

**IN THE COURT OF
APPEAL AT NYERI**

(CORAM: M'INOTI, KANTAI & ALI - ARONI,

JJ.A.) CIVIL APPEAL NO.153 OF 2020

BETWEEN

HENRY NJUE NJIRU

*(Suing on behalf of Ikambi Clan and
as legal representative of the late*

NJIRU KUGARIURA).....APPELLANT

AND

**DISTRICT COMMISSIONER,
MBEERE**

DISTRICT.....1ST

RESPONDENT MINISTER FOR LANDS AND

SETTLEMENT.....2ND RESPONDENT DIRECTOR OF LAND

ADJUDICATION AND SETTLEMENT.....3RD

RESPONDENT AND

**ABIUD WILSON NJUE.....INTERESTED
PARTY**

*(An appeal against the Judgment of the Environment and Land Court of
Kenya at Embu (Angima, J.) delivered on 27th July, 2020*

in

**E.L.C. JR No. 5 of
2019 Formerly
E.L.C. JR No. 122 of 2007.)**

JUDGMENT OF THE COURT

This is a first appeal arising from the judgment of the Environment and Land Court (“ELC”) at Embu delivered on 27th July, 2020 which dismissed the appellant’s judicial review

application. Our mandate on first appeal is set out by **rule 31** of the **Court of Appeal Rules, 2022**, which requires us to re-appraise the evidence, draw inferences of fact and come to our own conclusions.

We shall set out the facts and evidence as we consider whether the ELC reached a proper determination of the application filed before it.

The suit property was known as parcel 2244 Mbeere District and was in contention in Embu County Council objection Nos. 172 of 1985, 572 of 1983 and 1130 of 1983. The Embu Land Adjudication Officer made a determination on 11th November 1992 and awarded the suit property to 17 clans. Thereafter Appeal No. 146 of 1996 and Appeal No. 171 of 1996 were filed to the Minister for Lands and Settlement simply to clarify the subdivisions on the ground between the 17 clans. The appellant herein, **Henry Njue Njiru** (*suing on behalf of Ikambi Clan and as Legal Representative of the late Njiru Kugariura*), filed Appeal No.171 of 1996 on behalf of Ikambi Clan, while the Interested Party, **Abiud Wilson Njue**, filed Appeal No. 146 of 1996 on behalf of Mururi Clan. The Minister delegated the hearings of the appeals to the District Commissioner, Mbeere District. When the appeals were considered, the appellant, in Appeal No. 171 of 1996, was awarded the 58 acres of land sought at Ikunja, which was said to have been the area they pointed out in their claim. Meanwhile, in the other appeal No. 146 of 1996, the land was distributed among

various clans, with the balance of the land being given to the Interested Party's clan, less the portions

reserved for public utilities. The appellant's claim was affirmed as 58 acres and his clan did not receive any other land.

The appellant herein filed judicial review proceedings at the ELC seeking to quash the decision and awards of the Minister in both Land Appeals No.146 of 1996 and No.171 of 1996. He also sought to have the respondents compelled to give him 269 acres of land in the Kiandagwa area, in addition to the 58 acres in the Ikunja area, all located within parcel number 2244 Mbeere District. He sought all this land for distribution to his clan; Ikambi Clan.

The appellant's argument was that the finding in appeal No. 171 of 1996 was a nullity because it was heard as a fresh cause. He also stated that the appeals to the Minister were filed out of time and that the decision erroneously shared out land which should have been shared in the main adjudication decision.

The ELC in its judgment delivered on 27th July, 2020 stated that there was no evidence that the appeals were filed out of time and that there was no evidence of the appellant being denied a fair hearing before the Minister. The court also held that section 29 of the Land Adjudication Act did not provide any particular procedure to be followed by the Minister in the hearing of an appeal. The court noted that the Land Adjudication Officer set aside 26 portions of land for public utilities but did not allocate definite portions to the 17 clans. The court did not fault the clans for the manner in which they sought clarification; using appeals to

the Minister. The court

held that just because no reason was given for the rejection of the claim for 269 acres, it did not justify judicial review of the ministerial appeal. The court also held that there was no evidence that the appellant was entitled to 269 acres and that the decision of the Minister was final under the Act.

