



Zephania (Legal representative of the Estate of M’Vita Ikianya) v District Land Adjudication and Settlement Officer Igamba Ng’ombe Sub-County & 2 others; Murua (Interested Party) (Environment and Land Judicial Review Case E001 of 2023) [2024] KEELC 3755 (KLR) (25 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3755 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2023**

CK YANO, J

APRIL 25, 2024

BETWEEN

JOTHAM KARUKU ZEPHANIA (LEGAL REPRESENTATIVE OF THE ESTATE OF M’VITA IKIANYA) APPLICANT

AND

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER
IGAMBA NG’OMBE SUB-COUNTY 1ST RESPONDENT**

DEPUTY COUNTY COMMISSIONER 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

IGETA MURUA INTERESTED PARTY

JUDGMENT

The Application

1. The ex-parte applicant filed the Notice of Motion dated 19th April, 2023 brought under Article 23 (3) (f) and 47 of *the Constitution* of Kenya, Section 8 and 9 of the *Law Reform Act* Cap 26, Order 53 Rule 1(1), 2 and 3 of the Civil Procedure Rules and all enabling provisions of law seeking for orders that:
 - a. An order of certiorari be issued to the 1st and 2nd respondents (sic) quashing the decisions of the findings of the Appeal Case No. 138 of 2019 to the Minister delivered on the 19th December 2022 and certified on 31st January 2023 by the Director of Land Adjudication Nairobi.



- b. An order of prohibition to issue against the Respondents prohibiting them from implementing or enforcing the offensive recommendations and the decision contained in the proceedings of Appeal to the Minister No. 138 of 2019 delivered on the 19th December 2022 and certified on 31st January 2023 by the Director of Land Adjudication Nairobi in relation to Parcel No. 1179.
2. The motion is supported by facts set out in the Statutory Statement and the Verifying Affidavit of Jotham Karuku Zephania dated 20th April, 2023.
3. The Respondents filed grounds of opposition dated 19th October, 2023.
4. The Interested Party filed a Replying Affidavit dated 11th September, 2023.

The Applicants' Case

5. The applicant averred that Land Parcel Kamwimbi 'A' Adjudication section parcel 1179 (hereinafter called the suit land) formed part of their ancestral land Kamwimbi 'A' Adjudication Section 790 that his family gathered and has been utilizing. The Applicant averred that he was the beneficial owner/ proprietor of the suit land which was illegally hived off from No. 790 Kamwimbi 'A' Adjudication section their family's original ancestral land.
6. The Applicant stated that his late father lodged objection No. 702 whereby the land adjudication officer held that the interested party is entitled to the suit land and procedurally awarded the same to him. The applicant has attached a copy of the objection proceedings marked JKZ1.
7. The Applicant contended that his father being aggrieved by the decision to award the suit property to the interested party which decision was unfair, lodged an appeal to the Minister of Lands and Physical Planning as provided under section 29 of the [Land Adjudication Act](#). He has attached a copy of the appeal proceedings marked JKZ2.
8. The Applicant averred that the proceedings before the Minister were flawed with gross irregularities and unprocedural conducts by the panel sitting in Appeal to the Minister Case No. 138/2019 thus arriving at an unjust and unfair decision/finding.
9. The Applicant further averred that at the time of the hearing, the 2nd Respondent clearly misunderstood and ignored the fact that the interested party herein was not part of the suit during the committee stage and referenced in his judgment that he had filed a suit with the land committee. A copy of the committee proceedings marked JKZ3 has been attached.
10. The Applicant contended that, that goes to show that the 2nd respondent did not have a proper grasp of the facts of the case and only relied on the evidence of the interested party and did not consider the suit on its facts and merits.
11. That the interested party's evidence was that land parcel 790 was their clan land before they relocated to Weru Camp where they lived even after demarcation of land was done and that the said land was registered in the name of M'vita Ikanya. It is the applicant's contention that the narrative was not supported by any evidence since he could not account for any of his relatives who might have come back and/or be buried on the said suit land.
12. The Applicant contends that the first witness of the interested party, one Fredrick Kiura, gave conflicting evidence from the finding of the second respondent when he did a scene visit. That the said Frederick Kiura stated that he is a neighbor of the interested party and during cross-examination, he pointed out that the interested party's portion has a homestead and the land is cultivated.



