



**Republic v Igembe & another; Njeru & another (Interested Parties);
Njeru(Deceased (Exparte) (Environment and Land Judicial Review Case
E013 of 2022) [2024] KEELC 3501 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 3501 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E013 OF 2022**

CK YANO, J

FEBRUARY 22, 2024

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

AND

IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF LAND PARCEL NOS. 1795,13903 AND 12980

AND

IN THE MATTER OF AR OBJECTION NO. 805, 806, AND 808

.

BETWEEN

REPUBLIC APPLICANT

AND

DISTRICT LAND ADJUDICATION OFFICER, IGEMBE 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

JIMLENTUS NJIRI NJERU INTERESTED PARTY

MERCY WAMBURA NJERU INTERESTED PARTY

AND



**HENRY PAUL IRERI NJERU (SUING ON BEHALF OF THE ESTATE OF
PROTASIO NJERU(DECEASED EXPARTE**

JUDGMENT

1. Pursuant to leave granted by the court on 5th December, 2022, the *ex-parte* applicant filed a notice of Motion dated 22nd December, 2022 which was amended on 9th October, 2023 seeking for orders *certiorari* to call to this court and quash the decision/award in AR Objection No. 805, 806 and 808 dated 29/7/2022 concerning LR. 1795, 13903 and 12980 Igembe South Adjudication Section and costs of the suit.
2. The Motion is supported by the affidavit of Protasio Njeru, the applicant sworn on 20th December, 2022, statement of facts and affidavit verifying filed together with the application for leave and the annexures thereto.
3. The main grounds in which the application is made are that the *ex-parte* applicant was not notified and was not heard in the AR Objections. That the person who attended the hearing of the AR Objections was not authorized by the applicant. The *ex-parte* applicant contended that the 1st respondent acted *ultra vires* and in excess of jurisdiction and illegally. That the land committee was absent during the hearing as required by the *Land Adjudication Act*, and that the interested parties had no capacity in law to file objection on behalf of a deceased person without letters of administration.
4. In his supporting affidavit the *ex-parte* applicant avers that the 1st interested party and the 2nd interested party are son and wife of the applicant's brother Michael Njeru Raphael (Now deceased). That according to the Objection proceedings availed to him the interested parties herein had filed Objection No. 805, 806, and 808 dated 30th August, 2022 against the *ex-parte* applicant over land parcel Nos. 1795, 13903 and 12980. The *ex-parte* applicant further states that according to the said objection proceedings, his son Lawrence Christopher purported to appear, on behalf of the applicant when he had not been authorized to do so and the *ex-parte* applicant had no knowledge of the issues in the objection.
5. That in the said objections, the interested parties were demanding 25 acres from the *ex-parte* applicant's land parcels. The *ex-parte* applicant states that he does not owe the interested parties any land as he owed his brother only 20 acres which was returned as admitted by the interested parties in the proceedings.
6. The *ex-parte* applicant further states that he had other land transactions with his brother Michael Njeru whereby the said applicant's brother transferred to the applicant 8 acres at Athiru Gaiti as compensation. That his brother owed him Ksh. 400,000/= which was to be compensated by 4 acres.
7. The *ex-parte* applicant avers that the land transactions between him and his brother were purely commercial transactions which can only be subject of litigation in an Environment and Land Court and not in AR Objections and therefore the 1st interested party (sic) totally lacked jurisdiction to deal with such matters and in the circumstances acted *ultra vires*. That the 1st respondent also acted out of his jurisdiction by concerning himself with land which falls in Embu County which is outside his jurisdiction.
8. The *ex-parte* applicant contended that this brother never raised any issue during his lifetime and therefore the interested parties are only out to grab his land. That the record shows that the 1st respondent heard the AR Objection alone without the assistance of the committee contrary to



