



REPUBLIC OF KENYA



**Finnlemm Sacco Society Limited v District Land Registrar
(Kajiado) & 158 others (Environment and Planning Judicial Review
E004 of 2023) [2026] KEELC 1529 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1529 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND PLANNING JUDICIAL REVIEW E004 OF 2023
LC KOMINGOI, J
MARCH 12, 2026**

BETWEEN

FINNLEMM SACCO SOCIETY LIMITED APPLICANT

AND

DISTRICT LAND REGISTRAR (KAJIADO) 1ST RESPONDENT

DIRECTOR OF SURVEYS 2ND RESPONDENT

AND

ADELINE KOTTONYA 1ST INTERESTED PARTY

**WILLY KIMANI NGWITHI, DAVID KIRENGA & MARY NGUITHI KINGA
(SUED AS TRUSTEES OF UJENZI KIVULI INVESTMENT SELF HELP
GROUP 2ND INTERESTED PARTY**

JOHN MAINA KIRUBI & 154 OTHERS 3RD INTERESTED PARTY

JUDGMENT

1. This judgment is in respect of the Notice of Motion dated 5th October 2023. It is brought under Article 22,23 (3) (f) 47,50,159 (2) (2) (d) of *the Constitution* of Kenya, Section 3A of the *Civil Procedure Act*, Section 3,4,5,7, & 9 of the *Fair Administrative Action Act*, Civil Procedure Rules and all other enabling provision of Law.
2. It seeks orders: -
 - i. That an order of certiorari be and is hereby issued quashing the ruling dated 13th July 2023 by the 1st Respondent in the matter of determination of a boundary lines between Kajiado/Kitengela/44319 -vs- Kajiado/Kitengela 44320 and Kajiado/Kitengela 44318.



- ii. That an order of certiorari be and is hereby issued quashing the Surveyor's Report dated 7th June 2023 over Kajiado/Kitengela 44319 -vs- Kajiado/Kitengela 44320.
 - iii. That an order of prohibition be and is hereby issued prohibiting District Land Registrar, Kajiado from implementing, realizing, executing and /or in any manner whatsoever acting on the recommendations of the ruling dated 13th July 2023 in the matter of determination of a boundary line between Kajiado/Kitengela/44319 -vs- Kajiado/Kitengela/44320 and Kajiado/Kitengela 44318
 - iv. That an order of prohibition be and is hereby issued prohibiting the Director of Surveys from acting upon, implementing or in any manner whatsoever executing the Surveyor's Report dated 7th June 2023 in boundary dispute between Kajiado /Kitengela/44319 -vs- Kajiado/Kitengela 44320.
 - v. That the costs of the application be provided for.
 - vi. Any other and further relief that the Honorable Court may deem fit and just to grant in the circumstances.
3. The grounds are on the face of the Notice of Motion and are set out in paragraph 1 to 8.
 4. The Notice of Motion is supported by the affidavit of Francis Langat; the Credit and Risk manager of the Exparte applicant sworn on 5th October 2023.
 5. It appears the respondents did not file any responses to the Notice of Motion despite the fact that they were accorded several opportunities to do so.
 6. There is a Replying Affidavit by David Kirenga one of the trustees of the 158th Interested Party, sworn on the 3rd July 2024.
 7. There are Grounds of Opposition filed by the 158th and 159th Interested parties dated 7th June 2024.
 8. On the 24th September 2025 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.

The Exparte Applicants Submissions

9. They are dated 14th July 2025. They raise three issues for determination: -
 - i. Whether the Applicant has met the grounds or threshold for granting of Judicial Review Order.
 - ii. Whether the Applicant is entitled to the orders sought.
 - iii. Who should bear the costs of the suit.
10. It is submitted that Judicial Review process is the process by which exercise of powers by statutory bodies are checked, and reviewed by the High Court. Reliance is placed in the case of Municipal Council of Mombasa -vs- Republic & Umoja Consultants Limited (2002) eKLR; where the court of appeal stated: -

“Judicial Review is concerned with the decision-making process, not with the merit 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 the in making 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.”

11. It is also submitted that Kajiado/Kitengela/44320 had been sub divided into 362 individual parcels have all these registered proprietors ought to have been served with the summons Reliance is placed on Section 4 (3) of the *Fair Administrative Action Act*, 2015.

12. It is the Exparte applicant’s submissions that all the 362 registered proprietors ought to have been summoned as the determination of the dispute was going to affect the rights and interests of each of them.

13. It is also submitted the 1st Respondent a public officer acting in a quasi – Judicial capacity was under an obligation to observe the rules of natural justice which entails ensuring that all parties who stood to be affected by the decision were given adequate notice and an opportunity to be heard.

He has put forward the case of Pastoli -vs- Kabale District Local Government Council & Others (2008) 2EA 300.

14. It is submitted that the 1st Respondent’s ruling dated 13th July 2023 only dealt with two of the three parcels in contention and failed to make any findings or determinations with respect to Kajiado/Kitengela/44318.

Reliance is placed in the case of Republic -vs- The Chief Licensing Officer and Another Exparte Tom Mboya Onyango HC Misc Application No.524 of 2017 quoted in Re: Kisumu Muslim’s Association HC Misc Application No 280 of 2003; where the Court stated that:-

“Where an officer is exercising statutory power, he must direct himself properly in law and procedure and must consider all matters which are relevant and avoid extraneous matters...”

15. It is also submitted that the Exparte Applicant has demonstrated that the decision by the 1st Respondent was tainted with procedural impropriety, specifically the failure to consider all relevant parcels of land and affected parties in the boundary dispute. That this omission undermines the fairness of the Administrative process hence the Applicant has satisfied the threshold for the grant of Judicial review orders.