13. The Applicant contends that the findings by the 2nd respondent when he visited the suit land which allegedly belongs to the interested party, found that the said land was not developed. According to the applicant, that alone invalidates the credibility of that witness and further shows that the 2nd respondent completely ignored the discrepancies when making his judgment.
14. The Applicant states that the 2nd witness of the interested party did not also bring any proof and neither did he contribute to the evidence that would lead the 2nd interested party to conclude that the suit land was not the interested party's ancestral clan land.
15. The Applicant contends that his family belongs to a very different clan from that which the interested party hails from and therefore it would be completely impossible that the portion of land 1179 that was excised from 790 which was their father's original piece of land would form any part of the interested party's land.
16. The Applicant argues that the 2nd Respondent's judgment and findings was not based on any particular evidence except the contradictory and untrue statements of the interested party and his witnesses. That further the 2nd respondent refused to hear the Appellant's witnesses without any justifiable cause/reason even though he had brought them before him to be heard.
17. The Applicant further contends that the 2nd Respondent did not consider that the interested party herein had already succeeded in other matters where he still claimed that he was either related to the owners of the parcel numbers and/or their portions were also clan land. That one of the said suits was appeal No. 132 of 2019 where he sued a widow one Edith Kaura whose portion of land neighbors the applicant's land, and he was still awarded a portion of land on fictitious claims that he was related to the said widow.
18. The Applicant further argues that 2nd respondent did not give any particular reasoning behind his decision on awarding the interested party with the portion of land 1179 even though all the evidence produced before him was inconsistent and false. That neither the interested party nor any of his family members have ever lived on the said suit land.
19. The Applicant states that the 2nd respondent's decision was inconsistent with the evidence that was produced before him and therefore the findings of the 2nd respondent was unfair, marred with gross irregularities therefore leading to unjust decision and findings. That the action of the 2nd respondent of not affording the applicant a fair hearing is illegal, actuated with malice, unreasonable and biased. The Applicant further stated that the 1st and 2nd respondents breached their obligations and their duty to act fairly and follow a fair decision-making process.
20. The Applicant avers that unless the court intervenes and upholds the Law and *the Constitution*, injustice shall be occasioned to him and his family. That it is therefore in the interest of justice that the orders sought herein be granted.

The Respondents' Case

21. The Respondents filed grounds of opposition dated 19th October 2023 on the following grounds:
 - i. THAT the application is fatally defective, misconceived, and mischievous or otherwise is an abuse of the court process and therefore, are unsustainable in the obtaining circumstances.
 - ii. THAT judicial review proceedings purely deal with the procedure and process of decision making and not the merits and/or substance of the case. However, the Applicant is seeking that this honourable Court determines the merits of the decision.



- iii. THAT the plaintiff's (sic) Application is bad in law only meant to defeat the cause of Justice hence it ought to be dismissed with costs to the Respondent.
- iv. THAT the application is otherwise frivolous, vexatious and an abuse of the court process.

The Interested Party's Case

22. In his replying affidavit, the Interested Party deponed inter alia, that he is legitimate owner of plot No. 1179 Kamwimbi 'A' Adjudication Section. That the officers appointed under the [Land Adjudication Act](#) are mandated to and vested with jurisdiction to hear and determine all claims relating to interest in land in an adjudication area.
23. The interested party avers that there is an elaborate process under the [Land Adjudication Act](#) for identification of interest in land within the Adjudication section. That the suit land was a subject matter of proceedings in various tribunals established under the [Land Adjudication Act](#), namely the committee, arbitration board, Land Adjudication Officer and the Minister vide appeal to the Minister Case No. 138 of 2019. That the appeal to the minister was decided in his favour. That under Section 29 of the [Land Adjudication Act](#) the appeal to the minister is final.
24. The Interested Party states that the ex-parte applicant was given an opportunity to prosecute his objection and call for evidence but he never called any witnesses.
25. The interested party further avers that both parties were fully accorded an opportunity to be heard before a determination was made concerning the ownership of the land in question.
26. The Interested party states that the allegation by the ex-parte applicant that the proceedings before the minister were flawed with gross irregularities and un-procedural conducts is just an allegation not backed up with any evidence or particulars of fact on how the decision was irregular and un-procedural.
27. The interested party states that the ex-parte applicant was heard and there is no evidence that he was denied an opportunity to call witnesses if at all he had any. That throughout the entire process, the principle of natural justice entrenched in Section 4 of the Fair Administrative Act was complied with.
28. The interested party contends that the ex-parte Applicant's averments in his verifying affidavit dwell on the merits of the Minister's decision rather than the procedure to warrant review.
29. The interested party further contends that the ex parte applicant has not raised any triable issues within the purview of judicial review.

