

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ELC JUDICIAL REVIEW NUMBER E015 OF 2025**

REPUBLIC .....APPLICANT

VERSUS

DEPUTY COUNTY COMMISSIONER

TIGANIA CENTRAL .....1<sup>ST</sup> RESPONDENT

DISTRICT LAND AND SETTLEMENT OFFICER TIGANIA

CENTRAL/EAST.....2<sup>ND</sup> RESPONDENT

THE HON. ATTORNEY GENERAL,

STATE LAW OFFICE.....3<sup>RD</sup> RESPONDENT

AND

BERNARD BAARIU .....1<sup>ST</sup> INTERESTED PARTY

MARTHA GATEBIA .....EX-PARTE APPLICANT

**JUDGMENT**

1. Fair Administrative Actions, whether by individuals or bodies, are required to be efficient, reasonable, proportionate, lawful and above all procedurally fair. In particular, the concept of procedural fairness and propriety are key and critical. Pertinently, any such person or body, must adhere to and comply with the tenets of Natural Justice; Rule of Law; and the Due Process. Anything short or which does not meet the established threshold must give way.
2. The importance of complying with the due process of the law and particularly, the provisions of **Article 47 of the Constitution 2010**, were

highlighted in the case of **County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] KECA 397 (KLR)**.

3. The Court held thus:

*"71. The primary meaning of the rule of law as anybody who has anything to do with the law knows, "is that everything must be done according to law." In relation to governmental power, this means that every government authority must justify its action, which deprives an individual of his right or infringes his liberty, as authorized by law. This "is the principle of legality." But the rule of law demands more than just the principle of legality. It demands, and this is the second meaning of the rule of law, "that government should be conducted within a framework of recognized rules and principles which restrict discretionary power. "This is the principle of due process.*

*72. Due process is a fundamental aspect of the rule of law. Due process is the right to a fair hearing. The right to a fair hearing encapsulated in the audi alteram partem rule (no person should be condemned unheard) and founded on the well-established principles of natural justice, is not a privilege to be graciously accorded by courts or any quasi-judicial body to parties before them. As is clear from Articles 47 and 50 of our Constitution, it is a constitutional imperative.*

*73. 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.*

4. The subject matter/application brings to the fore the question of Administrative Fairness and the doctrine of *Ultra Vires*. The application before the court is dated the 14.10.2025. The application has been brought pursuant to the provisions of **Article 47 of the Constitution, 2010; Sections 8 and 9 of the Law Reform Act, Chapter 26 Laws of Kenya; and Order 53 Rules, 1 and 2 of the Civil Procedure Rules 2010.**

5. The Reliefs sought are:

*I. An order for certiorari be issued to bring this court and quash the proceedings and the decision delivered on 17/07/20215 being and appeal to the **Minister No. 217 of 2024 and Land Parcel Number 4218, 3458,6559 and 4190 Giithu Adjudication Section.***

*II. That costs of this application and the Exparte Chamber Summons for leave be borne by the interested party and the Respondents.*

6. The subject Application is premised on *inter alia*: the statements of facts dated the 14.10.2025; the affidavit in verification of the statements of facts sworn on the 14.10.2025; the grounds contained at the foot of the application; and the various annexures attached to the affidavit in verification of statements of facts including a copy of the proceedings and decision of the Minister [DCC- Tigania Central Sub County] dated the 17.07.2025.

7. The salient grounds that underpin the application are: The Exparte Applicant lodged an appeal to the Minister; the appeal was duly registered and assigned as number 217 of 2024; the appeal touched on and concerned plot number **4190- Giithu Adjudication Area**; the appeal was heard and disposed of *vide*

decision rendered on 17.07.2025; the Minister failed to comply with and abide by the rules guiding fair hearing; the Minister acted beyond his statutory powers; the Minister considered issues/matter which were never placed before him; the Minister undertook site visitation without notice to and involvement of the Exparte Applicant; and the decision of the Minister is unreasonable; irrational and unlawful.

8. The Exparte Applicant has reiterated the foregoing contentions in the body of the affidavit in verification of facts. In addition, the Exparte Applicant has annexed a copy of the proceedings/decision of the Minister pertaining to and concerning the appeal.
9. Flowing from the grounds highlighted in the body of the application and the content of the affidavit in verification of facts, the Exparte Applicant has invited the court to find and hold that the Minister breached and violated her fundamental rights and freedoms. In particular, the Exparte Applicant has revisited the right to fair administrative actions; the right to fair hearing and the right to property.
10. The Respondent opposed the application *vide* a replying affidavit sworn by the 1<sup>st</sup> Respondent. The replying affidavit has highlighted and raised various issues. The issues highlighted at the foot of the replying affidavit are: The parties to the appeal were afforded opportunity to be heard; the parties were duly heard; the proceedings before the Minister complied with the dictates of fair hearing; the decision of the Minister was lawful; and the subject application does not meet the threshold for the grant of the orders sought or at all.

