



**Republic v Cabinet Secretary in Charge of Lands & 6 others; Munyithya (Exparte Applicant)
(Judicial Review E003 of 2023) [2025] KEELC 669 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 669 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
JUDICIAL REVIEW E003 OF 2023**

LG KIMANI, J

FEBRUARY 20, 2025

**IN THE MATTER OF THE DECISION BY THE DEPUTY COUNTY
COMMISSIONER KYUSO SUB-COUNTY DATED 13TH JUNE 2022 EMANATING
FROM PROCEEDINGS OF APPEAL TO THE MINISTER IN APPEAL
CASES NOS. 93/2020 AND 96/2020 KYUSO ‘C’ ADJUDICATION SECTION**

AND

IN THE MATTER OF ARTICLE 25 AND 47 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284, LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

THE CABINET SECRETARY IN CHARGE OF LANDS 1ST RESPONDENT

**DEPUTY COUNTY COMMISSIONER KYUSO SUB-COUNTY 2ND
RESPONDENT**

CHIEF LAND REGISTRAR 3RD RESPONDENT

DIRECTOR OF LAND ADJUDICATION 4TH RESPONDENT

**LAND ADJUDICATION OFFICER KYUSO ‘C’ADJUDICATION, KYUSO SUB-
COUNTY, KITUI COUNTY 5TH RESPONDENT**

ATTORNEY GENERAL 6TH RESPONDENT

KALUNDA MUSYOKI 7TH RESPONDENT

AND

DAVID KYALO MUNYITHYA EXPARTE APPLICANT



JUDGMENT

1. The Notice of Motion dated 8th June 2023 by the ex parte applicant seeks the following orders:
 - i. An order of certiorari to remove into this Honourable Court and quash the decision of the 2nd Respondent and signed on the 13th of June 2022 that plots 1374, 1375 and 1376 be registered in the names of the 7th Respondent.
 - ii. An order of mandamus to issue commanding and/or directing the 1st, 2nd, 4th and 5th respondents to follow the provisions of the Land Adjudication Act Cap 284 Laws of Kenya, Fair Administrative Action Act and the Constitution of Kenya, 2010 in the matter in determination of ownership of Plots 1374, 1375 and 1376.
 - iii. An order of prohibition directed at the 3rd Respondent prohibiting them or their subordinate officers from implementing the decision dated 13th June 2022 issued by the 2nd Respondent.
2. The application is supported by the affidavit of the ex parte applicant and a Statement of Facts dated 8th June 2023. The ex parte applicant challenges the decision of the 2nd respondent signed on 13th June 2022 over plots 1374, 1375 and 1376.
3. The Applicant's claim is that the Land Adjudication and Settlement Officer Kyuso Sub-County rendered a decision on 18.10.2019 after hearing an objection to the award of the suit plots to the 7th Respondent. Being dissatisfied with the said decision the Applicant filed an appeal to the Minister on 13.11.2022. He complains that the 7th Respondent Kalunda Musyoki unprocedurally filed an appeal against the same decision on 22.11.2019 one year after the decision in the objection proceedings. The two appeals to the Minister filed are 93 of 2020 and 96 of 2020 respectively.
4. The Applicant stated that the 2nd Respondent consolidated the two appeals. He complained that the title and record of the proceedings show that the hearing revolved around Appeal 93 of 2020 and that Appeal 96 of 2020 was shown as having been lodged by the 7th Respondent while it was filed by the applicant.
5. The applicant stated that he was summoned by the 2nd Respondent to appear for hearing of an appeal which was shown to be number 96 of 2020 and wrongly shown as having been filed by Kalunda Musyoki, the 7th Respondent. That the 2nd Respondent rendered a decision dated 13.6.2020 which related to parcels numbers 1374, 1375 and 1376 Kyuso "C" Adjudication Section which were subject of appeal No. 93 of 2020. That there was no decision arrived at regarding parcel 1069 which was the subject of appeal No. 96 of 2020.
6. He further complained that the appeals process regarding appeal 93 of 2020 was not conducted in a procedural, fair, and legal manner. He claimed that the hearing was not in accordance with the provisions of the Land Adjudication Act, the Constitution of Kenya and was against the rules of natural justice. He further stated that the decision was in contravention of Article 47 of the Constitution of Kenya and should be declared illegal, null and void.
7. He faulted the decision claiming that he ought to have been recorded as the Appellant while the 7th Respondent ought to have been the Respondent and as a result the ownership of Land Parcel 1069 was not determined.