Submissions

30. Pursuant to directions given by the court, the parties consented to disposing off the application by way of written submissions. The applicant filed his submissions dated 22nd November, 2023 through Ms. Angela Nyagah Advocates. The respondents filed their submission dated 24th November, 2023 through the office of the Honourable Attorney General while the interested party filed his dated 8th February, 2024 through Ms. B. Musili Advocates.

Applicant's Submissions

31. The Applicant submitted that the application was brought before the court under Article 23(3) (f) and 47 of [the Constitution](#) of Kenya, 2010, Section 8 and 9 of the [Law Reform Act](#) Cap 26 and orders 53 rule 1(1), 2 and 3 of the Civil Procedure Rules 2010. The Applicant further submitted that the principles and scope of judicial review is not a novel issue in our jurisdiction but is a well-trodden



- path. The Applicant relied on the case of Municipal Council of Mombasa –vs- Republic & Umoja Consultants Ltd (2002) eKLR and Pastoli –vs- Kabale District Local Governments Council & Others (2008) 2 EA 300.
32. The Applicant identified two issues for determination: the first being whether the 2nd respondent acted irrationally during his decision-making process, and secondly, whether the 2nd respondent committed any procedural improprieties during the hearing of the parties.
 33. It is the applicant's submission that the 2nd respondent delivered his judgment on the 19th of December 2022 whereby he decided that the land in dispute 1179 was the ancestral land of the interested party even though both the applicant's father in the matter and the interested party laid ancestral claim to it. That the decision was made on the premise that the interested party had testified that his family had left their portion of land 1179, which later after demarcation formed part of land portion No. 790 the Applicant's ancestral land before they moved to Weru Camp.
 34. The Applicant pointed out that a quick look at the whole proceedings of the appeal will show that none of the persons mentioned by the interested party in his statements was ever brought as a witness to corroborate the evidence of the interested party and further that the interested party's witnesses gave contradicting statements from what the 2nd respondent also purported to have deduced from their evidence.
 35. The Applicant submitted that both the witnesses of the interested party testified that the father of the interested party was a neighbour to their grandparents and was living on the said land. The Applicant questioned how the 2nd respondent deduced from the full statement of all the parties that the relatives of the interested party had moved to Weru Camp and that is how they had missed the demarcation process.
 36. The ex-parte applicant relied on the Pastoli –vs- Kabale District Local Government Council & Others (2008) 2 EA 300 on what constitutes irrationality.
 37. The Applicant submitted that the 2nd respondent did not consider any of the Applicant's evidence but made a conclusion in favour of the interested party even when he and his witnesses gave very contradictory and unclear evidence.
 38. Regarding the second issue on whether the 2nd respondent committed any procedural improprieties during the hearing of the parties, the applicant submitted that his affidavit sworn on the 20th of April 2023 confirmed that the applicant had witnesses that he had brought to support his case but they were never heard.
 39. It is the Applicant's submission that to prove their case, the certified proceedings of the appeal of the Minister does not have the names of the appellant in the appeal and that of his witnesses that were present typed on the front page of the proceedings as being present. He pointed out that the certified proceedings were filled out with a pen later after the applicant complained of the omission and even then they failed to state that the appellant in the matter had witnesses.
 40. The Applicant further submitted that the 2nd respondent in his background of proceedings of the appeal stated that the Appellant had filed a case at the committee stage against the portion of land because he was left out during demarcation but the same was not true. He referred to the proceedings of the committee attached to his affidavit. That the interested party herein was not one of the complainants registered in the proceedings. That the interested party only joined the proceedings during the arbitration board hearings which awarded him land parcel 1179 even though he had skipped



the committee stage. The applicant submitted that this was a complete procedural error on the part of the board and that the 2nd respondent should have noticed this irregularity.