11. The Interested party also filed a replying affidavit and contended that the subject application is premature; misconceived; and contrary to provisions of **Order 53 of the Civil Procedure Rules**. Furthermore, the interested party has also posited that the decision of the Minister was reached and arrived at procedurally and that the Minister observed the tenets of the rule of natural justice. In addition, it has been contended that the applicant herein is merely seeking to have the court undertake a merit review of the decision of the Minister and which process it has been contended falls outside the purview of the judicial review process.

12. Flowing from the foregoing contentions, the Respondents and the interested party have invited the court to find and hold that the application before the court is not only premature, but same is legally untenable. The court has also been invited to find and hold that the impugned decision duly complied with the tenets of the due process. The court has been invited to dismiss the application and to award costs to the Respondents and the interested party.

13. The application came up for hearing on the 20.01.2026 whereupon the advocate[s] for the parties agreed to canvass and dispose of the application by way of written submissions. The court thereafter issued directions pertaining to the hearing and disposal of the application. The directions were: The Exparte Applicant shall file and serve written submissions within 7 days from the date of directions; the Respondents and the interested party shall file and serve written submissions within 7 days from the date of service; and the Exparte Applicant shall be at liberty to file rejoinder submissions [ if any] and same to be filed and served within 7 days.

14. The Exparte Applicant filed written submissions dated the 05.02.2026 and wherein the Exparte Applicant has highlighted three [3] key issues. The issues highlighted by the Exparte Applicant are: Whether the decision of the 1<sup>st</sup> Respondent was in breach of the rules of natural justice; whether the decision of the 1<sup>st</sup> Respondent was *ultra vires*, unfair, unreasonable, biased and tainted with illegality; and whether the applicant is entitled to the order of certiorari or otherwise.

15. Regarding the first issue, learned counsel for the applicant has submitted that the 1<sup>st</sup> Respondent proceeded to and conducted the proceedings pertaining to and concerning the appeal without affording the applicant the necessary facilities to adduce evidence; cross examine the witnesses and to participate in the scene visit. Furthermore, it has been submitted that the 1<sup>st</sup> Respondent proceeded to and visited the scene without notice to the applicant. In addition, it has been submitted that the scene visit was only undertaken in the presence of the interested party.

16. Additionally, it has been submitted that the 1<sup>st</sup> Respondent neither considered nor addressed the grounds of appeal which had been lodged by the Exparte Applicant [the appellant before the Minister]. To this end, it has been submitted that the manner in which the 1<sup>st</sup> Respondent conducted the proceedings violated the Rules of Natural Justice and the right to fair hearing. Moreover, it has been submitted that the proceedings and the ultimate decision are vitiated by procedural impropriety.

17. Secondly, learned counsel for the Exparte Applicant has submitted that the 1<sup>st</sup> Respondent acted outside the scope of his mandate. In this regard, it has been contended that the 1<sup>st</sup> Respondent disregarded the evidence that had

been taken during the Land Committee and the Arbitration Board, without assigning any reasonable basis.

18. In addition, it has been submitted that the 1<sup>st</sup> Respondent also failed to take into account [consider] pertinent facts and issues that had been raised by the Exparte Applicant.

19. According to learned counsel for the applicant, the decision of the 1<sup>st</sup> Respondent goes contrary to the stipulation and requirements of the law. Moreover, it has been submitted that the Minister proceeded to and arrived at an irrational decision, contrary to and in contravention of the established procedures. Simply put, it has been submitted that the decision of the Minister is tainted with illegality and impropriety.

20. Thirdly, learned counsel for the Exparte Applicant has submitted that the circumstance surrounding and underpinning the application warrants the grant/issuance of the orders of certiorari. To this end, learned counsel has posited that the application beforehand is merited. The court has been implored to allow the same and to grant the reliefs thereunder.

21. The Respondents filed written submissions dated 03.02.2026 and wherein same have raised two [2] key issues. The issues raised by/on behalf of the Respondents are: The application before the court does not meet the threshold for the grant of the orders sought; and the 1<sup>st</sup> Respondent complied with and adhered to the due process of the law/ rules of natural justice. In addition, it has been contended that the mere facts that the Exparte Applicant lost the appeal before the Minister [DCC] does not amount to and or constitute breach of the rights to fair hearing.

