



**James v Land Adjudication Officer, Tigania District & another (Civil Appeal
154 of 2017) [2023] KECA 1632 (KLR) (8 December 2023) (Judgment)**

Neutral citation: [2023] KECA 1632 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 154 OF 2017
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA
DECEMBER 8, 2023**

BETWEEN

GRACE MUNYATTA JAMES APPELLANT

AND

LAND ADJUDICATION OFFICER, TIGANIA DISTRICT 1ST RESPONDENT

LOICE KAARI NGUURA 2ND RESPONDENT

(Being an appeal against the decree and judgment of the ELC Court, Meru(E.C.Chero) dated 28th June 2017 in ELC Misc. Application (J.R) Cause. No. 92 of 2010)

JUDGMENT

1. This appeal arises from the decision of the Environment and Land Court (ELC) in the chamber summons dated 29th November, 2010 brought under Order 53 Rule 1 of the *Civil Procedure Rules* by Loice Kaari Nguura. She sought an order of *certiorari* to remove to the ELC and quash the decision of the Land Adjudication Officer Tigania District made on 7th July, 2010 in the objection case involving Land parcel number 1145 Uringu 11 Adjudication section (the suit land) and quash the same on grounds, inter alia, that the orders were made without jurisdiction.
2. In order to place this appeal in proper perspective, a short history of the circumstances that led to the Judicial Review application is necessary. The suit land was registered under the *Land Consolidation Act* (Cap 283) in the name of Solomon Nguura Thimangu (deceased) who was the husband to Loise Kaari Nguura (the 2nd respondent). Upon the death of Solomon Thimangu, the appellant herein lodged a claim for four acres of the suit land, a claim that was resisted by the deceased's wife who wanted the appellant evicted from the property.
3. The appellant filed an objection claiming the 4 acres from Loise Kaari Nguura. It was the appellant's case that the deceased had adopted her husband, James Kutila, as his son and therefore she was entitled to a share of the deceased's estate. She claimed further that together with her late husband they had



- lived on the land for more than 33 years and that when the deceased was alive nobody claimed the land until 1997, after the death of the deceased when Loice claimed to own her land. She contended that she had developed the land by planting miraa, and building her homestead, and wanted the matter to be investigated.
4. The objection was heard and on 7th July, 2010, the 1st respondent held that Parcel No 1814 was to be moved to its original Parcel No 1145, the same was to be subdivided and Grace Muniyatta James was to be awarded 4 acres.
 5. Following the decision of the adjudication officer, Loise Kaari Nguura upon being granted leave, moved to the ELC by way of chamber summons to have it quashed,. She sought an order of *certiorari* to remove to the ELC and quash the decision of the Land Adjudication Officer Tigania District made on 7th July 2010 in the objection case involving land Parcel number 1145 Uringu 11 Adjudication section.
 6. Mr. Ali Chemasi the Tigania west sub-county settlement officer, on behalf of the 1st respondent, filed his replying affidavit in opposition to the application. He deposed that the proper law and procedure was as set out under section 29 of the [Land Adjudication Act](#) was followed in the adjudication. He stated that the decision was fully implemented in the records and on the ground immediately after it was given since there was no stay order that was served on their office. The register and map of the land were taken to Nairobi in 2015 for preparation and issuance of Title deeds. Therefore, the judicial review proceedings had been overtaken by events.
 7. On her part, in opposing the judicial review motion, Grace Muniyatta James deposed that the 1st respondent did not act ultra vires the powers conferred on him by the law, since the land was in the final adjudication stage. A committee of 30 members was formed and they participated in the hearing and determination of the objection which was filed way before Samson Nguura passed on. The decision was never appealed against. It was her contention that the application was an abuse of the court process, and urged that it be dismissed.
 8. Having considered the submissions and the annexures on record, the learned Judge found that the issues for determination were: what were the powers and duties of a land adjudication officer under Cap 289 and, 284 of Laws of Kenya; did the Land Adjudication Officer, Tigania District have jurisdiction to issue the orders or decision; whether the applicable law to the adjudication of the suit land is the [Land Adjudication Act](#)(Cap 284) or the [Land Consolidation Act](#).
 9. It was held, that despite the matter being governed by the [Land Consolidation Act](#) (Cap 283) and not the [Land Adjudication Act](#) the land Adjudication officer was required to determine the dispute in conjunction with the committee and having failed to do so, he made the decision on his own and, therefore, the decision-making process was contrary to the law. It was further held that the 1st respondent acted without authority or jurisdiction. An order of *certiorari* was issued removing the decision of the adjudication officer made on 7th July 2010 and quashing the same.
 10. The appellant was aggrieved by the entire decision and preferred this appeal vide a notice of appeal dated 29th June 2017. In her memorandum of appeal, the appellant raises grounds, inter alia, that the learned Judge erred in law and fact: in holding that the 1st respondent had no jurisdiction to hear and determine the objection case; holding that the 1st respondent made the decision in the absence of the section's land committee members; holding that the applicable law was the [Land Consolidation Act](#), yet it was the [Land Adjudication Act](#), and failing to consider that the 1st respondent's decision had been fully implemented both on the ground and that in record, and the application had been overtaken by events; and failing to order that the objection be re-heard upon his finding that it was heard without jurisdiction.



