Republic v Cabinet Secretary Ministry of Land & Physical Planning & 3 others; Catholic Church Mission (Being Sued Through the Diocese of Meru South Registered Trustees) & another (Interested Parties); Nyaga & another (Exparte Applicants) (Environment and Land Judicial Review Case E002 of 2023) [2024] KEELC 5500 (KLR) (25 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5500 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2023

CK YANO, J

JULY 25, 2024

BETWEEN

REPUBLIC .... APPLICANT

AND

THE CABINET SECRETARY MINISTRY OF LAND & PHYSICAL PLANNING .... 1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICTION & SETTLMENT OFFICER .... 2ND RESPONDENT

THE CHIEF LAND REGISTRAR .... 3RD RESPONDENT

THE ATTORNEY GENERAL .... 4TH RESPONDENT

AND

CATHOLIC CHURCH MISSION (BEING SUED THROUGH THE DIOCESE OF MERU SOUTH REGISTERED TRUSTEES) .... INTERESTED PARTY

KABURURU PRIMARY SCHOOL (BEING SUED THROUGH THE BOARD OF MANAGEMENT) .... INTERESTED PARTY

AND

FREDRICK GITONGA NYAGA .... EXPARTE APPLICANT

M'NGERENI MATHAIYA .... EXPARTE APPLICANT

JUDGMENT

The Application

1. The ex-parte applicants filed the Notice of Motion dated 29th June, 2023 brought under Article 47 of *the Constitution* of Kenya, 2010, Section 8 and 9 of the *Law Reform Act* Cap 26, Order 53 Rule 1 (1), 2 and 3 of the Civil Procedure Rules 2010, and all enabling provisions of law seeking for orders that:

   a. An order of certiorari directed to the 1st and 2nd respondent quashing the decision of the Proceedings to the Minister Case No. 298 of 2017 via ruling delivered on the 13th January, 2022.

   b. An order of prohibition prohibiting the Respondents from implementing or enforcing the offensive recommendations and Ruling contained in the proceedings of Appeal to the Minister Case No. 298 of 2017 made on the 13th January, 2022 in relation to Kamwimbi "A" Adjudication Section.

   c. That costs of the application be provided for.

2. The motion is supported by facts and grounds contained in the application and the affidavit of Fredrick Gitonga, the Ex-parte Applicant dated 29th June, 2023.

3. The Respondents filed a replying affidavit sworn by Angela N. Wanyama the Deputy County Commissioner, Meru South Sub County dated 23rd February, 2024.

4. The 2nd Interested Party filed a Replying Affidavit dated 23rd February, 2024 sworn by Gabriel Rugendo Japhet, the Deputy Head Teacher of the 2nd Interested Party.

The Applicants' Case

5. It is the Ex-parte Applicants' case that the judgment/ruling of the Minister dated 24th February, 2022 was tainted and marred with issues of jurisdiction on account of the fact that the Deputy County Commissioner of Meru South issued notice for hearing of the Appeal No. 298 of 2017 while the hearing was conducted by the Assistant County Commissioner of Igamba Ng'ombe Sub-County and all what the Deputy County Commissioner did was endorse the judgment by appending his signature. That the judgment/ruling of the minister was against the established guidelines and principles in adjudicating land under Cap 284 which require that a person who has been in occupation is adjudicated and recorded under that person. It is also the applicants' contention that the Deputy County Commissioner on behalf of the 1st Respondent put into consideration extraneous matters, some being irrelevant, making him arrive at a wrong, unjust and unfair decision to the detriment of the ex-parte applicants.

   That the respondents in contravention of the rules of natural justice regularized the illegal invasion of the ex-parte applicants parcel of land without proper analysis of the evidence adduced during the hearing. It is applicants' contention that the acts of the respondents threatened the safe and proprietary rights of the ex-parte applicants and that the process of the decision making and or procedure by the minister was unfair, biased and ought to be challenged by way of judicial review.