16. It is submitted that the Exparte Applicant has established a case on the grant of orders of Certiorari and prohibition.

Reliance is placed in the case of Kenya National Examination Council -vs- Republic Exparte Geoffrey Gathenji Njoroge & 9 Others (1997) eKLR .

17. The Exparte Applicant prays that the orders be granted as prayed.

18. The Respondents did not file any written submissions.

The 158th And 159th Interested Parties’ Submissions

19. They are dated 17th November 2025. It is submitted that the 1st Respondent has jurisdiction under section 9 of the *Land Registration Act*, 2012 to determine boundary disputes.

20. It is also submitted that the Exparte Applicant has not adduced evidence to determine any proprietary rights registered in the register in favour of the 1st to 157th Interested Parties. Further; that sub division of land does not in itself convey any proprietary rights.



21. It is submitted that the 1st to 157th Interested parties have themselves applied for Judicial review or supported the Applicants' application. Further that the Exparte Applicant was represented during the exercise by Zawerio Maina, a surveyor from Geo Plan Surveys Limited.
22. It is also submitted that the issues complained of by the Experte Applicant got to the merit and not the process and therefore not within the province of Judicial Review.
23. It is submitted that the dispute was not time barred. They pray that the Application be dismissed with costs.

Analysis And Determination

24. I have considered the Notice of Motion, the Affidavit in support and the annexures; the response thereto, the written submissions and the authorities cited. The issues for determination are: -
 - i. Whether Exparte Applicant's application has met the threshold for grant of the orders of Judicial review.
 - ii. Who should bear costs of the suit?
25. Section 4 (3) of the *Fair Administrative Action Act*, 2015 provides that:-

“Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

 - a. Prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representation, in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine or where applicable; or;
 - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.”
26. In *Municipal Council of Mombasa -vs- Republic & Umoja Consultants Limited* (2002) eKLR the court of Appeal stated: -

“Judicial Review is concerned with the decision making process, not with the merit 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 the in the 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”.
27. It is not in dispute that the 1st Respondent has jurisdiction under Section 19 of the *Land Registration Act*, 2012 to determine boundary disputes.



28. It is the Exparte Applicant's case that at the onset of the dispute three parcels of land were to be affected. They are Kajiado/Kitengela/44318, 44319 and 44320 respectively. The summons issued dated 11th May 2023 concerned the three parcels.
- It appears the site visit was conducted on the 29th May 2023.
29. The list is however not inclusive on who was present at the meeting when the exercise was undertaken.
30. The surveyors Report dated 7th June 2023 only refers to Kajiado/Kitengela/44319 and 44320 only. I agree with Exparte Applicant's submissions that the said report does not mention Land parcel; Kajiado/Kitengela/44318 which was one of the parcels whose boundaries were to be checked.
31. The Land Registrar in in his ruling dated 13th July 2023 agreed with the Surveyors Report that land parcel Kajiado/Kitengela 44320 had encroached onto 44319.
32. I agree with the Exparte Applicant's submissions that the 1st to 157th Interested parties were not notified to attend the said exercise and yet they would be affected by said decision.
33. There is no response by the Respondents on these claims There is an attempt by the 158th and 159th Interested Parties to answer on behalf of the Respondents. This cannot stand.
- They are not the makers of the report and/or decision that is under review.
34. It is my view that omitting Land parcel; Kajiado/Kitengela /44318 from the exercise was a mistake on the part of the 2nd Respondent. This makes the report to be flawed.
- It was also important to confirm the acreage of the original land parcel; Kajiado/Ololoitikosh/Kitengela/3188.
35. I am satisfied that the affected owners who are members of the Exparte Applicant were not accorded an opportunity to be heard. This is against the rules of natural justice.
- It is not clear who was present or what transpired given the lack of response by the Respondents.
36. It has been stated numerous times that prohibition lies not only for the excess of, or an absence of jurisdiction but also for a departure from the rules of natural justice.
37. In the case of Chief Constable -vs- Evans (1982) 3ALL ER 141 Lord Brightman.... Stated at Page 155;
- “.....Judicial review as the words imply is not an appeal from a decision but a review of the manner in which the decision is made”
38. I am satisfied that the Application herein meets the threshold for grant of the orders sought.
39. I find merit in the Application and grant the orders sought namely: -
- a. That an order of certiorari is hereby issued to bring to this court, the ruling dated 13th July 2023 by the 1st respondent in the matter of determination of a boundary between Kajiado/Kitengela/44319, 44320 and 44318 for quashing and it is hereby quashed.
 - b. That the order of certiorari is hereby issued to bring to this court the surveyor's report dated 7th June 2023; in Kajiado/Kitengela/44319 -vs- Kajiado/Kitengela/4422 and 44318 for quashing and it is hereby quashed.
 - c. That an order of prohibition is hereby issued prohibiting the District Land Registrar Kajiado from implementing the ruling dated 13th July 2023; in the matter of the determination of



boundary lines between Kajiado/Kitengela/44319 -vs- Kajiado/Kitengela/44320 and Kajiado/Kitengela/44318.

- d. That an order of prohibition is hereby issued prohibiting the Director of Surveys from acting upon an implementing the Surveyor's Report dated 7th June 2023 on the boundary dispute between Kajiado/Kitengela/44319 and Kajiando/Kitengela/44320
- e. That each party do bear its costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 12TH DAY OF MARCH 2026.

L KOMINGOI

JUDGE

In Presence of:-

Mr K Mwalo for the Exparte Applicant

No appearance for the Respondents

Mr Omondi for Mr S N Otinga for the 158th and 159 the Interested parties.

Court Assistant: Nelima