41. The Applicant relied on the case of Keroche Industries Limited –vs- Kenya Revenue Authority & 5 others Nairobi HCMA No. 743 of 2006 (2007) KLR 240, while citing Reg –vs- Secretary of state for the Environment Ex-parte Nottinghamshire County Council (1986) AC which shared the same sentiments on the scope of judicial review.
42. It is the applicant’s submission that this judicial review application is competent and properly before this court.

The Respondents’ Submissions

43. The respondents identified the issues for determination to be whether the applicant has locus to bring this application; whether the impugned decision was arrived at in a manner envisaged by the law; and whether the judicial review remedies of certiorari and prohibition are availed to the applicant.
44. It is the respondents’ submission that the applicant has brought the suit as a legal representative of the estate of M’Vita Ikianya (deceased). That he also avers that he is the son to the deceased, but has not annexed any grant of letters of administration to prove that he is a legal representative as alleged. It is therefore the respondents’ submission that the applicant lacks locus to bring this suit.
45. The respondents relied on the cases of Joseph Muriuki Kithinji –vs- Peterson Ireri Mwaniki & 3 Others [2021] eKLR, Julian Adoyo Ongunga & Another –vs- Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi (Deceased) eKLR and Hawo Shanko –vs- Mohamed Uta Shanko [2018] eKLR.
46. The respondents’ counsel submitted that in this matter, the ex-parte Applicant seeks orders of Judicial Review in the nature of Certiorari and Prohibition against the decision of the proceedings to the Minister Appeal No. 138 of 2019 in respect of land parcel number 1179 Kamwimbi ‘A’ Adjudication section made vide the ruling delivered on the 19th of December 2022.
47. The respondents’ counsel submitted that the orders of Certiorari only issues if the decision being challenged was made without or in excess of jurisdiction or where the rules of natural justice were not complied with. The respondents relied on the case of Kenya National Examination Council –vs- Republic Ex-parte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996.
48. The respondents argued that it is necessary to examine whether in the delivery of its impugned ruling, the Respondent acted with the authority granted to it by the [Land Adjudication Act](#), Cap 284 and observed the rules of natural justice.
49. The respondent submitted that it is not in dispute that the [Land Adjudication Act](#), Cap 284 provides for the delegation of powers by the Cabinet-Secretary in-charge of lands to hear and determine appeals and they relied on Section 29(4) of the [Land Adjudication Act](#).
50. The respondents further submitted that it is equally not in contention that pursuant to the above-referenced provision, the norm has been that the Minister-in-charge of lands would delegate its powers and functions to hear appeals to the holders of the office of the Deputy County Commissioner, as seen in the case of Republic –vs- Cabinet Secretary, Ministry of Lands and Settlement & 2 others Ex-parte Gerald Mbuuri Kabugu [2018]eKLR.
51. The respondents submitted that in the instant case, the ex-parte applicant alleges that the impugned decision was marred by illegalities, bias and procedural impropriety. The respondent further submitted that in contrast, the Adjudication Section that is subject of this suit – Kamwimbi ‘A’ Adjudication