6. In the affidavit in support of the application, the deponent avers that the interested parties are known to him. He states that Land Parcel No. 795 and 796 Kamwimbi "A" Adjudiction Section was an ancestral land that his family gathered and has been utilizing. That the matter involved a land boundary dispute

between them and the interested parties. The deponent further avers that his father was buried at Kabururu primary School and the school never complained. That the minister in his decision stated that he found it difficult to believe that it was their grandfather who donated the parcel of land to the church, yet they tendered evidence that the parcel of land is ancestral. The applicants attached a copy of the appeal proceedings marked FG1.

7. The Applicants aver that they agreed that Kabururu Primary School be expanded and they shifted their houses but then the Catholic Church Mission extended the boundary which led to the objection. That it is absurd that the minister ruled that they are the ones who had moved the boundary, yet they tendered evidence that it was indeed the 1st interested party who had moved the boundary towards their house.

8. The Applicants state that the minister in his findings left out the parcels that boarder the church and school like 802, 800, 983 and included parcels of land that do not boarder the school church. That in 2010 when the boundary issue arose, the 1st exparte applicant was a member of the board of Kabururu Primary School and was withdrawn from the board due to conflict of interest. The deponent annexed a copy of the letter of dismissal from the school marked FG2.

9. The Applicants aver that during the hearing, the boundary was intact and they filed an objection against the interested parties after the boundary issue arose. The Applicants have annexed a copy of the objection marked FG3. That the minister failed to take note that back in 2011, they wrote letters to the demarcation officer complaining about the interested parties encroaching on parcels 795 which they were instructed to maintain the status quo of the boundary. The applicants have annexed a copy of the letter marked FG4.

10. The Applicants state that they also made complaints in regard to parcel 796 to the demarcation officer to urge the interested parties to maintain the status quo. The Applicants have annexed a copy of the letter marked FG5. That they further filed a complaint letter with DLASO in regard to parcel 795 and 796 informing the officer that they had filed objection case so that the officer would urge the parties to maintain the status quo. The applicants have annexed a copy of the letter marked FG6.

11. The Applicants contention is that the minister failed to acknowledge that the 1st interested party moved the boundary on the ground but the demarcation maps indicate that the boundary is still intact. That the appeal was heard by a person other than the Deputy County Commissioner as mandated by the law which amounted to an illegality. That the minister failed to consider that the matter involved a land boundary issue and that the 1st interested party changed the boundaries which resulted in the 2nd interested party encroaching on the applicants parcel of land. That the minister's decision was biased by noting that it was the applicants who allegedly removed the boundaries while the situation on the ground indicates that the interested parties are the ones that encroached on the ex-parte applicants' parcel of land.

12. The applicants further aver that the minister's decision was malicious and biased since when he visited the ground, he failed to appreciate that it was the applicants who were living on the parcel of land and the alleged party residing in the parcel of land is a stranger. It is also the applicants' contention that the minister negligently failed to acknowledge that the situation on the ground is different from what reflects on the cadastral maps in that the cadastral maps reflect the original boundary while on the ground the boundaries were moved by the interested parties.

13. The Applicants state that when the minister visited the ground, he did not possess the knowledge of the matter since he had not listened to the matter but did so as a mere formality. That if the decision

made by the Minister is implemented in relation to Kamwimbi "A" Adjudication Section, they shall stand to suffer irreparable harm.

14. The Applicants aver that unless the court intervenes and upholds the law and *the constitution*, injustice shall be occasioned to them. That it is therefore in the interest of justice that the orders sought herein be granted.

The Respondents' Case

15. It is the Respondents' case that the instant judicial review proceedings arose out of an Appeal relating to a boundary dispute between the Applicants, who claimed that the 2nd Interested Party's school had encroached on their land. The deponent of the respondents' replying affidavit states that from the records, the impugned ruling dated 24th February, 2022 was arrived at after her predecessor in the presence of the Assistant County Commissioner, Igamba Ng'ombe, presided over the hearing of the Appeal on 12/10/2021. The deponent annexed a copy of the appeal proceedings marked 'ANW 1'.

