MITHIKA APPELLANT

AND

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER TIGANIA
EAST/WEST DISTRICT 1ST RESPONDENT**

PETER KIMANDIU M'TWAMWARI (DECEASED) 2ND RESPONDENT

(An appeal against the judgment of the Environment and Land Court of Kenya at Meru (L.N. Mbugua, J.) at Meru dated 23rd January 2018 in Meru JR. No. 7 of 2017))

JUDGMENT

Introduction

1. This is an appeal from the judgment of the High Court (L. N. Mbugua, J.) delivered on 23rd January 2018 in Judicial Review Case No. 7 of 2017 at Meru, in which the learned Judge dismissed the appellant's application for orders of certiorari and prohibition.
2. At the hearing of the appeal, it was brought to the attention of the Court that the 2nd respondent died on 22nd May 2022. A copy of this death certificate was availed for the record. In the circumstances, the Court marked the appeal against the 2nd respondent as abated.
3. A brief background to the appeal is that Saverio Mithika (the appellant) had sought an order of certiorari to quash the decision of the District Land Adjudication and Settlement Officer Tigania East/West District (the 1st respondent) dated 25th November, 2016 in Objection No. 176 relating to land parcels Nos. 1196, 1249 and 2286 in Antuamburi Adjudication Section, and an order of prohibition to restrain implementation of that decision.



4. The objection proceedings arose within the framework of the *Land Consolidation Act*, Cap 283 Laws of Kenya. The appellant's complaint before the High Court was principally that the objection proceedings were conducted without a proper quorum of the Committee as required under section 9 of the Act, and that the 1st respondent failed to comply with due process.
5. The appellant further contended that this Court in Civil Appeal No. 28 of 2015 had directed that the dispute be heard afresh with due regard to the law, but that the fresh proceedings were conducted contrary to section 9 of the *Land Consolidation Act*.
6. Upon considering the judicial review motion, the High Court found the application to lack merit and dismissed it, leading to the instant appeal.
7. The memorandum of appeal raises the following grounds of appeal that the Environment and Land Court (ELC) erred in law and fact: by failing to find that the process leading to the impugned decision dated 25th November 2016 by the 1st respondent was flawed; by failing to find that the respondent had not complied with Section 9 of the *Land Consolidation Act* and therefore arrived at a wrong finding; and by dismissing the applicant's motion which was merited and therefore occasioned the appellant great injustice. The appellant sought an order that this Court allows the appeal, set aside the decision of the ELC with costs of the appeal and of the ELC to the appellant.

Submissions by Counsel

8. At the hearing of the appeal, learned counsel Mr. Mwanzia was present for the appellant while Mr. Carl Peters Mbaabu was present for the 2nd respondent. Mr. Mbaabu confirmed that the appeal had abated as against his client who died on 22nd May 2022. Mr. Mwanzia confirmed that he intends to proceed against the 1st respondent. The Hon. Attorney General was on record for the 1st respondent and had filed written submissions opposing the appeal. Mr. Mwanzia confirmed that he wished to rely on his written submissions.
9. In his written submissions Mr. Mwanzia submitted that the dispute was between the appellant and the 2nd respondent over land parcels No. 1196, 1249 & 2286 Antuamburi Adjudication Section. That the committee members are not indicated or recorded when the proceedings were conducted on 17th May 2016 when the parties testified. That the committee members present during the delivery of the decision by the respondent on 25th November 2016 were indicated as only three (3): Jacob Bariu M'Larama; Joseph Kirimana and Ken Likiremi Mathiu. Counsel submitted that the record does not show that the 1st respondent sat with any committee during the hearing of the objection as provided by the law.
10. Counsel further submitted that the applicable sections of the *Land Consolidation Act* are Sections 9, 10 and 11 which provide as follows:

“(9) Committee

1. The Adjudication Officer within whose district an adjudication section is situate shall appoint a Committee for each adjudication section from amongst persons resident in the adjudication section and each Committee shall consist of not less than twenty-five members.
2. The Adjudication Officer shall appoint an executive officer for each Committee within the district and such executive officer



shall attend, and may speak, at any meeting of the Committee, but shall not vote.

