Republic v Arbitration Committee Mwea Irrigation Scheme & another; Joseph & 3 others (Ex parte Applicants); Murira & 2 others (Interested Parties) (Judicial Review E004 of 2023) [2025] KEELC 5359 (KLR) (17 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5359 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

JUDICIAL REVIEW E004 OF 2023

JM MUTUNGI, J

JULY 17, 2025

BETWEEN

REPUBLIC ..... APPLICANT

AND

THE ARBITRATION COMMITTEE MWEA IRRIGATION SCHEME ..... 1ST RESPONDENT

THE NATIONAL IRRIGATION AUTHORITY ..... 2ND RESPONDENT

AND

LUCY WANJIRU JOSEPH ..... EX PARTE APPLICANT

TERESIA WANJIKU MURIRA ..... EX PARTE APPLICANT

SIMON MURIRA MURAGE ..... EX PARTE APPLICANT

TERACISIO NDAMBIRI MURIRA ..... EX PARTE APPLICANT

AND

RICHARD MUCHIRA MURIRA ..... INTERESTED PARTY

JEREMIAH NJOKA MURIRA ..... INTERESTED PARTY

VERONICA WAKARIA KIMANI ..... INTERESTED PARTY

JUDGMENT

1. The Ex-parte Applicants filed a Notice of Motion dated 23rd October 2023 seeking the following substantive order:

1. An order of certiorari to quash the proceedings and verdict of the 1st Respondent, the Arbitration Committee of the Mwea Irrigation Scheme, made on or about 11th July 2023 in respect of Rice Holding No. 3178, Unit 7, Wang'uru.

2. Costs be provided for.

2. The motion was supported by a Statement of Facts, Verifying Affidavit, and annexures filed on 6th October 2023. The Applicants are four siblings of the same family. They stated that the disputed rice holding belonged to their late mother, Margerita Mabuti Murira, who was the registered tenant under the Mwea Irrigation Scheme. They averred that in 2007, their mother filed Wang'uru SRM CC No. 61 of 2007 against some of the parties herein, which culminated in a family arbitration agreement on 11th August 2008. That agreement was reduced into a written consent and adopted by the Court on 21st May 2009, with its terms forwarded to the 2nd Respondent, the National Irrigation Authority.

3. The Applicants contended that since 2008, each child had been using ½ an acre of the holding in accordance with the family arrangement, and the 1st Ex-parte Applicant continued managing the mother's portion after her demise on 15th November 2018, with the knowledge and acquiescence of all. They argued that the Arbitration Committee had no power to vary or override the consent, which reflected a de facto allocation based on longstanding possession and usage.

4. The Applicants averred that the committee convened a hearing on 11th July 2023, but:

    1. The nature of the complaint was not disclosed in the hearing notice.

    2. The alleged complainant, the 2nd Ex-parte Applicant (Teresia Wanjiku), did not attend, yet was recorded as having given evidence.

    3. The proceedings were vague, with no clear complainant or fair opportunity for the applicants to participate.

    4. They were not allowed to cross-examine or to respond meaningfully.

    5. The verdict lacked reasons, was never announced during the session, and was only discovered later when extracted on 24th August 2023.

    6. The verdict imposed an equal 0.57-acre allocation to each of the seven children, which was not supported by evidence.

5. The Applicants therefore argued that the decision was factually unsupported, jurisdictionally flawed, and procedurally unfair.

6. The Interested Parties, who are also children of the late Margerita, filed a Replying Affidavit dated 19th February 2024. They admitted that the rice holding was in their mother's name and that the consent order existed. However, they argued:

    1. The consent was not registered with the 2nd Respondent before their mother's death;

    2. Upon their mother's demise, the holding became subject to succession, and no nomination had been made under Regulation 7(1);

    3. The consent did not operate as a nomination, but merely allowed the 1st Ex-parte Applicant to assist their elderly mother in managing the two acres — not to inherit or assume rights;

    4. The committee's decision to allocate 0.57 acres to each child was equitable and took into account the absence of a will or nomination;

5. The Ex-parte Applicants' application was a reaction to their failed suit in MCELC E023 of 2022, which had sought to restrain interference with the holding and was dismissed.

7. The Respondents, through the Scheme Manager, filed a Replying Affidavit sworn on 20th February 2024. They outlined the history of the holding as follows:

    1. The land was originally allocated to Joseph Murira Nguma in 1987 and subsequently to his wife, Margerita.

    2. In 2007, Jeremiah Njoka (2nd Interested Party) complained about the subdivision of the holding.

    3. A consent order was issued in Wang'uru SRM CC 61 of 2007 on 21st May 2009, but no written nomination was ever made to the Manager as required under Regulation 7.