22. The Interested Party filed written submissions dated the 06.02.2026 and wherein same has highlighted three [3] key issues. The issues highlighted by/on behalf of the interested party are: The application before the court is incompetent and fatally defective; the 1<sup>st</sup> Respondent complied with and followed the due process of the law in arriving at the impugned decision; and that issues raised by the Exparte Applicant fall outside the purview of judicial review. In particular, it has been contended that the Exparte Applicant is inviting the court to engage with the evidence and the facts of the case as pertains to the manner in which plot numbers 4218, 3458 , 6559 and 4190, were created.

23. The Interested Party has contended that the Minister duly reviewed the evidence that had been tendered during the committee stage; and the Arbitration Board Stage and thereafter arrived at an informed decision. The court has been invited to uphold the decision of the Minister and to dismiss the subject application. The court has equally been invited to award costs of the application to the interested party.

24. Having reviewed the substantive application; the statement of facts; the affidavit in verification of statement of facts; the annexures thereto; the replying affidavit sworn in opposition thereto; and upon consideration of the written submissions filed, I come to the conclusion that the determination of the subject application turns on two key [2] issues. The issues are: Whether the impugned decision of the Minister [ 1<sup>st</sup> Respondent] is tainted with procedural impropriety; and illegality or otherwise; and whether the rights

and fundamental freedoms of the applicant were violated/infringed upon or otherwise.

25.Regarding the first issue, it is important to reiterate that the 1<sup>st</sup> Respondent was called upon to undertake the proceedings in respect of the appeal in accordance with the provision of **Section 29 of Land Adjudication Act, Chapter 284, Laws of Kenya**; as read together with provision of **Article 47 of the Constitution, 2010**. In particular, it was incumbent upon the 1<sup>st</sup> Respondent to ensure that the parties to the appeal, namely; the Exparte Applicant, and the interested party, were duly notified of the scheduled hearing date; afforded an opportunity to testify and to call witnesses [where necessary]; granted opportunity to undertake cross examination and thereafter be involved in any incidental proceedings, including visitation to the locus in quo [if any].

26.As pertains to the subject matter, the Exparte Applicant has contended that the 1<sup>st</sup> Respondents did not afford her an opportunity to be heard. Furthermore, the Exparte Applicant has also posited that the 1<sup>st</sup> Respondent also proceeded to and undertook visitation to the locus in quo, without notice to the Exparte Applicant. Besides, it has been posited that the visitation was only undertaken in the presence of the interested party.

27.Moreover, the Exparte Applicant has also complained that the grounds of appeal which same had mounted, were neither interrogated nor addressed. In short, the Exparte Applicant contends that the proceedings before the 1<sup>st</sup> Respondent amounted to a charade. Besides, the Exparte Applicant has also contended that her side of the story/case was disregarded, without any lawful reasons or rational basis being granted.

28. What I hear the exparte to be stating is that the 1<sup>st</sup> Respondent failed to comply with the provisions of **Article 47 of the Constitution, 2010**; as read together with **Sections 6 and 9 of the Fair Administrative Actions Act**. In addition, the applicant is also impugning the actions of the 1<sup>st</sup> Respondent on the basis of breach of the rules of natural justice; Due process; and the right to fair hearing. [ See **Article 50 [1] of the Constitution, 2010**].

29. I beg to state that I have reviewed the decision of the 1<sup>st</sup> Respondent rendered on the 17.07.2025 and I find the said decision, to be wanting on a number of aspects/perspectives. Firstly, the proceedings of the 1<sup>st</sup> Respondent do not show whether or not the parties and in particular, the Exparte Applicant was afforded an opportunity to tender evidence; call witnesses and to cross examine the adverse party and his witnesses. In the absence of any such indications, namely; that the parties were afforded an opportunity to tender evidence and call witnesses, it is impossible to discern wherefrom the first Respondent came up with what is stated to be the Applicant's case and the Respondents' case.

30. Similarly, it is difficult to discern how the 1<sup>st</sup> Respondent arrived at the various findings, which have been enumerated in the body of [sic] the proceedings. In addition, one is left wondering when [if at all] the dispute between the parties was heard. Notably, the proceedings which have been filed and placed before the court do not have the material particulars including: the date when the proceedings were taken; the parties who were present; the witnesses [if any] called; the testimonies of the parties and witnesses [if any].