16. The deponent avers that from the records, the Applicant's assertion that her predecessor only appended his signature to the decision and did not conduct the proceeding is false as the Proceedings indicate that the Appeal was heard before "Nkandunda M. Haribae – Deputy County Commissioner – Meru South; Fred Masinjila – Assistant County Commissioner – Igamba Ng'ombe." That there is no evidence on record to support the Applicants' assertion that the Appeal hearing was solely conducted by the Assistant County Commissioner of Igamba Ng'ombe in absence of the Deputy County Commissioner. That in any case, pursuant to the provisions of Section 29(4) of the *Land Adjudication Act*, the Minister has authority to delegate his powers to hear an Appeal under Section 29 to any public officer. It is the respondents' contention that the Assistant County Commissioner is a public officer for purposes of Section 29(4) of the *Land Adjudication Act* as stated by this court in ELC Judicial Review No. E001 of 2022, Republic Vs Cabinet Secretary Ministry of Lands & Physical Planning and 3 Others Ex-Parte Alexander Nyaga Mitambo.

17. The Deponent avers that she is advised by counsel that judicial review proceedings purely deal with the procedure and process of decision-making and not the merits and/or substance of the case. That the Ex-parte Applicants' Application, as observed in paragraph 5 to 11 of their supporting affidavit, primarily challenges the merits of the decision and not the procedure in arriving at the same. That the complaint that the decision rendered on 24th February 2022 was malicious and biased is misplaced particularly in light of the fact that the same were mere general statements lacking in specificity and clarity.

18. The deponent states that she is advised that the Ex-Parte Applicants have offered no evidence to support their allegation of bias, and that as per Section 107 of the *Evidence Act*, (Cap 80), it is a cardinal principle of law that he who alleges a fact must prove it. That the impugned decision was not arbitrary, irrational or in any way unreasonable as the same was arrived at after a hearing conducted in a manner that observes the rules of natural justice and adheres to the rule of law.

19. The respondents contended that the application lacks merit and warrants dismissal with costs.

The Interested Party's Case

20. The Replying Affidavit sworn by Gabriel Rugendo Japhet in support of the 2nd Interested Party's case mainly mirrors that sworn by Angela N. Wanyama on behalf of the respondents. However, the deponent added that the school and the church have been established on the suit parcels of land No. 795 and 796 Kamwimbi "A" Adjudication Section respectively. That Kabururu Primary School is a public school that was established in 1964 by Kabururu Catholic Church, the 1st Interested party herein, and ran by teachers deployed by the Teachers Service Commission. Photos of the school and its

students marked GRJ1 has been annexed. That the said school is not only an institution for imparting formal education to the children of Igambang'ombe but also an employer.

21. The 2nd deponent states that he is advised by counsel that if the school is disposed of its land, the community at large would suffer as its children will be disenfranchised from their access to education and the teachers would lose a source of income. That the school has been in peaceful occupation of the parcel of land until the ex-parte applicants lost their appeal. That they have since continued to interfere with the school's peaceful occupation of the land by encroaching into parcel number 795 and destroying the fence and even cultivating part of it hence interfering with the daily activities of the school. Relying on legal advice, the deponent contends that this matter has public interest implications.

22. The 2nd interested party's contention is that the Applicant's application lacks merit and warrants dismissal with costs.

23. Pursuant to directions given by the court, the parties consented to canvassing the application by way of written submissions. The applicants filed their submissions on 11th March, 2024 while the Interested parties and the Respondents did not file any submissions either within the time granted by the court or at all.

