



**Republic v Director Land Adjudication & Settlement & 5 others;  
Nzungila (Exparte Applicant) (Judicial Review Application E001 of 2024)  
[2025] KEELC 274 (KLR) (Environment and Land) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 274 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
JUDICIAL REVIEW APPLICATION E001 OF 2024**

**EK WABWOTO, J  
JANUARY 31, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE DIRECTOR LAND ADJUDICATION & SETTLEMENT ... 1<sup>ST</sup>  
RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR, TAITA TAVETA  
COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER, TAVETA SUB-  
COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**LYDIA KATHEKE MRUTU ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**MARTIN KALUMU NZUNGILA ..... EXPARTE APPLICANT**

**RULING**

1. This Ruling is in respect to the 6<sup>th</sup> Respondent’s application dated 30<sup>th</sup> November 2024 which seeks several orders; the said application seeks to set aside the directions issued by this court on 25<sup>th</sup> November 2024, the 6<sup>th</sup> Respondent also seeks leave to file a supplementary affidavit and the Exparte Application and the Respondents be at liberty to file further affidavits if so desired. The 6<sup>th</sup> Respondent also seeks for



summons to be issued to the Exparte Applicant and the 4<sup>th</sup> Respondent herein for cross-examination by the 6<sup>th</sup> Respondent's Counsel.

2. The application is premised on the grounds that Counsel for the 6<sup>th</sup> Respondent came on record in this matter on 25<sup>th</sup> November 2024.

That upon our perusal of the proceedings and the documentation relating to this matter, it has become necessary for the 6<sup>th</sup> Respondent to seek leave of the Honorable Court to avail all available evidence pertaining to this matter that are pertinent for the fair and final determination of these proceedings.

3. It was averred that the following pertinent issues are particularly of not in this regard:
  - a. It has been established that in her application dated 20<sup>th</sup> June 2024, the *Ex Parte* Applicant herein produced before this court a fictitious and/or fabricated decision purporting it to have been rendered by the 4<sup>th</sup> Respondent in Appeal No. 162 of 2020: Martin Kalumu Nzungula =Versus= Lydia Mruttu.
  - b. It has further been established that Appeal No. 162 of 2020: Martin Kalumu Nzungula =Versus= Lydia Mruttu is a nullity having been filed well outside the 60 days time limit expressly prescribed under section 29 of the *Land Adjudication act*.
4. According to the Applicant, this court was moved on fraudulent premises to grant leave for the filing of these judicial review proceedings. It is accordingly necessary and in the interest of justice that the Exparte Applicant herein and the 4<sup>th</sup> Respondent be cross examined to ascertain the circumstances under which two decisions purporting to be of the 4<sup>th</sup> Respondent were exhibited as evidence before this court and for the court to act accordingly.
5. It was further averred that this court has been invited to enforce a nullity and/or illegality and unless the court is provided with the full record of all evidence touching on these proceedings, it may irreparably embarrass itself by furthering an illegality. Fraud unravels everything and it is trite law that once an illegality is called to the attention of the court, the court should investigate the same and resolve it.
6. It was the intention of counsel to bring these issues to the attention of the court on 25<sup>th</sup> November 2024 and to seek leave orally to file this application before the fixing of a hearing date but unfortunately counsel was engaged in another matter as this court was erroneously stated in the judiciary causelist to be away.
7. It was also contended that the issues are fundamental and central to the fair and just determination of these proceedings and no prejudice or loss will be occasioned to any party by granting the parties a fair chance on litigating the issues.
8. The application was also supported by the Supporting Affidavit sworn by the 6<sup>th</sup> Respondent Lydia Katheke Mruttu on the 2<sup>nd</sup> December 2024 which reiterated the grounds made in support of the application.
9. The application was opposed by the Exparte Applicant and the 1<sup>st</sup> to 5<sup>th</sup> Respondents. The Ex-parte Applicant filed a Replying Affidavit sworn by Martin Kalumu Nzungila on the 20<sup>th</sup> January 2025. It was averred that the 6<sup>th</sup> Respondent participated in the proceedings and never raised any objection to the same.
10. It was averred that the 6<sup>th</sup> Respondent is now estopped from claiming an illegality in the decision rendered by the Minister which she seeks to have the decision implemented.