31.It is also important to state that the 1<sup>st</sup> Respondent at paragraph 23 of the findings/proceedings indicate [s] that “the sitting” visited the parcels to ascertain the statements. Various issues do arise. These are: Who constituted [sic] the sitting; when was the locus in quo visited; who were the parties who attended during the visitation; what evidence [if at all] was taken; and whether the Exparte Applicant was notified and if so, whether the Exparte Applicant was present.

32.It is not lost on me that the Exparte Applicant has contended that the visitation to the locus in quo was undertaken without notice to her and without her participation. Moreover, the exparte applicant has also posited that only the interested party was notified and attended the site visit. Such kind of a situation constitute[s] a serious blemish on the rights to Fair Hearing; the Rules of Natural Justice and the due process of the law.

33.I must state that even though the Exparte Applicant raised and highlighted these pertinent issues, neither the 1<sup>st</sup> Respondent nor the interested party found it apposite to respond to the issues. Suffice it to state that the 1<sup>st</sup> Respondent did not avail to the court any copy of the notice [if any] that was served on the Exparte Applicant. In addition, the 1<sup>st</sup> Respondent also did not avail the minutes/proceedings [if any] that were taken during [sic] visitation to the locus in quo.

34.I am afraid that the manner in which the first Respondent undertook his/her statutory mandate ran afoul the dictates of the rule of the natural justice and the right to fair hearing. The 1<sup>st</sup> Respondent could not conduct any segments

of the proceedings without due notice to and involvement of the Exparte Applicant.

35. In the case of ***Gikenyi v County Government of Nakuru & 4 others (Petition E048 of 2024) [2026] KESC 12 (KLR)***, the Supreme Court of Kenya considered the legal implication[s] of failure to comply with the law underpinning fair administrative actions.

36. The Apex Court court stated thus:

*“The right to fair administrative action as enshrined under Article 47 of efficient, lawful, reasonable, and procedurally fair. See Shollei Vs Judicial Service Commission & another [2022] KESC 5 (KLR).”*

*55. Under this sub issue, the appellant’s argument is that the Respondents’ conduct was not procedurally fair as they did not adhere to due process. More specifically, he claims that the Respondents did not issue him with notice and nor was he granted an opportunity to be heard prior to the decision to stop payment of his salary.*

*56. In Sonko Vs County Assembly of Nairobi City & 11 others [2022] KESC 76 (KLR), this Court held that the audi alteram partem rule, which is a facet of procedural fairness, requires that those who are likely to be directly affected by the outcome of a decision should be given prior notification of the action proposed to be taken, and an opportunity to be heard.”*

37. Other than the procedural impropriety, which vitiates the proceedings undertaken before the 1<sup>st</sup> Respondent, it is also important to point out that the 1<sup>st</sup> Respondent also considered matters that did not fall before him/her. Simply put, the 1<sup>st</sup> Respondent veered of the road and proceeded to address issues that had not been appealed against. To start with, it is common ground that the appeal before the 1<sup>st</sup> Respondent only touched on plot

number **4190 Giithu Adjudication Area**. There was no appeal touching on and concerning plot numbers **4218, 3458 and 6559**.

38. Nevertheless, and in the absence of any appeal touching on the named parcels of land, the 1<sup>st</sup> Respondent in his wisdom [or lack of it] went ahead and made proclamations touching on the said parcels. Moreover, the 1<sup>st</sup> Respondent proceeded to and awarded the said parcels of land to the Interested Party who had not filed any appeal.

39. By considering ownership of parcel numbers **4218, 3458 and 6559**, which were not part of the appeal, the 1<sup>st</sup> Respondent acted illegally; and outside his jurisdiction. The impugned actions were clearly *Ultra Vires*.

40. To buttress the foregoing position, it suffices to reference the holding in the case of **Wanderi & 106 others Vs Engineers Registration Board & 7 others; Egerton University & another (Interested Parties) [2018] KESC 54 (KLR)**.

41. The Supreme Court stated thus:

***“[126] In examining Article 47(1) of the Constitution, the starting point is a presumption that the person exercising the administrative power has the legal authority to exercise that authority. Once satisfied as to the lawfulness of the power exercised, is when the court will delve into inquiring whether in the carrying out of that administrative action, there was violation of article 47(1). This is the test of legality. So that the question of the unlawfulness or otherwise to act is at the onset of the inquiry.” [Emphasis added]***

42. Additionally, the 1<sup>st</sup> Respondent, also went ahead and drew inferences from the evidence of unnamed witnesses and thereafter believed the testimonies of

[sic] the unnamed witnesses. [See paragraph 24 of the proceedings/findings]. It is good practice that where an adjudicator is making any reference to a witness, the witness, [if any] must be clearly identified. Unless that is done, the Appellate Court [forum] may not be able to verify the averment[s]; or certify the authenticity of [sic] the statements.

