



**Kariuki v Deputy County Commissioner Buuri East Sub-County & another;
M'munoru (Interested Party) (Environment and Land Judicial Review
Case E007 of 2023) [2024] KEELC 4774 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4774 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E007 OF 2023**

CK NZILI, J

JUNE 12, 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE BY JANET KARAMBU TO
APPLY FOR ORDERS OF JUDICIAL REVIEW OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF ORDER 53 RULES 1 AND 2 OF THE CIVIL PROCEDURE RULES

BETWEEN

JANET KARAMBU KARIUKI EXPARTE APPLICANT

AND

**DEPUTY COUNTY COMMISSIONER BUURI EAST SUB-
COUNTY 1ST RESPONDENT**

THE HONORABLE ATTORNEY GENERAL 2ND RESPONDENT

AND

STEPHEN MUTUMA M'MUNORU INTERESTED PARTY

RULING

1. What is before the court is the notice of motion dated 12.2.2024, seeking issuance of an order of certiorari to call for and quash the Minister's decision made on 5.5.2022 in Appeal No. 117/2020 regarding Parcel No. 633 Ruiru Rwarera Adjudication Section. The application is supported by a statutory statement of facts and verifying affidavit sworn by Janet Karambu Kariuki on 15.11.2024.
2. The facts are that the exparte applicant's late husband is the recorded owner of Parcel No. 633 Ruiru/Rwarera measuring 24 acres, which he bought from M'Mungania Makathimo by a sale agreement dated 30.3.1976 and took vacant possession. The exparte applicant avers that she has been utilizing the



- suit land throughout by keeping livestock and farming until he passed on. She attached a copy of the limited grant as RWM "1".
3. The exparte applicant states that all these facts and evidence of occupation were available before the land adjudication office records. She attached a copy of the sale agreement as annexure RWM "2". The applicant avers that the interested party trespassed on the land without her consent, yet he knew that her husband was the recorded owner of the land.
 4. Further, it was averred, given the above facts and concealment of them by the interested party claiming to be an orphan, that the minister was unfair and unjust to deny the applicant her right to ownership of the land. The applicant attached copies of the minister's decision and proceedings delivered on 5.5.2022, as well as that of the land adjudication officer, delivered on 19.3.2019 as annexures RWM "3" & "4," respectively.
 5. The application is opposed through a preliminary objection dated 19.12.2023 by the interested party and a replying affidavit sworn by Stephen Mutuma M'Munoru on 4.3.2024. It is averred that the application offends Order 53 Rule (2) of the Civil Procedure Rules.
 6. Further, the interested party avers that his late further M' Athara M'Ereche M'Rimbogoa was allocated Parcel No. 632/Ruiri Rwarera by the then minister of land, Hon. Jackson Angaine, in 1972. However, no documentation was issued to him, but he took vacant possession of the land, where he constructed a three-room timber house a kitchen and continued utilizing the said land until he got married.
 7. Moreso, the interested party avers that one of his brothers passed away and was buried therein. The interested party terms the husband to the exparte applicant, who used to be a land surveyor as a stranger to the land who unfairly used his position working at the land office to grab the land.
 8. The interested party avers that despite the demonstration that he was in complete occupation of 4 acres with permanent developments, as alluded to above, his objection was dismissed out of the undue influence of the late Zachary Kariuki Wanyeki.
 9. Further, the interested party avers the decision of the minister has no error or impropriety to warrant the disturbance of the award, for the applicant does not fault the procedure followed nor does she allege any breach of the law or her rights.
 10. Additionally, the interested party avers that his late father was always the owner of the subject land until he applied for subdivision upon his sons, only to discover it had illegally been acquired by the deceased.
 11. The interested party avers that the minister was justified to award 4 acres of land fully occupied by him contrary to the finding by the committee which had acted in a biased manner.
 12. The exparte applicant terms the notice of motion as time-barred by dint of Order 53 Rule (2) & (3) of the Civil Procedure Rules. When this matter came up on 6.5.2024, Miss Riungu for the exparte applicant relied entirely on the notice of motion, while Mr. Muriuki for the interested party urged the court to find the judicial review time-barred for six months had expired by the time the proceedings were commenced Counsel submitted that no explanation for the delay was offered.
 13. Learned counsel further submitted that judicial review seeks to check excesses of quasi-judicial entities and where the rights of an exparte applicant have been violated and not on merits or demerits for the decision. In this notice of motion, Counsel submitted the exparte applicant was looking into the merit and not the process.
 14. Similarly, learned counsel submitted that in the original exparte chamber summons, the exparte applicant had not invoked Article 47 of *the Constitution*, and to do so in the notice of motion was



