



**Mbaabu v Kaunu & 2 others (Environment & Land Petition E001 of 2023) [2024] KEELC 4342 (KLR) (22 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4342 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND PETITION E001 OF 2023**

**CK NZILI, J**

**MAY 22, 2024**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF  
CONSTITUTIONAL RIGHTS, FREEDOMS AND GUARANTEES  
UNDER ARTICLES 22, 23, 40 & 47 OF THE CONSTITUTION**

**BETWEEN**

**JOSEPH KOBIA MBAABU ..... PETITIONER**

**AND**

**FRANCIS KAUNU ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER IGEMBE SOUTH SUB-COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner, describing himself as a leader of the Athimba Ankola Clan and a beneficiary of land Parcel No. 1550 Lower Athiru Gaiti Adjudication Section, moved this court through a petition dated 1.12.2022. It was averred that during the adjudication process between 2000 & 2004, the District Land Adjudication Settlement Officer (DLASO) gave directions for the land to be subdivided and allocated to the clan members, and a list was sent to the said office for implementation.
2. The petitioner averred that he was allocated Parcel No. 500 Lower Gaiti B Adjudication Section, which he had been occupying alongside other clan members, while the other one was given to Kainda Kobia to use and rent.
3. The petitioner averred that in 2005, one M'Ithalii Mboti and his wife invaded his land, claiming it belonged to them, and attempted to chase away his farm workers from the land, subsequent to which the D.L.A.S.O handled the dispute and dismissed it on 18.12.2019.



4. The petitioner averred that the 1<sup>st</sup> respondent appealed to the Minister, which appeal was heard and determined in favor of the 1<sup>st</sup> respondent by a ruling delivered on 3.3.2022.
5. The petitioner faults the decision for being ultra vires, as null and void, discriminatory, and oppressive to him. He prayed for the said decision to be quashed and the land to be declared as exclusively belonging to him.
6. In the supporting affidavit by Joseph Kobia Mbaabu, which was undated, the petitioner averred that the land is situated in the Kindani location, which he has occupied for over 18 years to the exclusion of M'Ithali Mboti and his wife. He said that he was entitled to protection under Articles 10 (2), 22, 40 and 47 of *the Constitution*. Further, the petitioner averred that going by annexures marked J.K. "1," the D.L.A.S.O. rightfully awarded the land to him, unlike the ruling by the Deputy County Commissioner attached as per annexure marked J.K. "2".
7. The 1<sup>st</sup> respondent opposed the petition through a replying affidavit sworn by Francis Kaunu on 9.1.2024. It was averred that none of the petitioner's constitutional rights and freedoms had been infringed as alleged or at all. The 1<sup>st</sup> respondent averred that the petition was based on falsehoods, lacked evidence and failed to meet the constitutional threshold.
8. Further, the 1<sup>st</sup> respondent averred that the petitioner did not own any land in the area before or during the adjudication process; otherwise, before the area was gazetted as an adjudication section, the land was owned by the Athimba clan, which eventually, after adjudication was distributed to its clan members, among them M'Ithali Baicuriu (deceased).
9. The 1<sup>st</sup> respondent averred that when the process of land gathering commenced, M'Ithali Bacurio gathered his land, had it recorded under his name, and was given parcel No. 1550 Lower Athiru Gaiti Adjudication Section and on 20.8.2019 he sold the entire parcel of land to him for Kshs.30,000/= as per a sale agreement annexed as F.K. "1", which he paid and applied for a transfer of the land as per annexure marked F.K. "2", that was allowed by the demarcation officer.
10. The 1<sup>st</sup> respondent averred that the land adjudication officer, after confirming that the land belonged to the seller, formally transferred it to him, and he took vacant possession.
11. Again, the 1<sup>st</sup> respondent averred that in 2012, the petitioner invaded his land and demolished a temporary structure. He said a report was made at Maua Police station, following which the D.L.A.S.O. was requested and did file a report dated 1.11.2022, annexed as F.K. "3", showing the status of the land ownership as initially owned by M'Ithali Baicurio though later on transferred to him.
12. The 1<sup>st</sup> respondent averred that the petitioner was subsequently charged with the offense of malicious damage to property in Maua CM Cr. Case No. 3286 of 2012. Since the petitioner was continuing with trespass, the 1<sup>st</sup> respondent averred that he sought and obtained a consent to sue marked F.K. "4" and filed Maua CMC ELC Case No. 205 of 2012 annexed as F.K. "5".
13. The 1<sup>st</sup> respondent averred that the D.L.A.S.O. published the record of existing rights and invited parties to file objections, which the petitioner successfully did as A/R objection no. 19, leading to a Minister's Appeal No. 100 of 2021 annexed as F.K. "6".
14. The 1<sup>st</sup> respondent averred that during the hearing by the minister, each party was granted an opportunity to tender evidence and a decision was made on 3.3.2022, which the petitioner never challenged. The 1<sup>st</sup> respondent averred that after the minister's appeal, the Maua E.L.C. No. 205 of 2012 was marked as settled in terms of the minister's decision.