43. Suffice it to state that the manner in which the 1<sup>st</sup> Respondent proceeded is clearly illegal, unlawful and irrational.

44. Before concluding on this issue, it suffices to take cognizance of the holding in the case of *Pastoli v Kabale District Local Government Council and Others* [2008] 2 EA 300.

45. The court distilled the various principles that guide the determination of whether an adjudicator has acted rationally or otherwise. The court 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...*

*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 the 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.”*

46. Flowing from the foregoing, I come to the conclusion that the impugned decision and the attendant decision were vitiated by: procedural impropriety; illegality; unreasonableness; and irrationality. Quite clearly, the 1<sup>st</sup> Respondent acted ultra vires. In any event, the 1<sup>st</sup> Respondent breached the statutory provisions of **Section 29 of the Land Adjudication Act**, which only clothed same with power to hear an appeal concerning a particular/designated parcel[s] of land.

47. The second issue, that does arise is whether the 1<sup>st</sup> Respondent breached/infringed upon the applicant's right. To start with, the applicant was entitled to various rights. The rights include: right to Fair Administrative Action [**Article 47 of the Constitution, 2010**]; right to Fair Hearing and Fair Trial [**Articles 25 [c] and 50 [1] of the Constitution, 2010**]; right to due process of the law [**Article 10[2] of the Constitution, 2010**] and the right to equal protection and benefit under the law [**Article 27 [1] of the Constitution, 2010**].

48. The 1<sup>st</sup> Respondent was enjoined by dint of Article 10[1] of the constitution to comply with the constitutional dictates and commands. However, the 1<sup>st</sup> Respondent flouted the various commands. The 1<sup>st</sup> Respondent literally undertook proceedings including the visitation to the locus in quo without notice to and involvement of the Exparte Applicant.

49. I beg to state that the Exparte Applicant was subjected to a charade in the name of hearing of the appeal. To this end, I find and hold that the Applicant's right[s] Human Rights and Fundamental Freedom[s] were breached; violated and infringed upon.

50. The importance of the right to fair hearing and compliance with the rule of natural justice was affirmed in the case of **David Oloo Onyango v Attorney-General [1987] KECA 56 (KLR)**.

51. The Court of Appeal stated thus:

*A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at: De Souza v Tanga Town Council [1961] E A 377 at page 338, letter E-G. In Associated Provincial Picture Houses Limited v Wednesbury Corporation, [1948], KB 223 (a decision which was cited by both parties) at page 228-229, Lord Greene MR distinguished judicial acts from an executive act, such as the act of the Commissioner in this case, and continued,*

*“What, then, is the power of the Courts? They can only interfere with an act of executive authority if it be shown that the authority has contravened the law...*

*It is not to be assumed prima facie that responsible bodies .. will exceed their powers.”*

### **Conclusion**

52. The 1<sup>st</sup> Respondent was obliged to ensure that the proceedings before him/her met the constitutional threshold. In particular, it behooved the 1<sup>st</sup> Respondent to ensure that the tenets of the right to fair administrative action were met. Sadly, the proceedings before the 1<sup>st</sup> Respondent and the resultant decision, fell short of the constitutional imperatives.

**Final Orders:**

53.From the analysis in the body of the Judgment, it must have become apparent that the subject application is meritorious. In the premises, I am minded to and do hereby make the following orders:

- i. The Application dated 14.10.2025 be and is hereby allowed.*
- ii. The impugned decision of the 1<sup>st</sup> Respondent made on the 17.07.2025 vide appeal to Minister number 217 of 2024 be and is hereby quashed.*
- iii. The Appeal vide 217 of 2024 in respect of plot number 4190 – Giithu Adjudication Area be and is hereby remitted to hearing and determination by the Cabinet Secretary or her duly appointed Deputy County Commissioner, other than the Deputy County Commissioner – Tigania Central who rendered the impugned decision.*
- iv. The hearing and determination of the appeal to the Minister [subject to clause iii hereof] shall be undertaken on priority basis.*
- v. Costs of the suit/proceedings be and are hereby awarded the Exparte Applicant.*
- vi. The costs in terms of clause [v] shall be agreed upon and in default be taxed in the conventional manner.*

54.It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**OGUTTU MBOYA, FCIArb; CPM [MTI-EA]  
JUDGE**

**In the presence of:**

Naserian : Court Assistant

Mr. Joshua Mwiti for the Ex-parte Applicant.

Ms. Miranda [Senior Litigation Counsel] for the Respondents

Mr. Otieno C for the Interested Party.