



**Mbiuki v Director of Land Adjudication & another (Civil Appeal  
37 of 2016) [2022] KECA 910 (KLR) (8 July 2022) (Judgment)**

Neutral citation: [2022] KECA 910 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 37 OF 2016  
W KARANJA, MSA MAKHANDIA & K M'INOTI, JJA  
JULY 8, 2022**

**BETWEEN**

**STANLEY MBIUKI ..... APPELLANT**

**AND**

**DIRECTOR OF LAND ADJUDICATION ..... 1<sup>ST</sup> RESPONDENT**

**MURATHA MICHEU ..... 2<sup>ND</sup> RESPONDENT**

*((Being an appeal from the judgment and decree of the High Court of Kenya at  
Nairobi (Korir, J.) dated 19th March 2015 in Judicial Review No. 37 OF 1984))*

**JUDGMENT**

1. The appellant, Stanley Mbiuki by way of judicial review application in the High Court sought for: -
  - a) an order of mandamus compelling the Director of Land Adjudication, or officers under him not to delete the name of the appellant and if already removed to reinstate it in the register of existing rights as the owner of land parcel No. 1075 Muiru.
  - b) an order that the new numbers given to the sub-division of the said parcel of land that's Karingani/Muiru/1201 to 1206 or Karingani/Muiru/916 be registered in the name supplied by the appellant to the 1<sup>st</sup> respondent, and lastly;
  - c) an order of certiorari to remove into the High Court and quash the decision of the 1<sup>st</sup> respondent contained in his letter of 11<sup>th</sup> August 1983 cancelling the name of the appellant and substituting it with that name of Muratha Micheu, the 2<sup>nd</sup> respondent in the register of existing Rights.
2. From the record, the genesis of the dispute is that during the process of gathering fragments of land before demarcation that led to the creation of parcel of land known as land parcel No. 1076



- Muiru, “the land”, the 2<sup>nd</sup> respondent (now deceased) filed a land case against the appellant before the land adjudication committee being case No. 31 of 1965. The adjudication register for Muriu section was then published for inspection and objection following the completion of the process of land demarcation and consolidation on 7<sup>th</sup> August 1974. After hearing the dispute, the Committee awarded the land to the 2<sup>nd</sup> respondent. The appellant objected to the said resolution under Section 18 of the *Land Consolidation Act*, “LCA” (now repealed) and the objection was referred to the arbitration board as case No. 58 of 1968. After hearing the objection, the board upheld the earlier decision which was subsequently confirmed by the land adjudication officer on 25<sup>th</sup> June 1970 in line with the provisions of Section 18(3) of the LCA. However still being dissatisfied with the decision, the appellant vide a letter of 12<sup>th</sup> July 1971 lodged a complaint with the 1<sup>st</sup> respondent who then directed that the appellant be registered as the owner of the land on humanitarian grounds and proceeded to change the records at the Lands office to indicate that the appellant was now the owner of the land instead of the 2<sup>nd</sup> respondent.
3. This then triggered the 2<sup>nd</sup> respondent to lodge a complaint in 1982 with the provincial land adjudication officer in Embu which resulted in fresh investigations whereupon the 1<sup>st</sup> respondent instructed the Provincial Land Adjudication Officer at Embu to implement the earlier decisions of the committee and the arbitration board as confirmed by the land adjudication officer on 25<sup>th</sup> June 1970 and further amend the land register in favour of the 2<sup>nd</sup> respondent. This therefore meant that the adjudication register with the 2<sup>nd</sup> respondent as the owner of the land was final. It was then handed over to the land registrar, Meru for registration on 6<sup>th</sup> December 1983.
  4. It is this decision that resulted in the appellant filing judicial review proceedings seeking to quash the decision of the 1<sup>st</sup> respondent contained in the letter dated 11<sup>th</sup> August 1983 on the basis that it was illegal. That suit is the genesis of this appeal. The appellant sought the orders mentioned at the beginning of this judgment supported by his affidavit.
  5. The appellant deposed that in all his 56 years, as at the time of making the affidavit, he had lived on and utilized the land. Later he caused it to be given new numbers which he assigned to members of his immediate family. That it was only much later that the 2<sup>nd</sup> respondent surfaced and claimed to have been given the land by his great grandfather after he had paid him 5 heifers among other considerations. That the dispute was referred to the committee under the LCA which decided in favour of the 2<sup>nd</sup> respondent. The appellant appealed again to the adjudication officer who reviewed the decision and ruled in his favour and confirmed his decision in his letter of 28<sup>th</sup> October 1972 after determining the case under Section 18 of the LCA. It was only after Ten (10) years that he heard again about the land having been transferred back to the 2<sup>nd</sup> respondent. That he had been informed that the order installing him as the bona fide owner had been made purely on humanitarian grounds. It was the appellant's case that the 1<sup>st</sup> respondent and/or his officers having entered him as the owner of the land in the register of existing rights lost the right either in law or equity to remove his name. That further having been in occupation of the land for more than 12 years, then he had acquired the same by way of adverse possession. That by ordering alteration of the register, the 1<sup>st</sup> respondent and his officers had acted in excess of their jurisdiction and powers under the LCA.
  6. The motion was opposed by the 1<sup>st</sup> respondent through a replying affidavit of Frederick Rudolf Sandech Onyango dated 11<sup>th</sup> October 1984. He deposed that he was the Deputy Director of Land Adjudication in the Ministry of Lands and settlement at the time. That contrary to the Board's decision as confirmed by the Land Adjudication Officer at the time, subsequently and without express authority from the 1<sup>st</sup> respondent the Land Adjudication Officer directed the demarcation officer to alter the