15. The 1<sup>st</sup> respondent averred that the land adjudication fell under the *Land Consolidation Act* (Cap 283) and that the minister's decision was fair and supported by evidence and has subsequently been implemented as per annexure F.K. "7".
16. The 1<sup>st</sup> respondent termed the petitioner as an intermittent trespasser to his land, now lawfully owned by him in accordance with the law, and that there was no time the minister infringed any of the petitioner's constitutional rights or freedoms.
17. The 2<sup>nd</sup> & 3<sup>rd</sup> respondents opposed the petition through a replying affidavit sworn by N.K Tanui on 12.1.2024. As the Deputy County Commissioner Igembe South Sub-county, the 2<sup>nd</sup> respondent averred that the petition fell short of the threshold in a constitutional petition and lacked particulars or evidence to sustain it.
18. The 2<sup>nd</sup> & 3<sup>rd</sup> respondents averred the Minister's Case No. 100 of 2021 over Parcel No. 500 Lower Athiru Gaiti B Adjudication Section was heard and determined in the exercise of delegated powers from the minister and according to Cap 284, where all the parties were accorded an opportunity to represent their respective cases and a decision arrived at following the due process of the law, taking into account the facts and evidence presented. The 2<sup>nd</sup> & 3<sup>rd</sup> respondents termed decisions as the determinants as just under Section 29 of Cap 284.
19. Similarly, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents averred that the petitioner has failed to adduce any evidence on how the decision was unconstitutional, discriminatory, and or oppressive to him; otherwise, it was an attempt to appeal against the decision in the guise of a constitutional petition, contrary to Section 29 of Cap 284.
20. With leave of court the petitioner filed a further affidavit sworn by Joseph Kobia on 23.1.2024. He attached a letter dated 25.9.2006 and a clan membership list as J.K. 1 (a) & (b), showing that he was among the allottees of the land. Further, the petitioner attached annexure J.K. 2 (a), (b) & (c), which were letters and a map of the allocation as of 2004, and averred that he had been in occupation of the land, which fact was confirmed in the A/R objection that was heard on 20.11.2019, following a visit by the committee, which established he had duly occupied and developed the land.
21. The petitioner averred that the 2<sup>nd</sup> respondent failed to visit the suit land, before rendering its decision to establish and verify the facts. The petitioner averred that after the hearing in October 2020, the 2<sup>nd</sup> respondent delivered the decision in March 2022, without notice to him until he obtained a copy in August 2022. He said that the 2<sup>nd</sup> respondent frustrated him and was only able to obtain the decision after which the six-month period for appeal had lapsed.
22. As to the criminal case, the petitioner averred that he was acquitted of all the charges only for the 1<sup>st</sup> respondent to file a civil suit seeking a determination of ownership of the property. The petitioner averred that whereas the 1<sup>st</sup> respondent averred that he bought the land from M'Italii Baicurio, there was no proof to show that the seller owned the land prior to the sale for the clan never confirmed such an allocation to the late M'Italii Baicurio. Further, the petitioner averred that Isaiah Mbaabu Kaura could never be a credible witness on matters pertaining to the Athimba Ankola clan, for he was never in charge of land adjudication in the area. Therefore, the petitioner reiterated that the 2<sup>nd</sup> respondent acted beyond his powers by awarding the suit property to the 1<sup>st</sup> respondent, without concrete proof of ownership or going to the ground and establishing occupancy of the land.
23. With leave of court, parties canvassed the petition by way of written submissions. The petitioner relied on written submissions dated 15.2.2024. It was submitted that the 2<sup>nd</sup> respondent was expected to hear the appeal based on the grounds of appeal and the record of the land adjudication officer. The



petitioner submitted that the 2<sup>nd</sup> respondent failed to visit the locus in quo or demonstrate how he arrived at the decision, what evidence was adduced to show that the 1<sup>st</sup> respondent was entitled to the land, and explain why it took seventeen months to deliver the ruling without notifying him was placed. Reliance was placed on Republic vs Minister for Lands and others, ex parte Robert Musili Mwendwa (2006) eKLR, Judicial Service Commission vs Mbalu Mutava, and another (2015) eKLR.