- the *Land Adjudication Act*. It is the applicant's contention that the procedure of hearing the AR Objections was totally flawed and did not conform with the law. He reiterated that the interested parties had no legal capacity to file the said objections and that he was denied a chance to be heard contrary to the rules of natural justice. The *ex-parte* applicant argues that after he gave his brother back 20 acres he could not be compelled to give a further 19 acres as this would be fraudulent. That it is in the interest of justice that the application be allowed. He has annexed copies of the proceedings marked "PINI".
9. In their submissions dated 14th November, 2023, the firm of Ayub K. Anampiu & Co. Advocates for the *ex-parte* gave a summary of the application and pointed out that the *ex-parte* applicant passed on and was substituted by his son, Henry Paul Ileri Njeru pursuant to leave granted by the court.
 10. The *ex-parte* applicant's counsel submitted that there was no summons showing the applicant was ever informed of the proceedings hence his constitutional rights to be heard was violated. That one Lawrence Christopher Njeru who appeared during the hearing of the AR Objection and purported to be a party had no authority to act for the *ex-parte* applicant. That a written authority should have sufficed and no inquiry was made to verify whether Lawrence Christopher was authorized to appear for the *ex-parte* applicant.
 11. It is further submitted that the respondent acted in excess of jurisdiction for making a decision regarding parcels of land which are situate in Embu County which is outside the jurisdiction of the respondent.
 12. Learned counsel for the *ex-parte* applicant further submitted that the interested parties lacked capacity to file objection on behalf of Michael Njeru who at the time of filing of the AR Objection was deceased.
 13. The applicant's counsel relied on Meru ELC. HC. JR. No. 13/2015 – Peter Kangili Rukwaro – Versus – The Land Adjudication Officer, The Attorney General & M'Mwereria M'Ithiria and MER HC. JR. No. 27/2015 – Atanasio Ntonjikira & Another Versus Land Adjudication Officer, The Attorney General & Peter Kirema.
 14. In opposing the application, the Respondents filed a replying affidavit sworn by J. M Muchiri, the Land Adjudication and Settlement Officer Igembe Central, North and South Sub- Counties on 12th January, 2024. The deponent avers that the adjudication register of Amungenti "A" Adjudication was completed on 22nd March, 2022 vide a notice of the same date and persons affected by the register were called upon to lodge written objections. That the interested party filed an objection vide a letter received on 9th May, 2022 claiming 25 acres of land from Land Parcel Nos. 1795, 13903, 12929 and 12980 pertaining to Protasio Njeru. The deponent states that following that objection he issued summons dated 8th June 2022 to Protasio Njeru Informing him of the said Objection and indicating the date the case would be heard. Copies of eh said notice, letter and objection summons have been annexed.
 15. It is the 1st respondent's contention that both Protasio Njeru and the 1st Interested party were properly summoned and even the hearing was postponed twice in the presence of the applicant's son, Lawrence Christopher Njeru who was also assisted by Protasio's personal assistant one Douglas Miriti M'Limbiro. That the *ex-parte* applicant was duly represented by his son Lawrence Christopher Njeru who even signed a certificate admitting to be ready to represent his father. That the representative in fact produced evidence through documents and statement in defense all of which formed part of the grounds raised in arriving at the final decision.
 16. The respondent's aver that while hearing an objection or any claim the Land Adjudication officer or the Committee is not restricted to hear the case when the parties involved in the case are personally present. That a representative can be sent at the time and place specified in the summons. The 1st respondent denied making up a decision on land which is outside jurisdiction as the decision did not



affect any other parcels of land, except parcels Nos. 1795, 13903 and 12927 which were affected by the aforementioned objections and are all in Amungenti “A” Adjudication Section.