8. The Applicant contends that it is unclear under what circumstances the 7th respondent's appeal was allowed having been filed more than one year from the date of determination of the objection proceedings and contends that the decision is null and void.

The 1st -6th Respondents' Grounds of Opposition

9. The 1st, 2nd, 3rd, 4th, 5th, and 6th Respondents filed Grounds of Opposition dated 6th November 2023 stating that the application is bad in law, incompetent and incurably defective, brought in bad faith and a waste of the court's judicious time. Further, the orders sought are misleading, misconceived and ambiguous, therefore incapable of being granted by this Honourable Court.

The 7th Respondent's Replying Affidavit.

10. The 7th Respondent swore an affidavit in response to the application deposing that she is one of the proprietors of Land Parcel 1069 by virtue of inheritance from her late husband.
11. She stated that the dispute herein went through all the stages of the adjudication process. The demarcation officer awarded the land to the applicant but when the dispute was referred to the Committee the land was awarded to her. The land was also awarded to her by the Arbitration Board. The Applicant filed an objection to the Land Adjudication Officer where to her surprise sub-division of land parcel number 1069 was done resulting in land parcels 1374, 1375 and 1376.
12. She filed an appeal to the Minister. Her position is that there was no error and the Deputy County Commissioner acted within his powers to award her the land parcels that were illegally carved out of her parcel of land.

Ex-parte Applicant's Submissions

13. Counsel for the Ex-parte Applicant filed written submissions submitting on the right to fair hearing under Section 50 of *the Constitution* and the right to fair administrative action under Section 4 of the *Fair Administrative Action Act*.
14. It was submitted that the impugned proceedings before the Minister were fundamentally flawed for because the proceedings of 24th November 2020 revolved around only parcels 1374, 1375 and 1376 Kyuso 'C' Adjudication Section which were subject to appeal No. 93 of 2020. Further, as evidenced by the summons issued on 4th November 2020, Appeal 96 was recorded as an Appeal by the 7th Respondent and not the Applicant who is the one who appealed.
15. The Applicant's case is that the proceedings before the 2nd Respondent went against the minimum rules of natural justice, were not conducted in a fair, legal, procedural process and were not in accordance with the provisions of the *Land Adjudication Act* and *the Constitution* of Kenya 2010.
16. Counsel relied on the following authorities: Super Nova Properties Limited V The National Land Commission (2019) eKLR, Pastoli Vs Kabale District Local Government Council and Others (2008) 2 E.A 300 Municipal Council of Mombasa Vs Republic & Umoja Consultants Ltd C.A Civil Appeal No. 185 of 2001
17. Their submission is that the 2nd Respondent's decision dated 13th June 2022 is fundamentally flawed and as such the same should be declared by this Honourable Court as null and void.



1st -6th Respondent's Submissions.

18. State Counsel for the 1st-6th Respondents submitted that the ex-parte applicant failed to demonstrate how the Respondents have acted in an ultra vires manner and failed to prove illegality, irrationality and impropriety in the Respondent's actions.
19. Their view is that the ex-parte applicant is questioning the decision in the Minister's Appeal and not how the decision was arrived at.
20. Submitting that an administrative officer cannot be faulted for doing what he is supposed to do, they submit that the judicial review process is not concerned with the merits of the decision but decision-making process, and quoted the case of *Municipal Council of Mombasa v. Republic & another*(2002)eKLR.
21. State Counsel concluded that since the Applicant failed to show any procedural errors on the part of the respondents, the case ought to be dismissed.