The appellant was aggrieved by the decision of the ELC and filed the present appeal. The notice of appeal is dated 10th August, 2020. The memorandum of appeal is dated 5th October, 2020 and asks the court to set aside the judgment by the ELC and issue orders quashing the award of the Land Appeal cases No.171 of 1996 and No.146 of 1996. The appellant seeks an order compelling the respondent to award the appellant 269 acres in what became Mbeere/Kirima/2955 or all subdivisions thereof.

The appellant contends that the evidence taken by the Minister on appeals was contrary to the rules of evidence, that the court ignored jurisprudential development and validated disobedience of court orders. The appellant contends that his evidence on the history of the land was ignored and that his claim was dismissed without reason. He states that the award by the Minister was contrary to the finding in Minister's Appeal 171 of 1996, and the court erred in failing to re-assess the Minister's decision. He states that the Interested Party's evidence could not support the finding made by the Minister. The appellant also faults the ELC for allowing documents to be introduced through submissions. The appellant has filed submissions dated 17th

May,

2023 in support of the appeal and urging the court to allow the appeal. He submits that he had proved his case for the grant of judicial review orders and the same ought to have been allowed.

The respondent has filed submissions dated 5th December, 2023 through the office of the Attorney General. They oppose the appeal. They submit that the contentions by the appellant were outside the purview of judicial review which ideally is meant to ensure fairness to the parties in administrative issues and not deal with the merits of decisions. They also state that the Ministerial Appeals do not have an exact rule of procedure and that the appellant fully participated in the hearings of the appeals to the Minister, thus there was no violation of the rules of natural justice. They term the appeal as unmerited and urge the court to dismiss it with costs.

The Interested Party has filed submissions dated 2nd May, 2025. He states that the appeals were not filed out of time but were given the case numbers administratively after they were filed. He also states that the rules of natural justice were observed during the proceedings, that the decisions were lawful and that the property as stated no longer exists as it was subdivided among thousands of people. It is also submitted that a claim for allocation for land in a judicial review is improper and in any case the appellant's clan was awarded more than 1500 acres. The Interested Party urges the court to dismiss the appeal with costs.

This appeal was heard on 22nd September, 2025 on the Court's virtual platform. Learned counsel **Mr. Omoke** appeared for the appellant while learned counsel **Mr. Okwaro** appeared for the Interested Party. A hearing notice was served on 3rd September, 2025 to the Attorney General's Office but there was no appearance for the respondents.

Counsel for the appellant urged the court to consider that the scope of judicial review goes beyond procedure and requires the Court to consider substantive issues in its determination. He argued that the Minister's appeal considered matters of evidence and the court should engage in a similar endeavor and find the circumstances as peculiar enough to warrant a substantive look.

Counsel for the Interested Party submitted that judicial review is about procedure and not about merit because the parties do not have an opportunity to adduce substantive evidence. He urges this court to find the appeal unmerited and dismiss it.

We have considered the record of appeal, the submissions by all the parties and the relevant law.

Black's Law Dictionary defines judicial review as:

“Kenneth Bagnall, in his book, *Judicial Review* (Profex, 1985) defines judicial review as the process of challenge either to administrative or judicial or quasi-judicial action.”

The record demonstrates that the appellant sought an order of certiorari to have the decision of the Minister quashed for the reason that Appeal No.171 of 1996 was filed out of time, that it was heard as though it was a fresh cause and the decision was made contrary to the rules of natural justice and the law.

The scope of judicial review has been well settled through several judicial pronouncements. Before the enactment of the Fair Administrative Actions Act which came after the promulgation of the Constitution of Kenya, 2010 judicial review was governed by the Law Reform Act and Order LIII of the Civil Procedure Act. A party (like the appellant here) had to fit within the strict parameters of the said Act and rules to be entitled to approach a court through judicial review for a remedy. Considering the scope of judicial review, the Supreme Court of Kenya had this to say in **Dande & 3 Others vs. Inspector General, National Police Service & 5 Others [2023] KESC 40 (KLR)**:

“It is clear from the above decisions that when a party approaches a court under the provisions of the Constitution then the court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of order 53 of the Civil Procedure Rules and does not claim any violation of rights or even violation of the Constitution, then the court can only limit itself to the process and manner in which the decision complained of was reached or action taken and following our decision in SGS Kenya Ltd and not the merits of the decision per se.”