(10) Arbitration Board

1. The Minister, after consultation with the local authority in whom the land is vested under section 208 of *the Constitution*, shall appoint not less than six and not more than twenty-five persons resident within the district within which any adjudication area is situate to form a panel from which the Adjudication Officer may from time to time select not less than five persons to form an Arbitration Board for any adjudication area within his district:

Provided that—

- i. no person who has sat upon a Committee which has given a decision upon any particular matter shall be selected to be a member of an Arbitration Board to consider the same matter;
 - ii. where any land, in respect of which a Committee is unable to reach a decision on any claim to a right or interest therein, is situated on or near the boundary of a district, and the persons making such claims are resident in different districts, the Minister may, in his absolute discretion, appoint a Special Arbitration Board consisting of eight persons residing within the province; and in any such case a reference in this Part to an Arbitration Board shall include a reference to a Special Arbitration Board.
2. The Minister may appoint any fit and proper person to be the executive officer of any Arbitration Board appointed for a district and such executive officer may attend and speak at any meeting of the Arbitration Board in respect of which he is appointed but shall not vote:

Provided that no person who has acted as executive officer of a Committee which has given a decision upon any particular matter shall act as executive officer of an Arbitration Board to consider the same matter.

(11) Committee to adjudicate

1. The Committee appointed for an adjudication section shall adjudicate upon and determine in accordance with African customary law the claim of any individual person to any right or interest in any land within the adjudication section.
2. If a Committee is unable to reach a decision in accordance with African customary law it shall refer the matter to the



Arbitration Board which shall decide the matter and shall inform the Committee of its decision.”

11. Counsel asserted that from the above provisions, it is imperative that the committee sits to hear an objection. That the record does not speak of the committee during the hearing. Counsel submitted that there was no indication that any question was posed by any committee. In counsel’s view, this was in view of the fact that the committee was not constituted at all or invited to participate in the objection contrary to the law. Counsel concluded that the law was not followed and that the ELC assumed that a committee was in attendance during the objection. Counsel submitted that to do so is to err in law.
12. Counsel further submitted that the role of the Land Adjudication committee in an adjudication register objection is set out under Section 26(1) of the *Land Consolidation Act*. That the Adjudication officer is mandated to consider the matter together with the land Adjudication Committee which plays an active role. Counsel asserted that the proceedings do not indicate that he sat with them and they are not shown to have actively participated in the hearing and determination of the process.
13. Counsel further submitted that the 1st respondent did not indicate to the court by way of reply the number of committee members if at all or whether they were involved. Counsel relied on the decision of Republic v District Land Adjudication Officer Tigania East Ex Parte Paul Mwenda Maingi; Manii Joseph M’Mutura (Interested Party) [2022] eKLR where the court noted that the 2nd respondent cannot purport to answer for the statutory duties and obligations vested on the 1st respondent.
14. Counsel further relied on the decision of M’Ithiringi vs. District Land Adjudication Section and Settlement Officer – Karama & another (Judicial Review E009 of 2021) [2022] KEELC 2814 KLR on the quorum of the committee members where the court quashed the decision where the committee members were less than 10. Counsel urged this Court to allow the appeal with costs to the appellant both in this Court and in the ELC.
15. Learned counsel Mr. Wachira Nguyo, the Deputy Chief State Counsel for the 1st respondent submitted that the cause of action in these proceedings arose from the decision of this Court sitting at Nyeri in Civil Appeal No. 28 of 2015. That this Court directed that the District Land Adjudication and Settlement Officer do hear the parties herein in accordance with the law governing adjudication and, in the presence/aid of the committee. That on 17th May 2016 the 1st respondent conducted objection proceedings as guided by this Court. That this was Objection No. 176 on P/No. 1196/1249, 2286.
16. Counsel further submitted that all the parties were present with their witnesses and the committee members. That the appellant herein participated in the process without any objection at any point until a decision was made by the committee. That the appellant was not coerced by anyone, he subjected himself and the other parties in objection k176 on his own volition. That the appellant remained mute when filing his submissions regarding the averments made by the 2nd respondent regarding the implementation of the Committee’s decision. That in the absence of any evidence to rebut the averments made by the respondents, the Court should believe that the Committee was properly constituted. Counsel asserted that the applicable law was complied with and that the proceedings were conducted with the aid of the Committee.
17. On the question whether the ELC erred by failing to find that the respondent in J.R No 7 of 2017 had not complied with Section 9 of the *Land Consolidation Act*, Counsel submitted that if the appellant was aware that the Committee lacked quorum to perform its mandate, he ought to have objected to the same being conducted contrary to this Court’s Ruling. That the appellant has not produced any form of objections via a letter or an order from the Court. That he proceeded all the way until a decision was made. Counsel submitted that the 2nd respondent who was the appellant in Case No. 28 of 2015 before