24. On breach of constitutional rights, the petitioner submitted that under Section 29 of the [Land Adjudication Act](#), a Minister has to make a decision that he thinks just, and the order shall be final and, after that, forward the copies of the order to the Director of the Land Adjudication and the Chief Land Registrar under Section 29(3) thereof. Relying on Pastoli vs Kabale District Local Government Council & other (2008) 2 E.A 300, the petitioner submitted that the decision was tainted with irregularities, illegalities, irrationality, procedural impropriety, was erroneous, made without jurisdiction, and was therefore ultra vires.
25. In this case, the petitioner submitted that the 2<sup>nd</sup> respondent's reason or the decision was based on no evidence, amounted to misuse of power, was manipulated, fraudulent, and was an interference with by the 1<sup>st</sup> respondent as a land committee member.
26. The 1<sup>st</sup> respondent relied on written submissions dated 25.2.2024. It was submitted that the petition was not pleaded with clarity, conciseness, and precision. Reliance was placed on Manase Guyo & others vs Kenya Forest Services Ltd Mombasa High Court Petition No. 22 of 2024.
27. On the alleged infringement of constitutional rights and freedoms, the 1<sup>st</sup> respondent submitted that no evidence was tendered to demonstrate that the 2<sup>nd</sup> respondent acted in a way that violated or infringed on the rights of the petitioner; otherwise, the 2<sup>nd</sup> respondent followed Section 13(1) 19-20 and 29 of Cap 284 in hearing and determining the appeal, as a delegatee of the minister and accorded the parties all their rights and freedoms. Therefore, the 1<sup>st</sup> respondent urged the court to find no fault in both the process and the outcome of the appeal.
28. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents relied on written submissions filed on 27.2.2024. It was submitted that in line with Section 26 of the Act, the appeal was heard and determined by the 2<sup>nd</sup> respondent in a just and fair manner, in line with the rules of natural justice.
29. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents submitted that the petitioner had failed to prove that the 2<sup>nd</sup> respondent acted in excess of jurisdiction, as held in Republic vs Cabinet Secretary Ministry of Agriculture, Livestock, and Fisheries, C.S, Ministry of Industry, Trade and Cooperatives (interested party) Tanners Association of Kenya (suing through its Chairman Robert Njoka Ex parte Applicant (2019) eKLR.
30. Further, the 2<sup>nd</sup> & 3<sup>rd</sup> respondents who submitted the petition failed the test in Anarita Karimi vs Republic No. (1) (1979) 1 KLR 154, David Mathu Kimingi vs SMEC International PTY Ltd (2021) eKLR and Mumo Matemo vs Trusted Society of Human Rights Alliance (2013) eKLR. To this end, the 2<sup>nd</sup> & 3<sup>rd</sup> respondents submitted that whereas the petition had laid a legal foundation, it failed to particularize the alleged violation and the manner of violation to be entitled to the reliefs sought.
31. The issues calling for my determination are:
  - a. If the petitioner exhausted the internal dispute mechanism under the relevant statute.
  - b. If the petitioner meets the threshold of a constitutional petition.
  - c. If the petitioner pleaded and proved a breach of his cognitional rights and freedoms.
  - d. If the petitioner is entitled to the reliefs sought.