- illegal. Counsel termed the notice of motion as misplaced. Miss Riungu, in a rejoinder confirmed that in the original documents, *the Constitution* had not been invoked.
15. The court has carefully gone through the pleadings and the submissions made by the parties. Although the respondents were served with the application and at some time sent Miss Maina advocate to attend court, no response was made to the notice of motion.
 16. The decision sought to be quashed was made on 5.5.2023. Order 53 of the Civil Procedure Rules and Section 9 (3) of the *Law Reform Act* provide that any party challenging a decision on account of certiorari to file the proceedings within six months from the date of the decision.
 17. In the instant case, the ex parte applicant approached the court on 20.11.2023. The six-month period had expired on 5.11.2024. The interested party terms the proceedings as time-barred.
 18. In *Chabari vs DLASO Meru South Maara District & others E & L JR E001 of 2023 (2024) KEELC 11288 (KLR) (29th February 2024) (Ruling)*, the court observed that the procedural law of judicial review is the *Law Reform Act* and Order 53 Civil Procedure Rules. The court cited *Wilson Osolo vs John Odhiambo Achola & another (1996) eKLR* that the time limited by Section 9 of the *Law Reform Act* could not be extended under Order 49 of the Civil Procedure Rules. Furthermore, the court cited *Republic vs Chairman Amagoro Land Disptue Tribunal and another ex parte, Mafwabi Wanyama (2014) eKLR*, that time cannot be extended under Section 9 (3) of the *Law Reform Act*. The court observed that rules made under a statute could not override a statutory provision, and since the *Law Reform Act* has no such provision for an extension of time, an application filed outside seeking orders of certiorari was incurable under Article 159 2 (d) of *the Constitution*.
 19. In *Republic vs Land Registrar Busia & others Nyaboti ex parte EL & JR E003 of 2023 (2024) KEELC 1319 (KLR) 12th March 2024 (Judgment)*, the court observed that no time limit was prescribed under Order 53 Civil Procedure Rules for orders of mandamus and prohibition. The court said that under judicial review, the court is concerned with the decision-making process and not the merits of the decision as held in *Pastoli vs Kabale District Local Government Council & others (2008) 3 E.A 300* is based on the grounds of illegality, irrationality, procedural impropriety, and irrationality.
 20. In *Municipal Council of Mombasa vs Umoja Consultants Ltd (2002) eKLR*, the court observed that judicial review Concerns itself with whether the decision makers had jurisdiction, whether a fair hearing was applied on whether the decision maker took into consideration irrelevant matters.
 21. In this notice of motion, the ex parte applicant states that specific facts were not considered, such as the sale agreement of 1976 and her husband's occupation on the suit land. Instead, she says they were ignored by the decision-maker. She terms the decision as unfair and unjust for not considering relevant factors.
 22. In *Republic vs Deputy Count Commissioner Maknein and others; Matolo ex parte (ELC JR E021 of 2022) (2024) KEELC 1371 (KLR) (6th March 2024 (Judgment)*, the court cited *Republic vs KRA ex parte Yaya Towers Ltd (2018) eKLR* that a court in judicial review should ensure that the individual is given fair treatment by the authority to which he has been subjected to. In *Dande and Others vs Inspector General national police Service & 5 Others 2023 (KESCO 40) KLR (16th June 2023) (Judgment)*, the court said that if a party uses the traditional judicial review process without invoking *the Constitution*, then the court shall not undertake a merit-based review.
 23. The ex parte applicant raises two fundamental issues that the decision was unlawful and unfair. The *Black's Law Dictionary 11th Edition*, page 1850, defines unlawful as that which is not authorized by law. Further, on page 1839 (supra), unfair is defined as not honest, impartial, candid, or unjust; unfair



hearing is defined on page 865 as a hearing that is not conducted in accordance with due process, as when the defendant is denied an opportunity to prepare or consult with counsel.

24. In these proceedings the exparte applicant states that the minister differed with the earlier decision of the committee who had relied on the sale agreement. From the proceedings attached to the application herein, it is apparent that each party to the appeal was given an opportunity to ventilate his or her respective cases and avail exhibits. The minister visited the locus in quo and verified the facts on the ground. Further, the exparte applicant admitted during the hearing that at one time, they had agreed to allocate some squatters part of their land. One of the squatters found on the land was the interested party.
25. The exparte applicant admits in paragraph 3 of the verifying affidavit that his interested party had trespassed and settled on the land without her consent. During the hearing before the minister, it, however, turned out that the entry was consensual, given the statement of the exparte applicant at the minister's hearing.
26. A party seeking to challenge a decision-making process on unfairness and unlawfulness must plead and prove how unfair and unjust the decision-making process was. In these proceedings, the exparte applicant has failed to demonstrate her allegations of unfairness and unlawfulness, in the process of hearing and determining the minister's appeal. There was no evidence of an irrational decision or lack of consideration of relevant matters. The minister considered all the relevant evidence and material before it and reached a reasonable decision.
27. In *Lucy Mirigo & 550 others vs Minister for Lands and other* (2014) eKLR, the court cited the *Commissioner of Land vs Kunste Hotel Ltd* NRB C. A No. 234 of 1995 on the right to be heard. A minister must hear the parties and determine that he thinks just, taking into account the evidence on record and the application of the law to the facts of the case. Looking at the proceedings, evidence tendered, issues raised, and the law, I have no hesitation in finding that the process of hearing the appeal and reaching the decision was just, fair, and in line with the law. The upshot is that the notice of motion dated 12.2.2024 is both statute-barred and lacking merits it is dismissed with costs to the interested party.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 12TH DAY OF JUNE, 2024

In presence of

C.A Kananu

Mis Riungo for exparte applicant

Mbaikyatta for respondent

HON. C K NZILI

JUDGE

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