- this Court vide his replying affidavit dated 13th March 2017 swore that the Objection Proceedings were heard with the aid of a Committee where 21 members were present. Counsel further submitted that the appellant did not appeal to the Minister against either the process or the decision in the proceedings.
18. Counsel further submitted that two members who sat in the committee vide an affidavit dated 13th March 2017 reiterated what the 2nd respondent had sworn in his affidavit of even date. Counsel asserted that the appellant did not swear an affidavit rebutting the averments of the other parties privy to objection 76. Counsel asserted that the appellant in his affidavit verifying the statement of facts dated 6th February 2017 did not state the number of members who were in the Committee. That he simply stated that there was no quorum without substantiating the same.
 19. Counsel further submitted that the rules of natural justice were observed throughout the process leading to the decision in Objection 176. Counsel submitted that all the parties including the appellant were afforded an opportunity by the respondents to present their respective cases.
 20. On the question whether the ELC erred by dismissing the appellant's motion which was merited and therefore occasioned the appellant great injustice, counsel submitted that judicial review is concerned with the decision-making process and not the merits of the decision itself. Counsel asserted that the appellant on his own volition agreed to participate in Objection 176 by this Court devoid of any complaints. Counsel reiterated that the 2nd respondent in his replying affidavit swore that the Objection Proceedings were heard with the aid of a Committee where 21 members were present. That the appellant did not appeal to the Minister against either the process or the decision in the proceedings.
 21. Counsel further submitted that Judicial Review orders are discretionary in nature and the Court must exercise that discretion judiciously. Counsel urged that the appeal is unmerited and an abuse of the court process. Counsel urged that the appeal be dismissed with costs to the respondents.

Determination

22. We have considered the record, the submissions filed, the authorities cited and the law. This is a first appeal and we are bound as a first appellate court to re-examine the matter by way of a retrial, reconsidering the entire evidential material on record and arriving at our own conclusions. See *Selle v Associated Motor Boat Company* [1968] E. A. 123.
23. We discern the following issues for determination:
 - a. Whether the Committee that conducted Objection No. 176 was properly constituted and had the requisite quorum under section 9 of the [Land Consolidation Act](#).
 - b. Whether due process was followed in the objection proceedings.
 - c. What orders should issue.
24. Section 9(1) of the [Land Consolidation Act](#) provides for the establishment of an Adjudication Committee whose membership and quorum are prescribed by statute. The purpose of the quorum requirement is to ensure legality, transparency and collective decision-making in adjudication matters.
25. The appellant's principal complaint is that the objection proceedings were conducted without a proper quorum. The 1st respondent maintained that the Committee was properly constituted with 21 members, and that no objection was raised during the hearing regarding quorum.
26. Judicial review proceedings are concerned not with the merits of the decision but with the decision-making process. It was incumbent upon the appellant to demonstrate, by evidence, that the Committee sat without the statutorily required quorum.



- 27. No material evidence was presented to demonstrate absence of quorum.
Mere allegation, without evidential backing, cannot suffice to invalidate quasi-judicial proceedings conducted under statute.
- 28. On the question of due process, the appellant alleged arbitrariness and failure to observe procedural requirements. However, no specific procedural violations were demonstrated. There is no indication that the appellant was denied a hearing or that the directions of this Court in Civil Appeal No. 28 of 2015 were disregarded.
- 29. Having carefully reconsidered the material placed before the ELC and the grounds of appeal, we are not persuaded that the ELC erred in dismissing the judicial review application.
- 30. The appellant failed to demonstrate that the Committee was improperly constituted or that the objection proceedings were conducted in violation of section 9 of the Land Consolidation Act or the rules of natural justice.
- 31. Accordingly, this appeal lacks merit and is hereby dismissed.
- 32. Given the circumstances of the case and the fact that the 2nd respondent is deceased, we make no order as to costs.
- 33. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF FEBRUARY, 2026.

W. KARANJA

.....

JUDGE OF APPEAL

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

A. O. MUCHELULE

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