The 7th Respondent's Written Submissions

22. Counsel for the 7th Respondent filed written submissions noting that judicial review is sought if the decision of an administrative body is arrived at wrongly, citing the case of *Republic v. Public Procurement Administrative Review Board and another ex-parte Intertek Testing Seruves Ea Pty Limited & Authentix Inc; Accounting Officer, Energy and Petroleum Regulatory Authority & Another*(2022)eKLR. Their submission is that the fact that the applicant is dissatisfied with the decision of an administrative body, does not guarantee judicial review orders.
23. With regard to the consolidation of the two impugned Appeals to the Minister 93 of 2020 and Appeal 96 of 2020, the 7th respondent submitted that land parcels 1374, 1375 and 1376 were new subdivisions of land parcel 1069 therefore there is no way that the respondent could make a decision on land parcel 1069 when it was not in existence.
24. The 7th Respondent therefore denies any unfairness or procedural impropriety on the part of the 2nd Respondent in handling the two impugned appeals and relied on the holding in the case of *Pastoli vs. Kabaale District Local Government Council & others*(2008)EA 300.
25. Highlighting that orders of judicial review are given by the Court, Counsel for the 7th Respondent cited the cases of *Republic v. Attorney General & 4 others ex-parte Diamond Hashim Lalji and Ahmed Hasham Lalj. Republic v. Public Procurement Administrative Review Board & 2 others ex-parte Rongo University* (2018)eKLR

Analysis and Determination

26. Having considered the Notice of Motion herein, Statement of Facts, verifying affidavit, the replying affidavit and grounds of opposition by opposing parties and rival submissions by Counsel for the parties, the court is of the view that the issues arising for determination are;
 1. Whether the Appeal to the Minister filed by the 7th Respondent was filed out of time.
 2. Whether the proceedings and decision of the 2nd Respondent were fair, legal, procedural and adhered to principles of natural justice following the provisions of the *Land Adjudication Act*, The Fair Administrative Actions Act and *the Constitution* of Kenya 2010.



27. The ex parte applicant's case is that he filed an Appeal to the Minister against the decision of the Land Adjudication Officer Kyuso Sub-County rendered on 18.10.2019. He complained that Kalunda Musyoki unprocedurally filed an appeal against the same decision on 22.11.2019 one year after the decision in the objection proceedings. The two appeals to the Minister filed are 93 of 2020 and 96 of 2020 respectively.
28. The applicant further states that he was summoned by the 2nd Respondent to appear for a hearing of an appeal which was shown to be number 96 of 2020 by Kalunda Musyoki and not himself who had filed the appeal. That the 2nd Respondent rendered a decision dated 13.6.2020 which related to parcels numbers 1374, 1375 and 1376 Kyuso "C" Adjudication Section which were subject of appeal No. 93 of 2020. That there was no decision arrived at regarding parcel 1069 which was the subject of appeal No. 96 of 2020.
29. He further complained that the appeals process regarding appeal 93 of 2020 was not conducted in a fair, legal, procedural process and was not in accordance with the provisions of the Land Adjudication Act and the Constitution and against the rules of natural justice. He further stated that the decision of the 2nd Respondent was in contravention of Article 47 of the Constitution and should be declared illegal, null and void.
30. He also faulted the decision and stated that he ought to have been recorded as the Appellant while the 7th Respondent ought to have been the Respondent and as a result, the ownership of Land Parcel 1069 was not determined.
31. Further, the Applicant contends that it is unclear under what circumstances the 7th respondent's appeal was allowed as the same was filed more than one year after the determination of the objection proceedings and contends that the decision is null and void.
32. The right to fair administrative action is anchored on Article 47 of the Constitution of Kenya 2010 which states that;
- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall--
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.
40. Section 7 of the Fair Administrative Action Act provides for institution of judicial review proceedings and states that;
- (1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to--
 - (a) a court in accordance with section 8; or
 - (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.
 - (2) A court or tribunal under subsection (1) may review an administrative action or decision, if-