Ex-parte Applicants' Submissions

24. The Applicants submitted that it has been held time and again that jurisdiction of a court or a tribunal to entertain a claim is of paramount importance for without it, a court has to down its tools. The applicants relied on the case of Supreme Court in the Matter of Interim Independent Electoral Commission (2011) eKLR and the classic decision in the Court of Appeal decision in Owners of Motor vessel 'Lilian S' v Caltex Oil (Kenya) Limited (1989) eKLR.

25. It is the Applicants' submission that they appealed the decision of the Arbitration Board to the Minister in-charge of Land pursuant to Section 29(1) of the *Land Adjudication Act*. That Section 29(1)(b) provides that once an appeal is filed to the minister, the minister shall determine the appeal and make such orders thereon as he thinks just and the order shall be final. They also cited Section 29(4) which provides that the minister may hear and determine the appeal himself or he may delegate. The applicants submitted that it is clear that the person to whom the powers and functions are delegated must be gazetted, names in the notice, or a holder of public office specified in the gazette.

26. It is the Appellants' submission that the practice has been that the Minister would delegate the powers and functions to the holders of the office of the District Commissioner, now referred to as Deputy County Commissioner (D.C.C). The applicants submitted that in this particular case, the Appeal was heard by another person than the District Commissioner one Mr. Fred Masinjira, who is a D.O. (now Assistant County Commissioner). That he purports to hear and determine the appeal for and on behalf of the District Commissioner. That the decision by the minister was only endorsed by the Deputy County Commissioner one Mr. Nkaduda M. Hiribae who never took part in the hearing of the proceedings, but the same was heard by the Assistant County Commissioner Mr. Fred Masinjila who lacked the jurisdiction to hear the matter. It is the Appellant's submission that the same should be held null and void. The applicants relied on the case of M'bita Ntiro Vs Mbae Mwirichia & Another (2018) eKLR and submitted that the Respondents have not proved that the said Assistant County Commissioner had the mandates to hear and determine the matter on behalf of the minister. The applicants urged the court to find that Mr. Fred Masinjila had no jurisdiction to hear and determine the appeal and his orders should be declared null and void. The applicants further relied on the case of Keroche Indusrites Limited Vs. Kenya Revenue Authority & 5 Other4s Nairobi HCMA No. 743

of 2006 [2007]2 KLR 240 while citing Reg. Vs. Secretary of State for the Environment Ex-Parte NottinghamShire Country Council [1986] AC.

27. The Applicants submitted that in this Judicial Review Application, they challenged the legality of the process that was used to arrive at the final decision by the minister and not the merit of the case. That the court can only interfere with the decision of the bodies established under Act by way of Judicial Review proceedings. The applicants relied on the case of Lepore Ole Maito –vs- Letwat Kortom & 2 Others [2016] eKLR. It is submitted that the application is challenging how the decision was arrived at and not the decision itself by the minister as alleged by the Respondents. That the applicants are not seeking review of the evidence of the minister proceedings, but are challenging the procedure and process of how the decision was arrived at by the minister. It is submitted that the applicants have raised grounds that the process of how the decision was arrived at is what is before court. The applicants aver that the decision by the minister was without due consideration of the evidence tabled before him, illegal, ultra vires, unreasonable and in bad faith.

28. The Applicants further submitted that the process of the decision making constitutes an abuse of power and discretion, made in bad faith and violates the legitimate expectation of the Applicants. The Applicants relied on the case of Patoli Vs. Kabale District Local Government Council and Other (2008) 2 EA 300. The applicants submitted that they have demonstrated that they are challenging the decision-making process of the minister, that they have demonstrated that the decision-making process was marred with illegalities, bias and malice which they seek that the court grants them orders for judicial review.

29. The Applicants submitted further that the minister disregarded the evidence that was adduced by the ex-parte applicants and noted in his decision that the ex-parte applicants' assertion that their grandfather donated land to the school is difficult to believe despite the claimant in the minster proceedings adducing evidence that the parcels of land were acquired legally. The Applicant relied on the case of Republic Vs. Attorney General & Another Ex-parte Munyokwang Kiyer & 3 Others [2014] eKLR.