- section underwent all the adjudication process in accordance with the provisions of the [Land Adjudication Act](#) and the foregoing includes the publication of Kamwimbi 'A' Adjudication section and the subsequent hearing and determination of objections and appeals to said objections in instances where affected persons were unsatisfied with the decisions.
52. It is the respondents' submission that the Deceased, being dissatisfied with that decision, was afforded an opportunity to challenge it which he did through Minister Case No. 138 of 2019. The respondents contend that the appeal process was undertaken lawfully and it is their submission that the impugned decision in the appeal to the Minister's case was arrived at after due consideration of evidence tabled before the decision makers. As such they submitted that the D.C.C was statutorily mandated to issue the impugned decision which was legal and procedurally proper.
 53. Regarding the issue whether the rules of natural justice were observed, the respondents relied on the case of Republic –vs- County Director of Education, Nairobi & 4 Others ex-parte Abdukadir Elmi Robleh [20189] eKLR in which the court cited with approval of case of Msagha –vs- Chief Justice & 7 Others Nairobi HCMCA No. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553. It is the respondents' submission that the impugned Ruling was compliant with the relevant rules.
 54. The respondents submitted that the Deceased was given an opportunity to participate in the appeal proceedings and that a cursory look at the copy of the Minister appeal proceedings will reveal that the Deceased participated in the appeal process.
 55. They also submitted that in the present application no evidence was brought by the ex-parte Applicant of any interest, conduct or association of the Respondent as the primary decision maker, which would lead to a likelihood or apprehension of bias in favor of the Interested Parties.
 56. It is the respondents' submission that the impugned decision was indeed based on evidence material and they note that it referred to the testimonies issued by various participants during the Minister appeal proceedings as well as a site visit. The respondents' submitted that the rules of natural justice were adhered to and as such the ex-prate applicants' right to a fair hearing was not controverted.
 57. On whether the judicial review remedies of certiorari and prohibition are available to the Applicant, the respondents' submitted that judicial review proceedings purely deal with the procedure and the process of decision making and not with the merits and/or substance of the case. The respondents relied on the case of Republic –vs- Director of Immigration Services & 2 Others ex-parte Olamilekan Gbenga Fasuyi & 2 Others (2018) eKLR.
 58. The respondents contended that in the instant suit, the ex-parte Applicant being aggrieved with the decision of the Deputy County Commissioner, through these Judicial review proceedings intends that the honourable court delves into the substance of the Appeal proceedings and review the evidence. They argued that although the application purports to call into question the process adhered to in arriving at the decision, the same is a disguised attempt to revisit the merit of the decision.
 59. The respondents submitted that all parties, including the ex-parte applicant, were afforded an opportunity by the Respondents to present their respective cases.
 60. The respondents' counsel further submitted that owing to the serious nature of judicial review orders, it is not enough for the ex-parte Applicant to claim that the Deputy County Commissioner acted illegally, unreasonably or in breach of rules of natural justice. That the actual sins by the impugned office must be exhibited for judicial review remedies to be granted as demonstrated in the case of Republic –vs- Kenya Power & Lighting Company Limited & Another [2013]eKLR and in East



African Community –vs- Railways African Union (Kenya) and Other4s (No. 2) Civil Appeal No. 41 of 1974 [1974]EA 425.

61. The respondents urged the court in exercise of its discretion to find that the Ex-parte Applicant has not provided sufficient grounds to warrant an award of Judicial Review remedies of Ceriorari and prohibition.

Interested Party's Submissions

62. In his submissions, the interested party gave a brief background of the case. He submitted that land parcel No. 1179 Kamwimbi 'A' Adjudication Section was hived from a Section of parcel No. 790 Kamwimbi 'A' Adjudication and awarded to him.
63. The interested party cited Section 7 of the *Fair Administrative Action Act* and submitted that while exercising judicial review powers, the court has to establish if the decider has authority to decide, acted in excess of jurisdiction or powers, contravened any law, was biased, denied a party an opportunity to be heard, failed to follow mandatory and material procedure, was unfair, erred in law, was being directed by an unauthorized person, made the decision in bad faith, was irrational, abused discretion, was unreasonable or disproportionate, abused power and violated legitimate expectation of the parties.
64. The interested party relied on the case of Republic –vs- Pubic Procurement Administrative Review Board & 2 Others ex-parte Rongo University (2018) eKLR which held that the grant of orders of certiorari, mandamus and prohibition is discretionary. That the court is entitled to take into account the nature of the process against which judicial review is sought and satisfy itself that there is reasonable basis to justify the orders sought.
65. The interested party submitted that the applicant's claim that he was condemned unheard lacks merit. This is because from the records exhibited by the Applicant i.e. Appeal to the Minster case No. 138/2019, it is clear that the Applicant was afforded an opportunity to ventilate his issues, and actively participated in the proceedings. Therefore, the interested party submitted that the applicant was accorded an opportunity to be heard.
66. Regarding the Applicant's claims of gross irregularities and unprocedural conducts, the interested party relied on the case of Pastoli –vs- Kabale District Local Government Council & Others (2008) 2 EA 300 which details the scope of Procedural impropriety and unfairness.
67. It is the interested party's submission that there was evidence produced by him to confirm that parcel land No. 790 was clan land and that he further went on to account for his relatives. He argued that the two witnesses, Fredrick Kiura Kirocho and Mutharaka Mbuko confirmed and authenticated his averments.
68. The interested party submitted that the Applicant only made averments that are not backed by evidence. That the 1st respondent's findings (at the DLASO level) during the site visit concurs with the evidence of Fredrick Kiura Kirocho that the parcel of land had houses developed on it and much of the land was uncultivated meaning a portion of it was cultivated.
69. The interested party stated that he testified that they had been cultivating on the land and at the time when the Ministerial panel conducted a site visit, they had not cultivated it due to poor rainfall experienced.
70. The interested party submitted that it is clear that the 2nd Respondent's decision was not at all inconsistent with the evidence adduced at the Ministerial Level and thus the decision was arrived at in a fair and procedural manner.



