



**M'Etharia v Land Adjudication Committee Mbwaa 1 Adjudication & 2 others; Mitheu (Interested Party) (Judicial Review E009 of 2023) [2024] KEELC 3681 (KLR) (18 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 3681 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
JUDICIAL REVIEW E009 OF 2023**

**CK YANO, J**

**JANUARY 18, 2024**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL  
REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF SECTION 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA  
AND IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF SECTION 7 & 11 OF THE FAIR  
ADMINISTRATIVE ACTION ACT IN THE MATTER OF SECTION  
OF THE LAND ADJUDICATION ACT, CAP. 284 LAWS OF KENYA**

**AND IN THE MATTER OF THE PROCEEDINGS, FINDINGS AND DECISION  
OF THE COMMITTEE IN CASE NO. 201/21/22 OVER P. NO. 1612 MBWAA 1  
ADJUDICATION SECTION WITHIN TIGANIA WEST ADJUDICATION AREA**

**BETWEEN**

**PATRICK KIREMA M'ETHARIA ..... APPLICANT**

**AND**

**LAND ADJUDICATION COMMITTEE MBWAA 1 ADJUDICATION .... 1<sup>ST</sup>  
RESPONDENT**

**LAND ADJUDICATION & SETTLEMENT OFFICER, TIGANIA  
WEST ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JAMES MITHEU ..... INTERESTED PARTY**



## JUDGMENT

1. Pursuant to leave granted by this court on 6<sup>th</sup> June, 2023, the ex-parte applicant filed a Notice of Motion application dated 7<sup>th</sup> June, 2023 seeking the following orders:-
  - i. That a Judicial Review writ of certiorari do issue to bring into this court for purposes of being quashed the proceedings, findings and decision of the 1<sup>st</sup> and 2<sup>nd</sup> respondents dated 9/12/2022 in case NO. 201/21/22 over Land Parcel number 1612Mbwaal/Adjudication Section.
  - ii. That a Judicial Review writ of Prohibition do issue prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> respondents and their agents from implementing or giving effect to the decision dated 9/12/2022 in case No. 201/21/22 over land Parcel number 1612 Mbwaal Adjudication Section.
  - iii. That costs of this application be borne by the Respondents and the interested party.
2. The application is brought pursuant to Section 8 and 9 of the *Law Reform Act*, Order 53 Rule 3 of the Civil Procedure Rules, Sections 7 & 9 of the Fair Administrative Actions Act, Article 47 of *the Constitution* and all other enabling provisions of the Law and is supported by the statement of facts and the verifying affidavit of Patrick Kirema M'Etharia sworn on 7<sup>th</sup> June, 2023 and the annexures thereto.
3. The application is based on the grounds that the ex-parte applicant was not accorded a fair hearing, that the committee members who heard the dispute and rendered the decision were not impartial and were biased in favour of the interested party who is married to one of the committee members, that the proceedings before the committee were procedurally flawed on account of the committee members sitting to adjudicate over a matter which directly affected one of the committee members and directly affected the entire panel, that the decision of the 1<sup>st</sup> and 2<sup>nd</sup> respondents is irrational, oppressive and a clear manifestation of biasness against the ex-parte applicant and that the impugned decision is void ab initio and repugnant of justice.
4. The ex-parte applicant reiterated the above grounds in his verifying affidavit and stated that he is the owner of the suit land which initially measured about 8 acres. That the land was gathered by the ex-parte applicant's mother around the year 1976 and that the applicant was born thereon in the year 1979 and has been in occupation together with his six siblings. The ex-parte applicant has exhibited photographs showing alleged developments on the land marked "PMK1".
5. The ex-parte applicant further states that in the year 2016, the area was declared an adjudication section and all the neighbouring parcels were issued with parcel numbers except the suit land owing to interests by the committee members because of the potential area in which the land is situate. The ex-parte applicant named Francis Mwongela Iringo and Julius Chokera as some of the committee members interested in the suit land.
6. The ex-parte applicant states that he objected to the committee members taking his land and complained to the adjudication officer, and for 5 years the ex-parte applicant was not issued with a parcel number. That in the year 2022, a new adjudication officer was posted to head the section and upon the ex-parte applicant's complaint, the committee members were directed to demarcate the land and issue the ex-parte applicant with a number. That the directive by the adjudication Officer was obeyed.
7. The ex-parte applicant states that one Stella Kabuthia who is a wife of the interested party was appointed to serve as a committee member and sits in the panel with Daniel Julius Limbere, Francis



Mwongera Iringo, Julius Chokera, Jane Maiti, Julius Kimathi, David Karithi and Gedion Muchui Arithi. The applicant has annexed a copy of proceedings in a different matter showing the said panel marked “PKM2”. That the said committee members through her husband who is the interested party herein, filed an objection in the year 2022 against the suit land. That the ex-parte applicant protested against the matter being heard by the said panel but the case was heard nonetheless. The applicant states that the protests were never recorded save for the withdrawal by Francis Mwongela Iringo.