records of existing rights to show that the appellant was the owner of the land instead of the 2<sup>nd</sup> respondent. That those instructions were clearly in breach of the provisions of Section 19 of the LCA.

7. The said alterations were contrary to the law and the officer went beyond what the law required of him. That in September 1982, the 2<sup>nd</sup> respondent after discovery of the said alterations of rights in the existing rights register lodged a complaint with the provincial land adjudication officer in Embu and as a result, fresh investigations were carried out and a report made to the office of the 1<sup>st</sup> respondent in Nairobi who thereafter instructed the provincial land adjudication officer to implement the decision of the committee and the arbitration board as confirmed by the land adjudication officer on the ground. That this was corrected in the register and the 2<sup>nd</sup> respondent was reinstated as the rightful owner of the land.
8. The 2<sup>nd</sup> respondent too, filed a replying affidavit through Japheth Muyandi who reiterated the contents of the 1<sup>st</sup> respondent's affidavit and added that they were the legal owners of the land after due process of the law.
9. Upon consideration of the pleadings, respective submissions and authorities cited by the parties, the trial court framed the issue for determination as being whether the 1<sup>st</sup> respondents' decision in 1971 to order fresh investigation was backed by the law and reached the verdict thus:

“28 The applicant cannot be allowed to claim a right to land based on an illegal decision. It is also clear that the deceased (the 2<sup>nd</sup> respondent) was never involved in the 1971 decision and this was a clear breach of the rules of natural justice. The letter dated 11<sup>th</sup> August 1983 was only rectifying a mistake and the same was not illegal or unreasonable. The applicant was not entitled to a hearing in the circumstances. I therefore find that no ground have been advanced by the applicant in support of his prayers for granting judicial review orders.”

10. It is this finding of the trial court, that the appellant has challenged by way of an appeal to this Court. He has advanced 15 grounds which may be summarized as follows; that the trial court erred and misdirected itself in failing to appreciate that the 1<sup>st</sup> respondent having entered the appellant as the owner of the land in the register of existing rights, had no right either in law or equity to deregister him; by dismissing the appellant's contentions that by ordering the existing rights register to be altered the 1<sup>st</sup> respondent and his officers exceeded their jurisdiction and powers under the LCA; by ignoring the fact that the 1<sup>st</sup> respondent's letter dated 11<sup>th</sup> August 1983 cancelling the appellant's name had been written over 12 years later after his name had been entered in the existing rights register and was illegal; by failing to appreciate that the appellant had acquired ownership of the land by way of adverse possession; by selectively finding that the 2<sup>nd</sup> respondent had not been heard when the decision was made; by failing to find that there was breach of the rules of natural justice when the applicant was called and told that his land had been given new numbers and registered in the name of other persons; by failing to find that there was no formal communication of the aforesaid decision by the 1<sup>st</sup> respondent that the appellant's land had been given new numbers and registered in the name of other persons; by holding that the letter dated 11<sup>th</sup> August 1983 was only rectifying a mistake and the same was not illegal or unreasonable;

by failing to appreciate that there was no procedure for a letter to formally rectify an alleged mistake and or revoke a decision that had already been made; by failing to give any weight to the submissions and authorities filed by the appellant; by failing to find and hold that the reversal of the decision by the office of the Director of Land Adjudication deprived the appellant of the right and opportunity to appeal to the Minister for Lands as required by



the law; and lastly wrongly invoking the LCA instead of the *Land Adjudication Act*, “LAA” in resolving the dispute.