- e. What is the order as to costs?
32. In *Bernard Murage vs Fineserve African Ltd & others* (2015) eKLR, the court held that where a statute provides alternative remedies, such statutory mechanism must be exhausted before a party can move to court. In *Communication Council of Kenya & others vs Royal Media Services* (2014) eKLR, the Supreme Court of Kenya held that the doctrine of avoidance interrogates whether there are other ways of resolving a dispute outside a constitutional petition. In *Speaker of National Assembly vs Karume* (1992) KLR 21, the court held that where was a straightforward procedure for redress of any dispute prescribed by *the Constitution* or statute, and that procedure must be strictly followed.
33. In *Geoffrey Muthinja Kabiru & others vs Samuel Henry Munga & others* (0215) eKLR, the court held that a party must exhaust a dispute resolution mechanism outside the court before invoking its jurisdiction as the court should be the last port of call.
34. The respondents have attacked the petition as a disguised appeal against the minister's decision made on 23.3.2023. The petitioner, in his further affidavit sworn on 23.1.2024, has blamed the 2<sup>nd</sup> & 3<sup>rd</sup> respondents for delivering the ruling after 17 months, contrary to the requirements of Cap 284 and the *Fair Administrative Action Act*, and for failing to avail him a copy on time so as to move to court within six months. The 1<sup>st</sup> respondent, on the other hand, has averred that the D.L.A.S.O implemented the decision as per annexure marked F.K. "7" on 21.6.2022.
35. It is important to note that the six months were to expire from the date of the delivery of the decision. The petitioner averred in paragraph 7 of the further affidavit that he obtained the ruling in August 2022 after he was frustrated by the 2<sup>nd</sup> respondent until the six-month period lapsed.
36. No evidence has been tendered to show when the petitioner became aware of the decision and whether any follow-up letters were sent to the 2<sup>nd</sup> & 3<sup>rd</sup> respondents seeking access to the decision as per Article 35 of *the Constitution* and the *Access to Information Act*.
37. On the other hand, there is no averment by either of the respondents on how the ruling date was communicated to the parties and whether the 2<sup>nd</sup> & 3<sup>rd</sup> respondents, as required under Article 47 of *the Constitution*, availed to the petitioner on time, copies and reasons for the decision, in order to exercise his right of appeal.
38. After 2010, a party has two options to challenge a decision by inferior tribunals under Articles 23 (3) and 47 of *the Constitution*. He may move under Article 47 of *the Constitution* and the Fair Administrative Actions Act. Similarly, he may move the court through Order 53 Civil Procedure Rules and Sections 8 & 9 of the *Law Reform Act*. Section 9 (2) of the *Fair Administrative Action Act* provides that the internal dispute mechanisms have to be exhausted before a party moves the court. Under Section 9(4) thereof, where there are exceptional circumstances, an applicant may be exempted from the non-exhaustion doctrine.
39. In *Krystalline Salt Ltd vs Kenya Revenue Authority* (2019) eKLR, the court termed exceptional circumstances as including whether the internal remedy would be effective or futile or is rigid. In *National Assembly of Kenya vs. Kina and another* (civil appeal) 166 of 2019 (2022) KECA 548 KLR (June 20<sup>th</sup> 2022) (Judgment), the court held where an alternative remedy was not available or practical, or there would be delay or uncertainty in providing the remedy, then the doctrine may not apply.
40. In *Nicholus vs A.G. and 7 others*, the National Environmental Complaints Committee and 5 others (interested party) Petition E007 of 2023 (2023) KESC 113 (K.L.R.) (December 28th, 2023) (Judgment), the Supreme Court of Kenya held that the availability of an alternative remedy, does not necessarily bar an individual from seeking constitutional relief for such an avenue is contingent



upon the adequacy of an existing alternative means of redress. The court held it had to scrutinize the purpose for which a party was seeking the relief it was appropriate in the given circumstances and the relationships between the constitutional relief and the alternative means of redress.