- (a) the person who made the decision-
 - (i) was not authorized to do so by the empowering provision;
 - (ii) acted in excess of jurisdiction or power conferred under any written law;
 - (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;
 - (iv) was biased or may reasonably be suspected of bias; or
 - (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;
 - (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - (c) the action or decision was procedurally unfair;
 - (d) the action or decision was materially influenced by an error of law; (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
 - f) the administrator failed to take into account relevant considerations;
 - (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;
 - (h) the administrative action or decision was made in bad faith;
 - (i) the administrative action or decision is not rationally connected to-
 - (i) the purpose for which it was taken;
 - (ii) the purpose of the empowering provision;
 - (iii) the information before the administrator; or
 - (iv) the reasons given for it by the administrator;
 - (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
 - (k) the administrative action or decision is unreasonable;
 - (l) the administrative action or decision is not proportionate to the interests or rights affected;
 - (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;
 - (n) the administrative action or decision is unfair; or
 - (o) the administrative action or decision is taken or made in abuse of power.
- (3) The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that-



- (a) the administrator is under duty to act in relation to the matter in issue;
 - (b) the action is required to be undertaken within a period specified under such law;
 - (c) the administrator has refused, failed or neglected to take action within the prescribed period
33. The Court of Appeal in the case of *Suchan Investment vs. The Ministry of National Heritage and Culture* (2016) eKLR stated that Articles 47 and 50(1) have elevated the rules of natural justice and the duty to act fairly when making administrative, judicial or quasi-judicial decisions into constitutional rights capable of enforcement by an aggrieved party in appropriate cases.”

Whether the Appeal to the Minister filed by the 7th Respondent was filed out of time.

34. The 1st issue raised by the applicant is that the 7th Respondent filed the appeal to the Minister out of time as stipulated under Section 29 of the *Land Adjudication Act* which requires any person who is aggrieved by the determination of an objection to file an appeal within sixty days after the date of the determination,
35. The applicant in his affidavit sworn on 8th June 2023 in support of the Notice of Motion herein stated in paragraph 5 "Annexed hereto and marked DKM3 are copies of the form of appeal to the Minister by Kalunda Musyoki dated 22nd November 2019)"
36. The court notes that in the first instance, the applicant did not attach to the supporting affidavit the annexures referred to as DKM3. He also did not attach to the Notice of Motion and serve to the parties, the documents filed when applying for leave. The court directed on 15th November 2023, 30th January and 15th February 2024 that all documents filed during the leave stage be filed in the present case and be served on all parties. This is a mandatory requirement under Order 53 Rule 4 of the Civil Procedure Rules which stipulates that;
- “Copies of the statement accompanying the application for leave shall be served with the notice of motion, and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement”.
37. The Forms of Appeal attached to the affidavit filed are for land parcels 1375 and 1376 and contain only one page each. The said forms did not contain grounds in support of the Appeal and were not signed. They also did not contain the date 22nd November 2019) which was the date the Applicant claimed the 7th Respondent filed her Appeal. The court took the liberty to call for the original file Miscellaneous Application No. E017 of 2022 where leave was sought and granted. The court noted that the two forms of appeal filed by the 7th Respondent had two pages each with grounds of appeal at the back but they did not contain the date of 22nd November 2019. They were also not signed by the 7th Respondent.
38. The court concluded that in the entire court record there is no proof that the appeals to the Minister filed by the 7th Respondent were filed out of time on 22nd November 2019. This ground of challenge thus fails.
39. The applicant claims that he filed an appeal to the Minister No 96 of 2020 under section 29 of the *Land Adjudication Act* in respect of parcel number 1069. The proceedings before the 2nd Respondents were in respect of cases Nos 93 and 96 of 2020 relating to land parcels 1374, 1375 and 1376. The parties



were; Kalunda Musyoka (7th Respondent) versus Kasyoka Munyithya, Samson Syengo Munyithya and David Kyalo Munyithya. The parties were summoned to appear for a hearing of the Appeal on 18th November 2020 through a summons by way of the letter dated 4th November 2020. The said summons were very clear that the parties were to attend to answer the claim of land parcels 1374, 1375 and 1376.