11. Parties thereafter filed their respective written submissions in support of their positions. The appellant’s submissions merely reiterated the history of the dispute and grounds of appeal that we have already set out in extenso elsewhere in this judgment. We see no reason to rehash the same.
12. The 1<sup>st</sup> respondent opposed the appeal and submitted that, the issue for determination was whether its decision contained in the letter was illegal, unreasonable and/or breached the rules of natural justice. The 1<sup>st</sup> respondent submitted that the appellant cannot be allowed to claim a right based on an illegal decision and that the letter dated 11<sup>th</sup> August 1983 was only rectifying a mistake and the same was not illegal or unreasonable having been made in line with Section 19 & 20 of the LCA. The 1<sup>st</sup> respondent submitted that the committee of the adjudication section established under Section 9 of the LCA, dealt with the dispute and found in favour of the 2<sup>nd</sup> respondent; that if the appellant was dissatisfied with the decision, he had a right of appeal under Section 10 of the same Act which he did not exercise.
13. It was submitted that there was no error when the trial court found that the order for fresh inquiry was illegal and that confirmation made in 1970 was final as per section 19 of the LCA. That the issue of adverse possession was not before the High Court for determination and that the appellant was bound by his pleadings. Further, that since these were judicial review proceedings, adverse possession could not have fallen for determination; that there was no error by the learned judge as due process was followed in arriving at the decision to have the land revert to the 2<sup>nd</sup> respondent. Accordingly, he prayed for the dismissal of the appeal.
14. On his part, the 2<sup>nd</sup> respondent, he submitted that this Court should not be concerned with the merits of the case rather than the decision-making process as was held in the case of *Republic Vs. Mwangi S. Kimenyi ex parte Kenya Institute for Public Policy and Research Analysis (KIPPRA)* [2013] eKLR. It was his submission that the 2<sup>nd</sup> respondent’s name was rightly entered in the register of existing rights after due process was followed including resolution of appeals filed by the appellant. That the decision of the Land Adjudication Officer was final and was not subject to any appeal which was in consonance with Section 19 of the LCA. The subsequent decision of the Land Adjudication Officer to revert the land to the appellant was therefore flawed as it had no legal basis and indeed the said officer exceeded his powers in doing so.
15. The 2<sup>nd</sup> respondent further submitted that the appellant’s name was wrongly and unlawfully entered in the register without following due process envisaged under LCA. He maintained that the purported entry of the appellant’s name was ultra vires, illegal, null and void and of no legal consequence as his name had been entered after all the steps had been followed in ensuring the 2<sup>nd</sup> respondent had been registered and the alterations in favour of the appellant did not undergo such due process.
16. The 2<sup>nd</sup> respondent added that the proper Act applicable in the circumstances of the case was LCA which had come into force on 28<sup>th</sup> July 1959 and the area, where the land is situate had been established as an adjudication section under the LCA on 1<sup>st</sup> April 1969. That all the proceedings with regard to the land were undertaken pursuant to the provisions of the LCA and not LAA contrary to the submissions of the appellant.
17. The 2<sup>nd</sup> respondent further submitted that, indeed the decision by the 1<sup>st</sup> respondent to order for fresh inquiry was not legally sound as it was based allegedly on humanitarian grounds, which is unknown under the Act. Coming to the claim for adverse possession the 2<sup>nd</sup> respondent submitted that the claim was callous, misplaced and an afterthought. In any event, his case before the trial court was for Judicial Review Orders and a claim based on adverse possession could not have been entertained. That by virtue



of Section 8(1) of the LCA the appellant would have been precluded from making such claim pursuant to Sections 9 and 10 of the LCA.

18. As a consequence, the decision by the 1<sup>st</sup> respondents' officials to revert the land to the appellant on humanitarian grounds without following the procedure and without involving the 2<sup>nd</sup> respondent was made in total breach of the rules of natural justice.

19. It was further submitted that the judgment was based solely on the merits of the case and without undue regard to technicalities as alleged. That the learned judge was right in upholding the decision which granted the land to the 2<sup>nd</sup> respondent and that he rightly rejected the humanitarian reason that granted the appellant the land because it was not based on any legal provisions.

20. The 2<sup>nd</sup> respondent thus prayed that the appeal be dismissed with costs.

21. While considering this appeal, we are well aware that we are bound as a first appellate court to re-examine the matter by way of a retrial, reconsider the entire evidential material on record and arrive at our own informed conclusions as was put in the case of *Selle Vs. Associated Motor Boat Company [1968] E.A 123* thus;

"... An appeal to this 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 make due allowance in this respect..."