41. In this petition, there is no evidence that the petitioner slept on his rights and deliberately failed to exhaust the internal dispute process, yet he had all the necessary documents to exercise his right of appeal as provided to him by the 2<sup>nd</sup> – 3<sup>rd</sup> respondent.
42. In *Dande & 3 others vs Inspector General National Police Service and 5 others* Petition 6 E007, (E005) & 8 (E0010) of 2022 (Consolidated (2023) K.E.S.C. 40 (K.L.R.) (June 16<sup>th</sup>, 2023) (Judgement) the Supreme Court of Kenya court clarified on the scope of judicial review post-2010 after it was elevated as a substantive and justifiable right. The court held that under Articles 23 (3), 47, and Sections 7 of the Fair Administrative Actions Act as held in *Praxedes Saisi and 7 others vs. D.P.P. & others* (2023) K.E.S.C. 6 (K.L.R.) (Civ) (January 27<sup>th</sup>, 2023) (Judgment), the right to fair administrative action was a constitutional imperative covering not only state bodies but also any person, body or authority making administrative decisions. The court said that when a party approaches a court under the provisions of *the Constitution*, then the court can carry out a merit review of the case, unlike if it was filed under the traditional Judicial review.
43. In this petition, the petition seeks to question the delay, rationale, lack of notification, and the failure to be accorded the decision on time in order to file an appeal. To my mind the petitioner cannot be faulted for choosing a constitutional petition instead of the judicial review path.
44. As to whether the petition meets the constitutional threshold, a party seeking a constitutional relief must describe the party's nature and particulars of the rights and freedoms infringed, the manner of infringement, details of the violations, loss, and damage caused, and the evidence of violations or the breaches. In *Mumo Matemu vs. Trusted Society* (supra), the court held that there must be precision and clarity on the particular Constitutional rights or freedoms that have been infringed or violated, so that the opposite party and the court may know what the issues were before it. There must also be evidence of proof of constitutional violations. See *Mustafa Tobiko Ole Tumpal vs Hassan Ole Naado & 17 others* (2021) eKLR.
45. In *C.C.K. & others vs Royal Media Services Ltd* (supra), the court said that the basis of the grievance must be stated, including the manifestation of contravention or infringement as held in *Anarita Karimi vs Republic* (supra), since it serves as a foundation of conviction and good faith in engaging the constitutional process of dispute settlement.
46. Again, a constitutional petition must disclose a constitutional issue or question demonstrating the link between the aggrieved party, the provisions of *the Constitution* alleged to be contravened, and the manifestation of the contravention. See *Dennis Gakuu Wabome vs Independent Electoral Boundaries and Commission and others N.R.B. Petition No. E321 of 2022*.
47. In this petition, the 2<sup>nd</sup> & 3<sup>rd</sup> respondents are agreeable that the legal foundation has been laid. However, they fault the petition for lack of particularity and precision in the manner of the violations, loss and damage suffered.
48. Looking at the petition, I think the petitioners substantially complied with *the Constitution* of Kenya (Protection of Fundamental Rights & Freedoms) Practice and Produce Rules, 2013 (Mutunga Rules) and laid out the specific constitutional rights and freedoms allegedly infringed on dates, nature, and manner of infringement. The respondents were able to respond to the petition in detail without calling for better particulars.



49. In my view, the constitutional issue raised in the petition is whether the 2<sup>nd</sup> respondent adhered to the constitutional requirements under Article 47 of *the Constitution* as read together with the Fair Administrative Actions Act in hearing and determining the minister's appeal and, after that, notified the petitioner or time or at all of the decision and later on supplied the same to the petitioner so as to exercise his right of appeal.
50. As to whether the petitioner has proved a breach of his right to ownership of land, equality before the law, protection and equal benefit of the law, dignity, quality service in an administrative action, access to justice, fair hearing, public trust, and impartiality in decision making, the burden of proof lies on he who alleges. A party alleging a breach of constitutional rights and freedoms must lay tangible and cogent evidence to sustain his claims.
51. The mode of hearing constitutional petitions under Rule 20 of the Mutunga Rules may be through affidavit, evidence, oral or written submissions. See *Christian Juma Wabwire vs. AG* (2019) eKLR, L.T. Col. Peter Ngari Kagume & others vs A.G. Constitutional Petition Application No. 128 of 2006. Mere words, speculations, and imaginations must be guided by evidence of a probative nature or value. In *Nasra Ibrahim Ibren vs. I.E.B.C. & 7 others* (2018) eKLR, the court observed that a party is under a constitutional forensic duty to clear and set out the particulars of the constitutional transgressions committed.
52. The 2<sup>nd</sup> & 3<sup>rd</sup> respondents have averred that the hearing and determination of the appeal was heard in a fair and just manner as per Section 29 of Cap 284, and each party was accorded an opportunity to present their respective cases. Further, the 2<sup>nd</sup> & 3<sup>rd</sup> respondents averred that the minister's decision was just and fair. On the other hand, the petitioner terms the process as faulty, the decision as ultra vires, there was a failure to visit the locus in quo and the reasons for the decision were not given.
53. An administrative action is defined under Section 2 of the *Fair Administrative Action Act*, as the powers, functions, and duties exercised by authorities, an act or omission, or decision of such a body that affects the legal rights or interests of any person to whom such action relates.
54. Article 47 of *the Constitution* provides that administrative action must be expeditious, efficient, lawful, reasonable, and procedurally fair. The purpose of fair administrative actions under Article 47 (b) of *the Constitution* is to promote efficient administration. In *Kiluwa Ltd & another vs Business Liaison Company Ltd & others (Petition 14 of 2017)* (2021) K.E.S.C. 37 (K.L.R.) (August 6th, 2021) (Judgment), the supreme court of Kenya held that Article 47 of *the Constitution* is expressed in normative terms as opposed to general principles that would require further input of the legislative so as to attain prescriptive force, and whose substantive entitlements cannot be suspended by Sub-Article (3) as to expeditious efficiency, lawfulness, reasonableness and procedural fairness. The court said that Sub-Article (3) serves to perfect the enjoyment of these rights.
55. In *James Willy Kingori vs Chairman, Extra Ordinary Meeting of Michimikuru Factory Ltd & others Maurine Kobia Dickson (interested party)* (2022) eKLR, the court cited *Dry Associates Ltd vs Capital Markets Authority & another* (2002) eKLR, that Article 47 was intended to subject administrative processes to constitutional discipline.
56. The court also cited *J.S.C. vs Mbalu Mutava* (supra) that Article 47 is an essential and transformative development of administrative justice to control the powers of the state organs and other bodies and was a reflection of national values such as the rule of law, human dignity, social justice, good governance, transparency, and accountability. The court held that the failure to observe the constitutional decree for all intents and purposes undermines the rule of law and the values of Article 19 (1) of *the Constitution*