    4. After Margerita died in 2018, the office received numerous complaints from family members and convened dispute resolution meetings.

    5. The matter was heard and settled on 11th July 2023, with a resolution that the four-acre holding be subdivided equally among the seven children (0.57 acres each).

8. They maintained that:

    1. No succession nomination was presented to the Manager within 30 days as required.

    2. The Committee was empowered under Section 25 of the *Irrigation Act*, 2019 and Regulation 7(5) of the 1977 Regulations to manage such disputes.

    3. The process followed was lawful and fair;

    4. The Ex-parte Applicants were guilty of laches, having failed to pursue nomination or succession mechanisms in time.

Parties written arguments

9. The Ex-parte Applicants filed submissions dated 10th September 2024. They argued that the Arbitration Committee lacked jurisdiction to determine the dispute because their mother, the original licensee, had already made a valid nomination, which was reflected in the consent order recorded on 21 May 2009 in Wang'uru SRM CC No. 61 of 2007.

10. They contended that the 2009 consent was an expression of nomination and that no party challenged it within the prescribed timeline. They further argued that the Arbitration Committee violated Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act* in various ways:

    1. The hearing notice did not disclose the nature and reasons for the administrative action.

    2. The alleged complainant, Teresia Wanjiku (2nd Ex-parte Applicant), was absent, yet the proceedings record her as present and testifying.

    3. They were not allowed to cross-examine or respond meaningfully to the allegations.

    4. The committee failed to give reasons for its decision, and the verdict was never announced at the sitting.

    5. The entire process was procedurally flawed, rendering the decision null and void.

11. The Respondents filed submissions dated 11th November 2024. They emphasized that Judicial Review is not concerned with the merits of the decision, but only with the lawfulness of the process followed. They contended that:

    1. The Committee acted within its mandate under Section 25 of the *Irrigation Act*, 2019 and Regulation 7(5);

    2. No formal nomination had ever been made to the Scheme Manager in writing as required.

    3. The 2009 consent only governed the management of the land during the mother's lifetime, and did not amount to a nomination.

    4. The Committee's resolution to divide the holding equally among the seven children was lawful and equitable.

12. The Respondents asserted that due process was followed, stating that the Ex-parte Applicants received a hearing notice, attended, made submissions, and that the Committee resolved a longstanding family dispute based on the available evidence.

13. The Interested Parties filed submissions on 17th April 2025, aligning with the Respondents. They argued that the consent order cited by the applicants did not constitute a formal nomination. The Committee's decision was deemed fair and rational, aiming to provide equal shares to all beneficiaries in the absence of a will or nomination. The Ex-parte Applicants expressed dissatisfaction with a previous failed suit (MCELC E023 of 2022) and were re-litigating the same issues. They contended that procedural fairness had been observed and that the applicants had ample opportunity to participate.

14. I have considered the pleadings, submissions and the relevant law. The issues for determination are:

    1. Whether the Arbitration Committee had jurisdiction to hear and determine the dispute

    2. Whether the Ex-parte applicants were denied their right to be heard.

    3. Whether the order of certiorari can issue.

Whether the Arbitration Committee had jurisdiction to determine the dispute

15. The question of jurisdiction turns on the applicable legal framework. The parties cited the Irrigation (National Irrigation Schemes) Regulations, 1977, but it must be noted that these were repealed and replaced by the Irrigation (General) Regulations, 2021, made under the *Irrigation Act*, 2019. Under Regulation 36 of the Irrigation (General) Regulations, 2021:

    1. A permit holder may nominate a successor in writing and may at any time revoke or amend such nomination by notice to the Authority (Reg. 36(3));

    2. Where a permit holder dies without nominating a successor, an authorised dependant may, within one month, nominate a successor in writing to the Authority or the County Irrigation Development Unit;

    3. Such nomination must be approved by the Scheme Management Committee (Reg. 36(4)).

16. In this case, no written nomination by the deceased (Margerita Mabuti Murira) to the Authority was presented. The 2009 consent order did not meet the threshold of a nomination under the 2021 Regulations, as it was not:

    1. Addressed to or registered with the Authority;

2. Approved by the Scheme Management Committee, nor

3. Made in accordance with the permit-holder's rights under Regulation 36.

17. The absence of a formal, registered, and committee-approved nomination meant that the holding became subject to Regulation 36(4). That provision authorizes dependants, such as the children of the deceased, to nominate a successor within one month of the licensee's death — subject to committee approval.