40. During the hearing, the 7th Respondent testified that she was meant to be defending one parcel of land but the land was subdivided into three without her knowledge and given to the respondents. On the other hand, the Applicant herein testified that he was in possession of parcel 1376 and that initially the land was a single parcel and when their father died he showed them how they would subdivide the land.
41. From the evidence of the parties and their witnesses and the record of proceedings, it appears that the Land Parcel 1069 was the original number which was subdivided and resulted in 3 additional parcels (Nos. 1374-1376), while still retaining a portion 1069 which was ordered to remain in the name of the 7th Respondent during the objection proceedings.
42. It becomes clear from the foregoing that the 2nd Respondent and the parties before him were dealing with land parcel Nos. 1374, 1376 and 1376 and not parcel 1069. The court has also considered the documents produced by the Applicant as evidence of filing the appeal. He produced two copies of receipts one dated 13th November 2018 which is on account of "Appeal to the Minister P/No. 1069 Kyuso "c" Adj Section. However, the Applicant did not produce the Form of Appeal to the Minister that he filed yet he produced and filed Forms of Appeal to the Minister filed by the 7th Respondent in respect of parcels 1375 and 1376.
43. The court finds that there is nothing to show the number that was allocated to the appeal in respect of parcel No. 1069. Indeed among all the documents filed, there is nothing to show that the ex parte applicant filed appeal No. 96 of 2020. The receipt dated 10th November 2022 shows that it was on account of case 96/2020 Kitui. This receipt was issued after the decision of the 2nd Respondent on 13th June 2022 and does not show what the payment was for.
44. From the documents produced by the applicant, the court was not satisfied that the applicant indeed filed an appeal to Minister No. 96 of 2020 and whether appeal number 96 of 2020 was in relation to land parcel 1069. Indeed the documents the court has show that appeal to the Minister nos. 93 and 96 of 2020 were filed by the 7th Respondent and related land parcels 1374, 1375 and 1376. The court finds that the applicant did not prove that he filed the said appeal.

Whether the proceedings and decision of the 2nd Respondent were conducted in accordance with principles of natural justice in a fair, legal, procedural manner in accordance with the provisions of the *Land Adjudication Act*, The Fair Administrative Actions Act and *the Constitution* of Kenya 2010.

The issues that have been dealt with above are in general the issues raised by the applicant in claiming that the proceedings and decision of the 2nd Respondent were not conducted in accordance with principles of natural justice in a fair, legal, procedural manner in accordance with the provisions of the *Land Adjudication Act*, The Fair Administrative Actions Act and *the Constitution* of Kenya 2010.

45. In the case of *Pastoli vs. Kabale District Local Government Council and Others* [2008] 2 EA 300, it was held:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural



impropriety ...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.....Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

46. The court has considered the proceedings and decision of the 2nd Respondent and finds that he did not go outside of his jurisdiction. He dealt with appeal numbers 93 and 96 of 2020 relating to land parcels 1374, 1375 and 1376. The parties to these appeals were summoned to appear for the hearing well knowing the dispute that was scheduled to be heard.
47. The parties were heard and they called witnesses. They were also given an opportunity to cross-examine the witnesses.
48. The 2nd respondent considered the evidence tendered before him and the previous proceedings before the land adjudication tribunals and came to his own findings.
49. In the court’s view, the 2nd Respondent did not make an error in the decision-making process and the decision cannot be said to have an illegality. Further, the court finds that the 2nd respondent’s decision was not irrational since in the court’s view there was no such gross unreasonableness in the decision taken, such that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision.
50. Further, the court finds no procedural impropriety in the conduct of the proceedings before the 2nd Respondent and there was no failure to act fairly on the part of the 2nd Respondent while. There was also no failure to observe the rules of natural justice in the process of making the decision.
51. For the foregoing reasons the court finds that the Applicant failed to prove his case and the court makes the following order;
 1. The Notice of Motion dated June 8, 2023 is hereby dismissed.
 2. Costs are awarded to the Respondents.

READ, SIGNED, DATED AND DELIVERED VIRTUALLY AT NYERI THIS 20TH DAY OF FEBRUARY 2025.

In the Presence of:

Muthui holding brief for the 7th Respondent.

No appearance for the Applicant.

No appearance for the Respondents.



Court assistant: Michael.

HON. LADY JUSTICE L. G. KIMANI

JUDGE