Analysis And Determination

71. I have considered the application, the responses and the written submissions filed. I have also considered the legal authorities relied on and the law. The issues for determination in my view are:
- i. Whether the Applicant has locus to bring this application
 - ii. Whether the impugned decision was arrived at in the manner envisaged by the law.
 - iii. Whether the judicial review remedies of certiorari and prohibition are available to the Applicant.

Whether the Applicant has locus to bring this Application

72. The respondent argued that the applicant herein has no locus to institute the suit for failing to take out Letters of Administration. That in this case, the Applicant has brought the suit as a legal representative of the estate of a deceased person, but has not exhibited any grant of letters of administration to prove that he is the legal representative as alleged.
73. I have perused the pleadings herein. I do note that in the Notice of Motion dated 19th April, 2023 and the verifying affidavit sworn by the Applicant on even date, the Applicant avers that he has the authority to swear the affidavit as legal representative of the estate of his late father one M’Vita Ikianya. It is clear from this that the Applicant has brought the suit as a legal representative of the estate of M’Vita Ikianya (deceased). However, a perusal of the record indicates that there is no grant of letters of administration issued to the applicant to prove that he is a legal representative of the estate of the deceased as alleged.
74. Locus standi is defined in Black’s Law Dictionary, 9th Edition (page 1026) as “the right to bring an action or to be heard in a given forum.” In the case of Alfred Njau and Others –vs- City Council of Nairobi (1982) KAR 229, the court held that:
- “the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.”
75. A claim that one has no locus standi therefore challenges a party’s right to be heard before a court and if a determination is made in the affirmative then this issue has the capability of disposing of the suit.
76. Section 82 of the [Law of Succession Act](#) gives the personal representatives of a deceased person’s estate the power to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the the deceased or arising out of his death of his personal representative. It is clear that one can only institute or enforce a suit on behalf of the estate of a deceased person once they have been appointed personal representatives to such estate. Such appointment under the [Law of Succession Act](#) can only be by way of obtaining a full grant or a grant limited for purposes of instituting a suit and prosecuting it which would in this case be an Ad-litem.
77. In the case of Julian Adoyo Ongunga & Another –vs- Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi (Deceased) [2016] eKLR, Mrima J), described a party filing a suit without an Ad Litem as follows:
- “...Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain the suit even where a valid cause of action exists. Locus standi relates mainly to the



legal capacity of a party. The impact of a party in a suit locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is worth noting that the issue of locus standi becomes such a serious one where the matter involved the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties...”

78. Further in the case of *Hawo Shanko –vs- Mohamed Uta Shanko (2018) eKLR*, the court while addressing the failure to obtain a grant prior to filing a suit observed that:

“...the general consensus is that a party lacks the Locus Standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or Applicant has not been formally authorized by the court by way of a grant limited for that purpose, then it will be difficult to control the flow of court cases by those entitled to benefit from the estate. If each beneficiary is allowed to file a suit touching on a deceased’s estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the Limited grant which gives the plaintiff the locus to stand before the court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same. One has to first obtain a limited grant that will give him/her the authority to file the suit...”

79. The court went further and stated:

“...if any relationship with the deceased does exist whether son, daughter, wife, widow is not sufficient. That relationship does not give the locus standi to any relative to obtain suit before obtaining limited grants. One’s relationship to the deceased does not clothe such a party with the locus standi. It is the Limited Grant which does.”

80. I am persuaded by the above decisions. I come to the inescapable conclusion that the Applicant has no locus. However, assuming that I am wrong on this issue, I will proceed to determine the other issues.