11. It was further averred that the application seeks to delay the matter, the allegations regarding the decision on Appeal No. 162 of 2020 are baseless and speculative and in any event the court is yet to render itself in the matter. The 6<sup>th</sup> Respondent participated in the proceedings relating to Appeal No. 162 of 2020 yet she did not raise any objection before the Minister and neither did she aver that the request to summon the ex-parte and the 4<sup>th</sup> Respondent for cross-examination is unwarranted as the 6<sup>th</sup> Respondent has not demonstrated the necessity of such cross-examination or its relevance to the resolution of the substantive issues herein.
12. The 1<sup>st</sup> to 5<sup>th</sup> Respondents filed grounds of opposition dated 27<sup>th</sup> January 2025. The same was premised on the grounds that the application is misconceived, frivolous, vexatious and an abuse of the process of the court, the prayers sought are premature, the orders sought are untenable and the Applicant is guilty of laches.
13. During the plenary hearing of the application, Learned Counsel Mr. Awele made oral submissions on behalf of the 6<sup>th</sup> Respondent while Learned Counsel Mr. Mutinda made oral submissions on behalf of the Exparte Applicant while Learned Counsel Ms. Waswa submitted on behalf of the 1<sup>st</sup> to 5<sup>th</sup> Respondents.
14. The 6<sup>th</sup> Respondent urged the court to grant the reliefs sought in the said application. It was submitted that the cross-examination is being sought on the basis that there are two conflicting decisions which were fraudulently uttered and that the said proceedings were presided without jurisdiction and further no prejudice will be suffered by the Exparte Applicant and Respondents.
15. The 6<sup>th</sup> Respondent in opposing the application submitted that there is no basis to grant the said application and more so upon which the 6<sup>th</sup> Respondent should be allowed to cross-examine the Exparte Applicant and the 4<sup>th</sup> Respondent. It was also submitted that they have not stated which paragraphs upon which they intend to cross-examine the deponents. In regard to the issue of jurisdiction it was submitted that the 6<sup>th</sup> Respondent participated in the process and is estopped from raising the same at this stage.
16. The court has considered the application and the main issue for consideration is whether the said application is merited.
17. While cross-examination in judicial review proceedings is considered a vital part of ensuring fair administrative action, meaning that parties have the right to cross-examine witnesses in such cases, although the court has discretion to allow it depending on the circumstances and whether it is necessary to enhance the course of justice; this is particularly relevant when evidence is presented through affidavits.
18. The court has the discretion to decide whether to allow cross-examination based on factors like the importance of the information sought and the potential for unnecessary delay. In many cases, evidence in judicial review proceedings is presented through affidavits, and the court may allow cross-examination of deponents if it deems it necessary to clarify issues or uncover relevant information. If a party wishes to cross-examine a deponent in a judicial review case, they must provide a compelling reason to the court demonstrating why cross-examination is necessary to achieve justice.
19. Order 19 Rule 2 of the *Civil Procedure Rules* governs the court's power to allow cross-examination on affidavits, providing the court with discretion to order cross-examination when appropriate.
20. In the instant case, the court has considered the application and it is the finding of this court that the proceedings before court fit into the perfect pigeon hole of normal judicial review proceedings. Deviation from the normal manner of disposal of judicial review proceedings so as to include cross-



examination of the deponents of the Exparte Applicant's supporting affidavit would go against the normal practice of judicial review proceedings. It is the view of this court that it has been demonstrated by reference to the decided cases above that the request for order for summons to issue for cross examination of the deponents is not merited. However, this court shall proceed to grant the applicant leave to file the supplementary affidavit within a limited time as was sought in her application.

21. Consequently, the application dated 30<sup>th</sup> day of November 2024 is hereby determined in the following terms: -
- a. The 6<sup>th</sup> Respondent is hereby granted 7 days to file and serve her supplementary affidavit.
  - b. Upon service, the Exparte Applicant and 1<sup>st</sup> to 5<sup>th</sup> Respondents shall have 7 days to file any further affidavits if deemed necessary.
  - c. Any other relief not expressly granted is deemed as declined.
  - d. Each party to bear own costs of the application.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI ON 31<sup>ST</sup> DAY OF JANUARY 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Court Assistant: Mary Ngoira.

Mr. Mutinda for Exparte Applicant.

Mr. Awele for 6<sup>th</sup> Respondent.

No appearance for other parties.