11. During the plenary hearing of the appeal on 14th November, 2022 learned counsel Mr. Carl Peters was present for the appellant while Mr. Mwendwa appeared for the 2nd respondent. There was no representation on the part of the 1st respondent. Counsel informed the Court that they would rely on their written submissions.
12. In the submissions dated 10th April 2018 filed by learned counsel for the appellant, she submits that contrary to the holding that there was no committee, the record is clear that there were 30 committee members and they even went to the suit land for a site visit before a decision was made. Additionally, the parties present were allowed to testify, avail witnesses, and cross-examine each other in the presence of the committee members. While placing reliance on the decision in *The Commissioner of Lands v Kunste Hotel Limited, Nakuru Civil Appeal No 234 of 1995*, it is submitted that the objective of judicial review proceedings was to ensure individuals received fair treatment.
13. Further, in regard to whether the law applicable was the *Land Consolidation Act* or the Adjudication Act, it is submitted that the 2nd respondent annexed two photocopies of letters which the learned Judge relied on to make the said conclusion. The said letters which referred to different parcels of land were never annexed in the affidavit but were only introduced and annexed in the written submissions. They called upon us to find that the applicable law was the *Land Adjudication Act*, Cap 284 as was held in *Stanley Thiane Mbui & another v Land Adjudication Officer, Tigania West District 7 another (2014) eKLR*, and to further find that both Acts gave the Land Adjudication Officer jurisdiction to hear and determine claims including objections in an adjudication area.
14. Moreover, the decision of the adjudication officer had been implemented and a new Parcel No P/No 4490 had been created and registered, a fact that has not been challenged by the 2nd respondent.
15. It is submitted further that the learned Judge ought to have directed the objection to be re-heard once he quashed the objection proceedings and we were urged to be guided by a decision of this Court in *Peter Kimandiu v Land Adjudication Officer, Tigania West District & 4 others*, Nyeri C.O.A Civil Appeal No 28 of 2015. Lastly, we have been urged to allow the appeal, and dismiss the judicial review application with costs both at the ELC and in this Court.
16. In opposing the appeal, the 2nd respondent filed her written submissions dated 8th May, 2018. It is submitted that the objection was to be determined pursuant to section 26 of the *Land Consolidation Act*. In this case, the officer made a single decision by himself and further that there were no such proceedings before the land adjudication office, if there was any she would have been aware, therefore, the proceedings were a forgery and, in any event, the powers donated by section 26 of the *Land Adjudication Act*, were limited to the register only.
17. On the locus standi, it is submitted that neither the appellant nor the 2nd respondent had the locus to file the objection. Both were representing their husbands who had died and therefore the adjudication officer did not have the jurisdiction to determine the objection.
18. Additionally, the respondent submits that the decision of the adjudication officer has not been implemented since stay had been granted and the appellant has already been evicted from the parcel of land. The 2nd respondent informed the Court that the whole of Uringu Adjudication section had been registered and titles issued and therefore it was no longer under adjudication.
19. This being a first appeal, this Court's mandate is as expressed in *Selle & another v Associated Motor Boat Co. Ltd & others* [1968]EA 123 as follows:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles



upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself, and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.'

20. We shall, therefore, proceed as above and also as commanded by Rule 31(1)a of the [Court of Appeal Rules](#) to consider the issues raised in this appeal by re-evaluating the evidence on record in its entirety and arrive at our own conclusion on matters of both fact and law. We shall only depart from the decision of the learned Judge if it is based on no evidence or where the court is shown to have acted on wrong principles of law. See [Jabane v Olenja](#) [1986] KLR 661.
21. We have considered the entire record of appeal before us along with the rival submissions by the parties as summarised above. The issue that arises for determination is whether the learned Judge erred in granting the said order of *certiorari*.
22. The 2nd respondent moved the ELC urging for the quashing of the decision of the adjudication officer which was issued on 7th July, 2010. This Court in [Municipal Council of Mombasa v Republic & Umoja Consultants Ltd](#) (2002) KLR, set out the parameters in applications for judicial review and held as follows;

“The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have power i.e jurisdiction to make it. Were the provisions affected by the decision heard before it was made? In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of a judicial review is concerned with and such a court is not entitled to act as a court of appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself as to whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of the judicial review.”

23. The 2nd respondent moved the court for leave under order 53 rule 2 of the [Civil Procedure Rules](#), which leave was granted. On the other hand, section 9(3) of the [Law Reform Act](#) provides that:

“in the case of an application for an order of *certiorari* to remove any judgment, order, decree, conviction or other proceedings, for purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction, or other proceedings or such period may be prescribed under any written law..”

We find that the 2nd respondent's application for leave was made not later than six months from the date the decision was made and it was, therefore, properly before the court.