Whether the impugned decision was arrived at in the manner envisaged by the law

81. It is the Applicant’s contention that the proceedings before the Minister were flawed with gross irregularities and un-procedural conducts by the panel sitting in Appeal to the Minister Case No. 138/2019 thus arriving at an unjust and unfair decision/finding. From his own averments, the Applicant admits that the matter was adjudicated upon under the mechanisms provided by the law, that is [Land Adjudication Act](#).

82. The purview of judicial review proceedings concerns itself with the procedure applied in arriving at the impugned decision and not the merits of the decision. The court will therefore confine itself with the decision-making process and not the merits of the decision.

83. The principles for Judicial Review were set out in the landmark case of *Republic –vs- Kenya National Examination Council Ex-parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR* where the Court of Appeal stated inter alia:

“ That an order of certiorari can only quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction or where the rules of natural justice are not adhered to or any other reasonable cause. It is trite law that the remedy of judicial review is not concerned with the merits of the case, but the decision – making process. In order for an applicant to succeed in an application for judicial review,



he must satisfy the court that a public officer has acted procedurally, that his decision was unreasonable and that the impugned decision was illegal...”

84. Similarly, in the case of *Municipal Council of Mombasa –vs- Umoja Consultants Ltd* [2002] eKLR, the Court of Appeal held that:

“Judicial review is concerned with the merits of the decision itself: 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.”

85. I am therefore guided that in deciding the application herein, the court will not concert itself with the merits of the impugned decision. Instead, the court will decide whether the applicants have demonstrated that the decision-making process was tainted with illegality, whether the decision was made without jurisdiction, and whether the rules of natural justice were not adhered to.

86. The Applicant pleaded that at the time of the hearing, the 2nd respondent clearly misunderstood and ignored the fact that the interested party was not party to the suit during the committee stage and further alleged that the 2nd respondent clearly did not have a proper grasp of the facts of the case and only relied on the evidence of the interested party and did not consider the suit on its facts and merits.

87. The Applicant further pleaded that the 2nd witness of the interested party did not also bring any proof and neither contributed to the evidence that would lead the 2nd respondent to conclude that the portion referred to as 1179 was not the interested party’s ancestral clan land.

88. The Applicant further avers that the 2nd respondent’s judgment was not based on any particular evidence, except the contradictory and untrue statements of the interested party and the witnesses. The Applicant states that the 2nd respondent refused to hear the Appellant’s witnesses without any justifiable cause and reason even though he had brought them before him to be heard.

89. It is crystal clear from the above that the Applicant is challenging the merits of the decision. I am afraid, this court sitting as a judicial review court, cannot pretend to sit on appeal over the impugned decision. Further, I am persuaded that the deceased was afforded an opportunity to challenge the decision he was dissatisfied with which he did through Minister Case No. 138 of 2019 and the appeal was done in accordance with the provisions of the *Land Adjudication Act*. A perusal of the Minister Appeal proceedings reveals that the deceased participated in the appeal process. Therefore, the Applicant’s argument has no basis and must fail.

Whether the judicial review remedies of Certiorari and Prohibition are available to the Applicant.

90. It is trite law that Judicial Review concerns itself with the integrity of the process rather than the merits of the decision made in the impugned proceedings. In the case of *Chief Constable of the North Wales Police –vs- Evans* [1982] 1 WLR 1155, Lord Brightman noted thus;

“Judicial Review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power...Judicial



Review, as words imply, is not an appeal from a decision but a review of the manner in which the decision was made.”

91. I have perused the verifying Affidavit of the Applicant wherein he purports to question the process adhered to in arriving at the decision. However, the same discusses the merits of the Appeal. This court cannot sit on appeal over the 2nd respondent’s decision.
92. It is not enough to simply state that grounds for issuance of the orders exist. There is need to lay basis for alleging that there exist grounds which justify the grant of the said orders. The Application is clearly attacking the merits of the decision of the Minister, and not the decision making process.
93. Consequently, the court dismisses the application with costs to the respondents and the interested party herein.
94. Orders accordingly.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH APRIL, 2024

C.K YANO,

JUDGE

In the presence of:

Court Assistant – Martha

No appearance for Applicant

No appearance for Respondent

No appearance for Interested Party