We note that the appellant's judicial review application was filed based on the provisions of sections 8 and 9 of the Law Reform Act therefore we are unable to acquiesce to the invitation by the appellant's counsel to consider the merit of the decision by the Minister in the impugned appeals. We adopt the position of this Court in the case of **OJSC Power Machines Limited, Trans Century Limited, and Civicon Limited (Consortium) vs. Public Procurement Administrative Review Board Kenya & 2 Others [2017] eKLR** where it was stated as follows:

"The law on the jurisdiction of the High Court to entertain judicial review proceedings are encapsulated in several decisions, some of which were cited before us while the learned Judge applied others in his judgment. The law, from these decisions is to the following effect;

That the purpose of judicial review is to ensure that a party receives fair treatment in the hands of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceeding.

Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision being challenged had the jurisdiction, whether the persons affected by the decision were heard before the decision was made and whether in making the decision, the public

body took into account

irrelevant matters or did not take into account relevant matters.”

While we consider the appeal herein, we re-affirm that judicial review is a discretionary measure on the part of a Judge and the appellate court will not interfere with it lightly. We rely on the case of ***Kajoi (Legal representative of Geoffrey Kajoi Akwalu) vs. Land Adjudication and Settlement officer (Igembe Settlement Officer) & Another [2022] KECA 802 (KLR)*** where this Court stated:

“The principle upon which this Court may interfere with the judgment of the superior court arising from such proceedings was stated by this Court in Kenya Revenue Authority & 2 others vs. Darasa Investments Limited [2018] eKLR as follows:

“... judicial review orders are still discretionary by nature and whenever this Court is called upon to interfere with the exercise of judicial discretion, as in this case, it ought to be guided by the principles enunciated in Coffee Board of Kenya vs. Thika Coffee Mills Limited & 2 Others [2014] eKLR. The Court ought not to interfere with the exercise of such discretion unless it is satisfied that the Judge misdirected himself in some matter and as a result arrived at a wrong decision, or that it be manifest from the case as a whole that the Judge was clearly wrong in the exercise of discretion and occasioned injustice.”

The appellant herein challenges the procedure adopted by the Minister in handling the impugned appeals. **Section 29** of the **Land**

Adjudication Act provides the Ministerial mandate on appeals from objections arising from adjudication. It states:

“29. Appeal

- (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by-**
 - (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and-**
 - (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.**
- (4) Notwithstanding the provisions of section 38(2) of the Interpretation and General Provisions Act (Cap. 2) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.”**

Essentially, the above provision does not specify exactly what process or considerations the Minister or his representative shall use in determining the appeals. During the hearing of the appeals in issue, representatives of the clans, including the appellant, were heard and recorded as testifying and engaging

in cross-

examination. It was also stated that the Minister's delegate (District Commissioner, Mbeere) visited the scene during the proceedings. None of these actions can be said to have been detrimental or against the purport and spirit of natural justice. In any event, the appellant who was the appellant in one of the appeals before the Minister has not denied that he took part in the hearing of the appeals, which fact is visible from the proceedings filed. We agree with the learned Judge's finding that the clans concerned were accorded a hearing, that they were given an opportunity to cross-examine witnesses and that Minister was not shown to be biased or have any personal interest in the suit property or the outcome of the proceedings.

The appellant agrees that his clan was given 58 acres of land. He does not dispute that certain land was set aside for public utilities and that other clans were to also receive a share of the same land. The appellant did not state exactly how the Ikambi Clan was prejudiced with regard to the land they received, more so in relation to the general distribution of the land to several clans who all claimed part of the property.

With regard to the contention that the Ministerial appeals were filed out of time, we agree with the learned ELC Judge that the assertion was not proved. We also rely on a letter dated 30th June, 2020 which confirms that the appeals were filed within the stipulated 60 days period but were not issued case numbers until

1996 for what was explained to be administrative reasons. Therefore the court was right to dismiss that argument.

We find that the process undertaken by the Minister in the hearing of Appeals No.146 of 1996 and No.171 of 1996 were done in line with the mandate under the Land Adjudication Act and in accordance with the principles of natural justice and did not warrant interference by the court by way of judicial review. The conclusion is that this appeal is unmerited and is dismissed with costs to the Interested Party.

Dated and delivered in Nyeri this 25th day of March, 2026.

K. M'INOTI

.....
JUDGE OF APPEAL

S. ole KANTAI

.....
JUDGE OF APPEAL

ALI - ARONI

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed

DEPUTY REGISTRAR