8. The ex-parte applicant further states that the interested party is a Njuri Ncheke elder and being aware of the consequences of giving false testimony, he refused to testify and instead used his son one Domiciano Mutabari to testify on his behalf. The applicant states that the panel visited the land and observed what was on the ground. That despite being shown the ex-parte applicants 12 homesteads built thereon and the fact that the interested party does not occupy or utilize any part of the land, the committee went ahead and arrived at a finding that the interested party was in possession of part of the land and eventually awarded him the whole land, save for two one-acre portions awarded to the ex-parte applicant. The applicant has annexed copies of the summons and proceedings and decision of the committee marked “PKM3” and “PKM4” respectively. It is the ex-parte applicant’s contention that the committee did not accord him a fair hearing and was impartial and biased in favour of the interested party, and failed to observe the principles of natural Justice.
9. The firm of M/s Mithega & Kariuki Advocates for the ex-parte applicant in their submissions dated 31<sup>st</sup> October, 2023 gave a brief summary of the case and pointed out that the respondents and the interested party never filed any response despite being served and submitted that the averments by the ex-parte applicant stand uncontroverted. They relied on the case of Esther Victoria Wanjiku Mahoro Versus Mary Wambui Githinji & 3 Others [2021] eKLR which restated the Ugandan case of Pastoli Versus Kabole District Local Government Canal & Others (2008) 2 EA which laid the circumstances under which Judicial Review can succeed as follows:-

“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”.
10. Counsel for the applicant pointed out that the ex-parte applicant’s case is that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were partial and biased towards the applicant and relied on the case of Republic Versus Independent Electoral and Boundaries Commission & 3 Others ex-parte Wavinya Ndeti [2017] eKLR, Philip Tunoi & Another Versus Judicial Service Commission, Techno Serve Limited Versus Nokia Corporation, International Chamber of Commerce/International court of Arbitration (Interested party) 2021 eKLR. It is their submissions that the presence of Stella Kabuthia wife of the interested party herein in the panel presented a case of actual bias. That although she is not listed as a member in the proceedings, it is the applicant’s testimony that she was present in the panel, a fact which has not been disputed. It is the submissions of the applicant’s counsel that her presence in the panel could not enable objective judgment to be made.
11. It was further submitted that Julius Chokera who was a member in the committee and who sat in the panel and voted yet he had interests in the applicant’s land. Learned counsel for the applicant cited Section 8(1) of the [Land Adjudication Act](#) and relied on the case of Ernest & Young LLP Versus Capital Markets Authority & another [2017] eKLR and submitted that the respondents did not follow procedural fairness as they did not observe the rules of natural justice. It is their submission that the applicant has laid out a case that shows procedural impropriety and illegality of the decision by the respondents and argued that this application is with merit and urged the court to grant the orders sought as well as costs.



12. I have considered the application and the submissions made. I find that the issues that arise for determination are those submitted by learned counsel for the applicant to wit, whether the applicant has laid out a case for granting the orders sought and who bears the costs of the suit.
13. The applicant's case is that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were partial and biased towards him. In support of the alleged bias and partiality, the applicant argued when the area was declared an adjudication section, the applicant was never issued with a parcel number and stayed for 5 years without one, and only got the parcel number after making complaints.

Secondly, that when objections was filed against the suit land, the applicant made an application for recusal of some committee members but that the said objection was disregarded and the dispute was heard and the impugned decision arrived at.

14. I have perused the material relied on by the applicant and in particular the proceedings marked "PMK4". I note that there was no application for recusal of any member of the committee as alleged by the applicant. Of more significance is that there was no committee member by the name Stella Kabuthia in Land Committee case No.201/21/22 over parcel NO. 1612 Mbwaa 1 adjudication Section. Therefore, the alleged bias and partiality against the 1<sup>st</sup> and 2<sup>nd</sup> respondents on account of the said Stella Kabuthia of being a member of a committee of a different panel in my view is far fetched and has not been proved by the applicant. It is clear from the material on record that Stella Kabuthia was only a committee member in other cases as shown in the annexure marked "PMK2" and not the case involving the suit land. The mere presence of the interested party's spouse in a totally different dispute cannot be a matter that creates any likelihood of bias in the determination of the proceedings over the suit land. The submission that her presence in a different matter could not enable the objective judgment be made over the suit land for which she was not sitting is in my view too remote and superfluous.
15. The applicant also alleges that Julius Chokera who was a member in the committee and who sat in the panel and voted had an interest in the suit land. However, the applicant has not exhibited any material to support his allegation that the said Julius Chokera had an interest in the suit land. In addition, there is no evidence to show that the applicant made an application for the recusal of the said committee member. The applicant has only raised the issue during these judicial review proceedings. As for Francis Mwongela Iringo, the proceedings are clear that he withdrew from the proceedings and therefore cannot be said to have influenced the impugned decision.
16. Furthermore, from the material on record, it is evident that all parties, including the ex-parte applicant were afforded an opportunity by the respondents to present their respective cases. In my considered view, the process followed by the respondents throughout the proceedings as well as the making of the decision were fair, objective and procedural. There is no evidence of bias or partiality disclosed as submitted by the applicant. It has not been shown that the impugned decision was made contrary to the law or that the rules of natural justice were violated.
17. In addition to foregoing, it should also be noted that the land adjudication procedure under the [Land Adjudication Act](#) allows any person who is not satisfied by a decision given to appeal through the following stages:-  
  
Land Committee, Land Arbitration, AR Objection and finally Appeal to the Minister. Therefore, the applicant needs to have exhausted all these procedures before turning to the court.
18. It is my finding that the motion herein lacks merit and the same is based on mere innuendoes and unsubstantiated claims which have not been proved to the required standard.



19. Consequently, the notice of motion dated 7<sup>th</sup> June, 2023 is dismissed.
20. Since the respondents and the interested party never filed any responses to the application, I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 18<sup>TH</sup> DAY OF JANUARY, 2024**

**Hon. C. Yano**

**ELC – Judge**

**In the presence of:-**

Court Assistant: Kiragu

Ms Gitari holding brief for Kiogora Nganga for ex-parte Applicant

No appearance for the respondents

No appearance for party.

**Hon. C. Yano**

**ELC – Judge**