17. The 1st respondent states that the Committee members participated in considering the matter contrary to the averment by the ex-parte applicant. That though the Land Adjudication Officers have always been sitting with the committee while determining any matter referred to them, there is no one time that the names of the committee present were ever listed in any proceedings. That the views of both committee members present and those of the presiding Land Adjudication Officer are all regarded as the views of both parties in general. That the final decisions and any orders are given by the presiding land Adjudication officer. The 1st respondent further states that proceedings under the [Land Consolidation Act](#) Cap 283 Laws of Kenya do not require Letters of Administration so as to file an Objection as the Act provides for ascertaining of rights and interests and therefore any person aggrieved or who has an interest in land can file an objection. That due to the foregoing, the objection was heard and determined in accordance with the [Land Consolidation Act](#).
18. In their submissions dated 16th January, 2024, the Hon. Attorney General for the Respondents reiterated the respondent’s averments and submitted that the ex-parte applicant was duly represented in the proceedings by his son. Learned counsel for the respondents cited Section 72(c) of the [Land Adjudication Act](#).
19. It was also submitted that the Adjudication Officer did not act outside his jurisdiction and did not concern himself with land outside his jurisdiction.
20. On whether the 1st respondent had capacity to entertain the objection in absence of letter of administration, the respondents’ counsel submitted that proceedings under the [Land Consolidation Act](#) do not require Letters of Administration and do not conform to the strict rules of Litigation. Further, that the preamble of the Act provides that its purpose is for ascertainment and recording of rights, therefore any person with interest in such land can raise an objection. They relied on the case of [Dominic Musei Ikembo Versus Kyule Makau](#) [2019]eKLR, [Peter N. Ngandi & 2 Others Versus John Muthami & Another](#) [2022]eKLR and [Republic Versus District Commissioner Machakos & Another ex-parte Kakui Mutiso](#) [2014]eKLR.
21. It is further submitted that the ex-parte applicant’s objections were heard in accordance with the Act. It is the Respondents submission that the Objection proceedings were done procedurally, legally and with propriety and the court was urged to dismiss the suit with costs.
22. I have considered the pleadings the legal and statutory authorities and the submissions filed. The issues for determination are whether the orders of Judicial Review sought are available to the applicant as well as costs.
23. In order for the applicant to succeed in the application, he must satisfy the court that the 1st respondent acted un-procedurally, that his decision was unreasonable and the decision was illegal and *ultra vires* or acted without jurisdiction. See [Republic Versus Kenya National Examination Council Ex-parte Geoffrey Gathenji Njoroge & 9 Others](#) [197]eKLR.
24. The circumstances under which orders of Judicial Review can be issued were also elaborated in the case of [Pastoli Versus Kabale District Local Government Council & Others](#) (2008) 2EA 300 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. Illegality is when the decision making authority commits an error of law in the process of taking the decision for making the act, the subject of the complaint. Acting



without jurisdiction or *ultra vires* or contrary to the provision of a law or its principles are instances of illegality. Irrationally, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards. Procedural impropriety, is when there is 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 to act or 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 legislature instrument by which such authority exercises jurisdiction to make a decision”

25. In the case of *Municipal Council of Mombasa Versus Umoja Consultants Limited* [2002]eKLR, the Court of Appeal held inter alia, that:-

“...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 in 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”

26. In this case, the *ex-parte* applicant alleged that he was not heard in the AR Objections. That the 1st respondent failed to observe the rules of natural justice. The *ex-parte* applicant’s complaint is that the person who attended the AR Objection proceedings was not authorized by him.

27. I have perused the said AR Objection proceedings. I have also looked at the response made by the 1st respondent vis-à-vis the allegation made by the *ex-parte* applicant. In the 1st respondent’s replying affidavit, there are summons marked “JMM3” informing the *ex-parte* applicant of the said Objection and the date the case was to be heard. The proceedings clearly indicate that one Lawrence Christopher Njeru a son to the *ex-parte* applicant attended the proceedings and even signed a certificate admitting that he was ready to represent his father, the applicant herein.

28. Section 13 of the *Land Adjudication Act* as well as Section 13 of the *Land Consolidation Act* provide that a person may be represented during such proceedings by a duly authorized agent. Furthermore, the *Land Consolidation Act* goes further and states that the representative is according to African Customary Law. It does not refer to a person with a written authority. In this case, the *ex-parte* applicant admits that his son was present and participated in the proceedings. The applicant has not explained to this court the reason why his son attended and even signed a certificate admitting that he was representing the applicant. Since the proceedings conducted under, the *Land Adjudication Act* and the *Land Consolidation Act* are not strictly speaking akin to proceedings under the *Civil Procedure Act*, this court finds that the *ex-parte* applicant was duly represented and took part in the Objection Proceedings. I am therefore not persuaded that the respondents failed to abide by the rules of natural justice since the applicant was duly heard through his son who was his representative.