18. Consequently, the Arbitration Committee (scheme management committee) had jurisdiction to receive and determine such nominations and to resolve disputes among dependants in the absence of a valid nomination. This is consistent with its mandate under Section 25 of the *Irrigation Act*, 2019, to resolve disputes relating to irrigation infrastructure and water use on scheme land.

19. The Court in the Case of Fatuma Maale Mohamed v National Irrigation Board & 2 Others (2020) eKLR Cherono, J struck the suit out on the basis that it was the National Irrigation Board through the mechanism established under the Act, who had jurisdiction to determine any disputes arising thereunder and that the aggrieved party, could only challenge the decision made by way of Judicial review and not by filing a new suit in Court. Hon. Justice Cherono, relying on the Case of Municipal Council of Mombasa v Republic and Umoja Consultants Ltd (2002) eKLR expressed himself thus:-

> "I agree with the above decision. It is trite that the National Irrigation Board has the sole statutory mandate to manage, control, regulate and allocate land within National Irrigation Schemes in Kenya. It is also trite that the National *Irrigation Act* Cap 347 is a self-regulating and sustaining law with definite provisions for dispute resolution and Appeal mechanisms for anyone aggrieved by the decision made by the Board under the Act. These decisions by the Board can only be challenged by way of Judicial Review under Order 53 CPR and Article 22 of *the Constitution* of Kenya 2010."

20. Having regard to Section 25 of the *Irrigation Act*, 2019 and Irrigation (General) Regulations, 2021 Regulation 36 and persuasive Judicial pronouncements, I find that the Committee had jurisdiction under the law to hear the dispute.

Whether the Ex-parte Applicants were denied fair administrative action

21. Under Article 47 of *the Constitution* and Section 4(3) of the *Fair Administrative Action Act*, 2015, every person has the right to:

1. Prior and adequate notice of the nature and reasons for the administrative action;

2. An opportunity to be heard and make representations.

3. Reasons for any adverse decision;

4. Procedural fairness throughout.

22. In the present case, the process adopted by the Arbitration Committee fell short of these requirements. The record reveals:

1. The hearing notice failed to disclose the nature of the dispute;

2. The alleged complainant as per the record was absent, yet the record attributes submissions to her.

3. The Ex-parte Applicants were not allowed to question or challenge any evidence and the record does not show they had such opportunity.

4. No reasons were offered for the verdict.

5. The decision was communicated only weeks later, without explanation.

23. As observed in the case of Pastoli v Kabale District Local Government Council & Others [2008] 2 EA 300, procedural impropriety includes failure to observe the rules of natural justice and breach of statutory fairness requirements. The court observed: -

> " 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."

24. The Respondents did not controvert the improprieties alleged by the Applicants and no evidence was adduced to demonstrate that the Applicants were afforded due process during the hearing. I am satisfied that the Ex-parte Applicants were denied a fair hearing contrary to *the Constitution* and the *Fair Administrative Action Act*, 2015.

Whether an order of certiorari should issue

25. In the Case of Kenya National Examination Council v Republic ex parte Geoffrey Gathenji Njoroge [1997] eKLR, the Court of Appeal held that certiorari is available to quash decisions made:

1. Without jurisdiction;

2. In excess of statutory authority;

3. In breach of the rules of natural justice.

26. Although the Committee had jurisdiction under the current regulatory framework, the hearing and verdict were conducted in a procedurally defective manner. The entire process was tainted by unfairness and a lack of transparency, warranting the intervention of this Court.

27. Upon careful review, the Court finds that while the Committee had jurisdiction to entertain the dispute under Section 25 of the *Irrigation Act*, 2019 and Regulation 36 of the Irrigation (General) Regulations, 2021, the proceedings culminating in the verdict of 11th July 2023 were procedurally flawed and unfair and failed to meet the standards of fair administrative action guaranteed under Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015.

28. The Committee failed to:

1. Properly notify the Ex-parte Applicants of the nature of the hearing;

2. Ensure the presence and participation of the alleged complainant;

3. Allow the Ex-parte Applicants to respond and cross-examine adequately;

4. Provide written reasons for the decision rendered making it difficult to determine how they arrived at the decision. At the very least the decision ought to have the findings of the Committee leading to the decision.

29. These cumulative deficiencies rendered the proceedings and verdict unlawful, unreasonable, and procedurally unfair, thereby justifying the issuance of the prerogative remedy of certiorari to quash the impugned decision.

30. Accordingly, an order of certiorari to quash of the 1st Respondent made on 11th July 2023 is hereby issued in terms of prayer (1) of the Notice of Motion dated 23rd October 2023.

31. The parties will bear their own costs of the application.

JUDGMENT DATED. SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17TH DAY OF JULY 2025.

J. M. MUTUNGI

ELC JUDGE