since the Bill of Rights was an integral part of Kenya's democracy and a framework for its social, economic and cultural policies.

57. In *Republic vs Firearm Licensing Board and Another ex parte Boniface Mwaura* (2019) eKLR, the court said that all laws must conform to the constitutional edifice and all statutes must be interpreted through the prism of the Bill of Rights. The court said Article 47 codifies every person's right to fair administrative action that includes procedural fairness or natural justice and that Sections 7 (2) of the [Fair Administrative Action Act](#) provides for the grounds of applying for judicial review and that judicial review was constitutional supervision of public bodies involving a challenge to the legal validity of a decision.
58. Section 4 of the [Fair Administrative Action Act](#) re-echoes Article 47 on procedural fairness. The administrator has to give the affected person of his decision prior and adequate notice of the nature and reasons for the proposed administrative action, an opportunity to be heard, to make a presentation, notice of a right to a review or internal appeal mechanism against his decision, statement of reasons, information, materials, and evidence.
59. Section (4) of the [Fair Administrative Action Act](#) relates to attendance during the proceedings. Section 7 (2) relates to the question of unreasonableness and irrationality, justifications, transparency and intelligibility. In *Suchan Investment Ltd vs. Ministry of National Heritage & Culture and 3 others*, the court cited *J.S.C. vs Mutava* (supra) that reasons must be given for a decision under Article 47 (2) of [the Constitution](#).
60. In *John Wachiuri t/a Githakwa Graceland and Wandumbi Bar & others vs. the County Government of Nyeri and another* (2016) eKLR, the court observed that there were three categories of public law wrongs, namely illegality, which includes the decision maker knowing the law regulating them, fairness, that demand that the body must act reasonably as to amount to abuse of power and irrationality or proportionality if the decision is unreasonable or perverse.
61. Applying the preceding tests, can the process and outcome of the minister's appeal be said to have passed the constitutional tests under Article 47? From the decision rendered by the minister, there were no reasons given why the appeal was successful. The decision-maker failed to explain the rationale of his decision and why he believed one party and not the other based on the evidence before him. Third, it was not indicated why the decision maker was diverting from the earlier verdict during the A/R objection. The decision does not show what were the grounds of the appeal and whether the same were considered or not.
62. The deponent to the replying affidavit by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents is one Mr. N.K Tonui and not J.K Sawe, who heard and determined the minister's appeal. The deponent did not state how conversant he was with the appeal, yet he is not the one who heard and determined the appeal. He has not stated if he had authority from Mr. Sawe to swear the affidavit. The deponent did not state why there was a delay of 17 months in delivering the verdict and whether the petitioner was notified to attend the ruling and accorded a copy on time to file an appeal.
63. Irregularity, illegalities, and procedural improprieties are some of the reasons a decision can be found null, void, ultra vires, and unsustainable, as held in *Pastoli vs Kabale District* (supra). See *Mpiuki vs Land Adjudication & Settlement Officer Igembe & others* (2022) KEELC 15158 (K.L.R.) November 30th (2022) (judgment).
64. Looking at the decision herein, I find the same falling short of the constitutional edifice under Article 47 of [the Constitution](#). The same is hereby quashed and the appeal remitted for re-hearing by a different officer within six months from the date hereof.



65. Costs to the petitioner.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 22ND DAY OF MAY, 2024**

**In presence of**

C.a Kananu

Mr. Gitonga for 1<sup>st</sup> respondent

Miss Gikundi for the petitioner

Miss 2<sup>nd</sup> & 3<sup>rd</sup> respondent

**HON. C K NZILI**

**JUDGE**