28. The *ex-parte* applicant has also raised the issue that the interested party had no legal capacity to file the said objections on behalf of the deceased person without Letters of Administration. In my view, Letters of Administration is not a prerequisite in an adjudication matter. In the case of *Maingi Versus*



Kyumbwa & 2 Others (Constitutional Petition 11 of 2012) 2022} KEELC 3225 (KLR)(27 July, 2022)
(Judgment) wherein the court held:-

“On the second issue, our view is that proceedings, conducted under the Land Adjudication Act are not strictly speaking akin to proceedings under the Civil Procedure Act, The District Commissioner acting on behalf of the Minister has wide latitude to conduct the proceedings in a manner that meets the substantive ends of Justice. Section 13 of the Land Adjudication Act talks of “Guardian” or “representative according to African Customary Law”. It does not refer to legal representatives. The strict rules of civil litigation as relates to capacity to sue and be sued do not apply to proceedings before the committee or the minister. It is not therefore necessary for a person appearing on behalf of a family or clan where the head of the family or clan has died to possess letters of administration in respect of a deceased claimant. The parties therefore had locus standi to appear before the adjudication committee, lack of letters of administration notwithstanding. Further, the Act allows every person who consider that he had an interest in the land in question to lodge a claim to the recording officer. In this case, the parties did not need to obtain letters of administration to protect their interest in the land in question. Furthermore, the two qualified as representatives of the deceased under customary law to represent their respective families in the adjudication proceedings. That ground meets the same fate as the first ground”.

29. The *ex-parte* applicant has also submitted that the decision of the 1st respondent was tainted with issues of jurisdiction. The applicant argued that the 1st respondent decided on land which was outside his jurisdiction and therefore his actions were *ultra vires*. I have perused the proceedings. The hearing was in respect of land in Igembe Adjudication Area, Igembe South Sub-county, Amungenti “A” Adjudication Section. The AR Objections were in respect to Parcels Nos. 805, 806, 807, 809, 1795, 13903, 12927 and 12980 within the said Section. The *ex-parte* applicant has not indicated which of the parcels of land was outside the jurisdiction of the 1st respondent. In my view, the *ex-parte* applicant has simply made a general statement that the 1st respondent lacked jurisdiction, but has failed to demonstrate sufficiently on what basis there was no jurisdiction.
30. The other issue is whether the committee was involved in the determination of the AR Objections. Objections in the Land Consolidation Act are determined in the presence of a committee. I have perused the proceedings attached to the *ex-parte* applicant’s affidavit as well as the replying affidavit by the 1st respondent. There is no indication of the presence of Committee Members. The submissions by the respondents’ counsel that there were committee members present during the hearing of the objection cannot be correct. If the committee members were appointed and were in attendance as alleged, the proceedings could have reflected. I am inclined to believe the applicant’s argument that the decision of the Land Adjudication Officer was given without the aid of a committee as mandated by law.
31. In the result, I allow the Notice of Motion dated 9th October, 2023 in the following terms.
 - a. An Order of *certiorari* be and is hereby issued calling and bringing into this honourable court for purposes of quashing the decision of the 1st respondent dated 9th July, 2022 in AR Objection Nos. 805, 806 and 808 concerning LR. Nos. 1795, 13903 and 12980 Igembe South Adjudication Section.
 - b. The objections are remitted back to the Adjudication Officer Igembe South, Amungenti “A” Adjudication Section to constitute a committee for purposes of hearing the Objections in accordance with the law.
 - c. Parties to bear their own costs.



DATED SIGNED AND DELIVERED AT MERU THIS 22ND DAY OF FEBRUARY, 2024

HON. C. YANO

ELC – JUDGE

In the Presence of: -

Court Assistants: Tupet & Bernice

No appearance for Anampiu for ex-parte/applicant

Ms. Kendi holding brief for Ms. Mbaikyatta for 1st and 2nd respondents.