24. An order of *certiorari* can only quash a decision already made and it will issue if the decision is without jurisdiction or in excess of jurisdiction or where the rules of natural justice are not adhered to. It is trite law that the remedy of judicial review is not concerned with the merits of the case but with the



- decision-making process. In order for an applicant to succeed in such an application, he must satisfy the court that a public officer has acted un-procedurally, that his decision was unreasonable, and that the impugned decision was illegal.
25. We need to be clear here that we are concerned with the process and not the decision itself. The 2nd respondent challenged the jurisdiction of the adjudication officer under section 26 of the [Land Consolidation Act](#) while the appellant argued that the objection fell under the provisions of the [Land Adjudication Act](#).
26. Under the [Land Adjudication Act](#), section 9 provides the duties of the adjudication officer the following terms:
- “(i) The adjudication officer shall be in charge of and shall exercise general supervision and control over the adjudication.
 - (ii) The adjudication officer shall hear and determine –
 - (a) Any petition respecting any act done, omission made or decision given by a survey officer, demarcation officer or recording officer and;
 - (b) Any objection to the adjudication register which is submitted in accordance with section 26 of this Act.”
27. Further, section 10 sets out the general powers of an adjudicating officer as follows:
- “1) The adjudication officer shall have jurisdiction in all claims made under this Act relating to interests in land in the adjudication area, with power to determine any question that needs to be determined in connection with such claims and for that purpose, he shall be legally competent to administer oaths and to issue summons, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for the carrying out of the adjudication.
 - 2) The adjudication officer may himself exercise all or any of the powers which are given by this Act to officers subordinate to him.
 - a) Section 11 particularises the powers of the adjudication officer as He may issue to the officers subordinate to him and to committees and boards such general or particular directions as he thinks necessary for carrying out the provisions of the Act which relate to the procedure for demarcation, recording of title and survey within the adjudication area;
 - b) At any time before the adjudication register is completed, he may correct any error or supply any omission occurring in the adjudication register;
 - c) He may make a claim or otherwise act on behalf of a person who is absent or under a disability.”
28. In view of the above listed duties of the adjudication officer, the question we need to answer is whether the officer in Tigania, acted ultra vires the powers conferred on him. From the record, it is not clear when the 2nd respondent's husband was registered as the owner of the suit property, but what is on record is that the appellant herein filed objection proceedings No 249. The appellant contended that the land was in the final stages on the adjudication as the register had not been settled. In those circumstances, it is clear that the appellant was in order to lodge the objection in respect of the portion of land on which she had been living with her late husband and children for many years.



- 29. The objection was, in our view, properly raised. Following the objection, the Adjudication officer appointed committee members who even visited the land, asked questions, and made a decision based on their observations and evidence received during the objection hearing. We find that the adjudication officer did not act alone as claimed and the decision in question was the decision of the committee. The adjudication officer acted within the law under section 10(1) of the *Land Adjudication Act*.
- 30. In regard to the 2nd respondent’s argument that neither the appellant nor she had the locus to bring the issues for determination, we find that section 26(1) of the *Land Adjudication Act* provides that any person named or affected by the adjudication register who considered it incomplete or incorrect could object to the same.
- 31. An issue was raised as to whether the adjudication process was done under the *Land Adjudication Act* or under the *Land Consolidation Act*. Admittedly, there is confusion as to the difference between these two statutes. In some quarters, they have been referred to as sisters. The learned Judge found that the applicable Act was the *Land Consolidation Act*. This conclusion was arrived at after the learned Judge considered some letters that were attached to submissions. We note that the proceedings before the court were by way of judicial review.
- 32. In judicial review proceedings, a party files a statement of facts and affidavits which are then served on all the parties and pursuant to Order 53 rule 4, no other evidence can be introduced into the proceedings without the leave of the court, and this would be by way of filing further affidavits. The learned Judge therefore, fell into error when he considered and relied on the contents of letters which were only introduced to the proceedings at submission stage. That finding is therefore unsustainable and is set aside.
- 33. As stated in the previous paragraphs, we find that a judicial review application is more concerned with the process. Therefore, having found that the adjudication officer complied with section 12 of the *Land Adjudication Act*, our inevitable conclusion is that the learned Judge erred in holding that the adjudication officer acted without authority or jurisdiction.
- 34. On the question of parties not having locus standi, we can only restate that the appellant was raising the objection on her own behalf and not on behalf of her late husband’s estate. It is also settled that in such proceedings, a party does not need to have letters of administration to be clothed with jurisdiction to object to the register. Neither the appellant nor the 2nd respondent needed any letters of administration for them to participate in the proceedings before the committee.
- 35. In the end, for the foregoing reasons, we find that the appeal is merited and the same is accordingly allowed with costs as against the 2nd respondent. The judgment of the ELC allowing the Chamber Summons dated November 29, 2010 is hereby set aside and, in its place, we make orders that the said Chamber Summons be and is hereby dismissed with costs to the appellant.

DATED AND DELIVERED AT NYERI THIS 8TH DAY OF DECEMBER, 2023.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

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JUDGE OF APPEAL



A. O. MUCHELULE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