22. We have considered the record of appeal, the submissions by both parties and the cited authorities. In our view, the issues for consideration are: what was the applicable statute to the dispute; whether the letter of 11<sup>th</sup> August was illegal, unreasonable, arbitrary and lastly whether the trial court had jurisdiction to make a determination on the issue of adverse possession.

23. The appellant has complained about the court not dealing with the dispute under the LAA but rather proceeded to invoke the LCA which was to his detriment. The (LCA) was enacted in 1959 and came into operation on 28<sup>th</sup> July 1959. That was before independence. Its purpose according to the preamble was: -

"...to provide for the ascertainment of rights and interests in, and for the consolidation of land in the special areas; for the registration of title to, and of transactions and devolutions affecting, such land and other land in the special areas; and for purposes connected therewith and incidental thereto." (Emphasis provided)

The LCA in PART II provides for "ASCERTAINMENT AND RECORDING OF RIGHTS AND INTERESTS IN LAND; CONSOLIDATION AND DEMARCATION; AND CREATION OF ADJUDICATION REGISTER."

24. On the other hand, the LAA, was enacted in 1968 and came into operation on 28<sup>th</sup> June 1968: Its preamble is to the effect:

"to provide for the ascertainment and recording of rights and interests in trust land, and for purposes connected therewith and purposes incidental thereto."

25. To draw a distinction, the land in question is situate in Muiru. This area was established as an adjudication section under the provisions of the LCA on 1<sup>st</sup> April 1964. Its complete record of existing rights was published for inspection and objections on the 7<sup>th</sup> June 1968 under sections 16 and 17 of



the LCA. By a public notice of 18<sup>th</sup> August 1972, this record was deemed to be the true and complete record of all the existing rights and interests in the adjudication section under sections 20, 25 and 26 of the Act.

26. Our perusal of the record firstly reveals that indeed the application which gave rise to this appeal was filed by the appellant pursuant to the The intitulement heading reads in part,

In the matter of Land Consolidation Act Cap 283 and in the matter of application by Stanley Mbiuki for leave to apply for orders of certiorari and mandamus.

27. Secondly, examining the detailed steps taken by both parties as explained by the 1<sup>st</sup> respondent through the affidavit of Frederick Rudolf Sandech Onyango which was accepted by both the appellant and the 2<sup>nd</sup> respondent as the proper chronology of the dispute, it points to all events having been carried out under the LCA and nothing more. Further the LAA could not have applied to the dispute as it had not yet been enacted nor did the dispute involve Trust land.

28. That being the case the appellant cannot now fault the trial court for invoking the legislation that he himself had asked the court to be guided by and which in any case, was the only applicable legislation to the dispute as at the time. The faulting of the trial court on the use of LCA is therefore without legal basis.

29. We now wish to address the second issue as to whether the letter dated 11<sup>th</sup> August, 1984 was illegal, unreasonable arbitrary and/or breached the rules of natural justice and ought to be quashed, this being the fulcrum of the appellant's case before the High Court and the basis for the appeal in this Court.

30. The dispute giving rise to these proceedings goes way back to the 1960s, but the cause of action arose in 1983 when the appellant received a letter dated 22<sup>nd</sup> July, 1983 asking him to appear on 3<sup>rd</sup> August, 1983 before the Land Adjudication Officer, Meru. According to the appellant, when he turned up on the appointed date, he was informed that the land had been given new numbers and registered in the name of other persons. He immediately wrote a letter to the 1<sup>st</sup> respondent complaining of this new development. On 11<sup>th</sup> August, 1983 the 1<sup>st</sup> respondent replied to the appellant as follows:

“LAND CASE COMPLAINT BY MR. MURATHA MICHEU MUIRU  
ADJUDICATION SECTION

I refer to your letter dated 9-8-1983 on the above matter. The true position is as follows:

- a) Muiru was established an adjudication section under the provisions of the Land Consolidation Act, Chapter 283, on 1-4-

64. Its Record of Existing Rights was published complete for inspection and objections on 7-6-68 under sections 16 and 17 of that Act, and was on 18-8-72 by a public notice deemed to be a true and complete record of all the existing rights and interests in the adjudication section under section 20 of the Act. The adjudication register for the section was published complete for inspection and objections after the process of demarcation and consolidation, on 7-8-74 under sections 25 and 26 of the Act and has not to date been declared to be final under section 27.

