



**State v Deputy County Commissioner Suba Sub-County & another; Otieno & 3 others (Exparte); Ojwang & 4 others (Interested Parties) (Environment and Land Judicial Review Case E004 of 2024) [2024] KEELC 3740 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3740 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2024**

**M SILA, J**

**APRIL 24, 2024**

**BETWEEN**

**THE STATE ..... APPLICANT**

**AND**

**DEPUTY COUNTY COMMISSIONER SUBA SUB-COUNTY 1<sup>ST</sup> RESPONDENT  
ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**SAMWEL L OTIENO ..... EXPARTE  
TIMSON O OTIENO ..... EXPARTE  
ERASTUS O OTIENO ..... EXPARTE  
MICHAEL ONYANGO OTIENO ..... EXPARTE**

**AND**

**WYCLIFFE O OJWANG ..... INTERESTED PARTY  
HEADMONDS JAMES K'OBIL ..... INTERESTED PARTY  
CHARLES O OJWANG ..... INTERESTED PARTY  
JOSEPH OKOTH OJWANG ..... INTERESTED PARTY  
MICHAEL OTIENO OJWANG ..... INTERESTED PARTY**



## RULING

1. I have before me an application dated 16 April 2023. It is an application brought pursuant to Order 53 of the Civil Procedure Rules and it seeks leave to commence judicial review proceedings against the respondents. The *ex parte* applicants intend to file suit for orders of certiorari to quash a decision made by the 1<sup>st</sup> respondent which was made on 3 November 2023 awarding the land parcels Kaksingri West B/1335 and 1336 to the interested parties in Adjudication Appeal Case No. 514 of 2017, Kaksingri West B, Adjudication Section. That award was made in respect of an appeal to the Minister pursuant to Section 29 of the Land Adjudication Act, Cap 284, Laws of Kenya. It is apparent therefore that the 1<sup>st</sup> respondent was exercising a delegated authority.
2. I am afraid that as drawn I am unable to grant the leave sought. This is because the decision was strictly not of the Deputy County Commissioner Suba, in that capacity, but was, in the context of the matter, a decision of the Minister, since the Deputy County Commissioner Suba was only exercising a delegated authority. The Minister (now Cabinet Secretary) must therefore be a substantive party to the litigation but he/she is not included in the litigation.
3. The main motion, without the Minister being a party, will be a non-starter.
4. For the above reasons, I decline to grant the leave sought. The application is therefore dismissed but there will be no orders as to costs.
5. The *ex parte* applicants are at liberty to file a proper application for consideration.

**DATED AND DELIVERED THIS 24 DAY OF APRIL 2024.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**HOMA BAY**

