



State v Deputy County Commissioner Suba Sub-County & another; Rowa (Exparte); Ngorome & 3 others (Interested Parties) (Environment and Land Judicial Review Case E003 of 2024) [2024] KEELC 3371 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3371 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2024**

M SILA, J

APRIL 24, 2024

BETWEEN

THE STATE APPLICANT

AND

THE DEPUTY COUNTY COMMISSIONER SUBA SUB-COUNTY 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

DISMAS OKELLO WILLIAM ROWA EXPARTE

AND

SILAS OUKO NGOROME INTERESTED PARTY

HEADMONDS JAMES K'OBIL INTERESTED PARTY

EDWIN OCHIENG AGIK INTERESTED PARTY

KENNEDY ANTHONY INTERESTED PARTY

RULING

- 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 1st respondent said to have been made on 3 November 2023 (though it appears to me to be a decision made on 19 December 2023) awarding the land parcels Kaksingri West B/1291, 1292, 1293 and 1294 to the interested parties in Adjudication Appeal Case no 521 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 1st 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. The main motion, without the Minister being a party, will be a non-starter.
3. 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.
4. 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