- b) During the period of fragment gathering in MUIRU, Mr. Muratha Micheu filed a land adjudication committee case (No. 31/65) against you and the committee awarded to him the land in dispute.



- c) You later lodged an objection to the Record of Existing Rights (Objection No. 52) appealing against the committee decision, and on 20-9-68 the Executive Officer of the committee allowed you to file an arbitration board case No. 58/68. The board heard the case on 6-5-1970 and gave judgment against you on 8-5-70 in favour of Muratha Micheu, thereby confirming the committee decision in case No.31/65. On 25-6-70 the Land Adjudication Officer perused the proceedings and judgments of both cases and confirmed the judgments. Now, under section 19 of the Land Consolidation Act aforesaid such confirmation or determination of the Land Adjudication Officer is final and is not subject to appeal.
- d) You were however not satisfied with the confirmation and you therefore complained to this office, as a result of which I directed the Land Adjudication Officer to investigate the matter further. After the completion of those investigations, it was recommended that the records should be amended in your favour – but this was not in accordance with the provisions of the Land Consolidation Act. It was purely on humanitarian grounds.

My letter LA.5/1/17 Vol. XIX/205 dated 14-6-83 merely directed the Senior Land Adjudication Officer Meru to comply with the law, as stated in (c) above, by re-instating Muratha Micheu as the owner of the land in accordance with the 1970 confirmation of the Land Adjudication Officer.”

- 31. Section 19 of LCA provides that the decision of the Adjudication Officer shall be final. It is couched in these terms;

“Decision of Adjudication Officer to be final

Any confirmation or determination of an Adjudication Officer made under section 18 of this Act shall be final and shall be notified in writing, signed by the Adjudication Officer, to the executive officer of the Committee concerned, who shall make such alteration, if any, as may be required in the Record of Existing Rights to give effect to such confirmation or determination.”

- 32. Section 20 of the same Act then proceeds to provide for the finality of the Record of Existing Rights as follows:

“Record of Existing Rights to be final

After the expiry of sixty days from the date mentioned in section 17, or on the date upon which all alterations to the Record of Existing Rights have been made in accordance with section 19, of this Act, whichever is the later, the Record shall be deemed to be a true and complete record of all existing rights and interests in the adjudication section to which the Record relates:

Provided that no inaccuracy in, or omission of, any particular shall in any way affect the validity of any lease or license granted under Part VI of the Trust Land Act (Cap. 288).”

- 33. From our appreciation of the above provisions of the law and the whole Act it is manifestly clear that the Act does not provide for appeal to the 1<sup>st</sup> respondent. It, therefore, follows that the 1<sup>st</sup> Respondent’s decision to order for a fresh inquiry was legally unfounded and not based on any provision of the law. It is our finding just like the trial court that the Adjudication Officer had made a confirmation in 1970 and



that confirmation was final as per Section 19 of the LCA. The alleged overturning of the earlier decision of the Adjudication Officer was, therefore, contrary to the law. The change was allegedly anchored on “humanitarian grounds.” No such ground exists in the Act. We hasten to add that where there is a clear provision of a procedure to be followed, it can be said that a decision made contrary to that procedure based on humanitarian grounds legally proper or sound. One cannot purport to use humanitarian ground to trample on other’s people’s rights. The letter dated 11<sup>th</sup> August 1983 was meant to correct an obvious and glaring error that had been committed by the 1<sup>st</sup> respondent and we find nothing in the said letter that is illegal, arbitrary, unreasonable and or breached rules of natural justice. We do not think that where there is clear and obvious breach of the law and remedial measures are undertaken by the proper authorities to cure the same, there will be need to hear the parties as correctly observed by the trial court. Such was the case here! It therefore follows that the decision in that letter is legal and sound as it reversed an illegality that had been perpetuated by the 1<sup>st</sup> respondent. It is therefore not amenable to quashing as correctly observed by the trial court.

34. On the last issue, as to whether the trial court had jurisdiction to handle the issue of adverse possession, we reiterate what we have stated before that this matter was filed as a judicial review application and judicial review is not an appeal from the decision of a public body or tribunal. Accordingly, the issue of adverse possession could not have been entertained in such proceedings. Judicial review proceedings are special proceedings with specific procedure and for specific orders of either certiorari, mandamus or prohibition and cannot be the basis for other prayers that have different procedures. We find that the trial court had no jurisdiction to handle that issue and by extension this Court will not delve into it.
35. The upshot is that this appeal has no merit and is dismissed. The costs of the appeal shall be borne by the appellant.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF JULY, 2022.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**K. M’INOTI**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