30. The Applicants further submitted that it is also evident from the proceedings in the appeal that the Deputy County Commissioner showed open bias in the manner that he treated the evidence of the applicants. It is their submission that where it is clearly showed that the decision maker completely ignored evidence, then the decision was made prejudicing the applicants by condemning them unheard. That, that is an iconic pillar of the rules of natural justice; audi alteram partem.

31. The Applicants submitted that in the view of above, they pray that the court grants orders for certiorari quashing the decision of the Respondent and an order for prohibition against implementation of the decision made by the minister.

Analysis And Determination

32. I have considered the pleadings, the legal and statutory authorities and the written submissions filed. The issues for determination as I can deduce are:

    i. Whether the impugned decision was arrived at in the manner envisaged by the law; and

    ii. Whether the judicial review remedies of Certiorari and Prohibition are available to the Applicants.

Whether the impugned decision was arrived at in the manner envisaged by the law.

33. In the instant matter, the ex-parte applicants seek orders of Judicial Review in the nature of Certiorari and Prohibition against the decision of the Proceedings to the Minister Appeal No. 298 of 2017 in respect of land parcel number 796 and 795/KAMWIMBI "A" ADJUDICATION SECTION made vide the ruling delivered on the 1st April, 2022.

34. It is common ground that the purview of judicial review proceedings concerns itself with the procedure applied in arriving at the impugned decision and not the merits of the decision. The court will therefore confine itself with the decision-making process and not the merits of the decision.

35. In the case of Republic Vs. Kenya National Examination Council Ex-parte Geffrey Gathenki Njoroge & 9 Others [1997] eKLR, the court of Appeal stated inter alia:

> " That an order of certiorari can only quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction or where the rules of natural justice are not adhered to or any other reasonable cause. It is trite law that the remedy of judicial review is not concerned with the merits of the case, but the decision-making process. In order for an applicant to succeed in an application for judicial review, he must satisfy the court that a public officer has acted unprocedurally, that his decision was unreasonable and that the impugned decision was illegal..."

36. In the case of Municipal Council of Mombasa Vs. Umoja Consultants Ltd [2002]eKLR, the court of Appeal held that:

> " Judicial review is concerned with the merits of the decision itself: the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself, such as whether there was or there was not sufficient evidence to support the decision."

37. I am therefore guided that in deciding the application herein, the court will not concern itself with the merits of the impugned decision. Instead, the court will decide whether the applicants have demonstrated that the decision-making process was tainted with illegality, whether the decision was made without jurisdiction, and whether the rules of natural justice were not adhered to.

38. On the allegation that the appeal was heard by a person other than the Minister as mandated by the law which amounted to an illegality, in the case of Samuel Kamau Macharia & Another Vs. Kenya Commercial Bank & 2 Others [2012] eKLR, the Supreme Court stated:

> " A court's jurisdiction flows from *the constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law..."

39. The issue that calls for determination in this application is whether the impugned appeal was heard by a person who was not the legally and properly appointed person by the minister to hear the matter and therefore who had no jurisdiction.

40. Section 29 of the *Land Adjudication Act* (Cap 284) deals with appeals to the minister. Sub Section 4 of Section 29 provides that the minister may delegate his duties and functions to any public office by name by notice in the gazette and secondly by such notice, the minister may delegate his functions and duties to any person for the time being holding any public office. The law is therefore clear that the minister had the power to name any public officer to perform his duties and functions under the *Land Adjudication Act*, and such name must be gazetted. It is also clear that the minister can delegate his duties and functions to any public officer specified in the germane gazette notice. That section provides inter alia that:

> " ...the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister."

41. Consequently, it is within the powers of the Minister in-charge of lands to delegate its powers and functions to hear appeals to the holders of the office of the Deputy County Commissioner. I place guidance in the case of Republic Vs. Cabinet Secretary, Ministry of Lands and Settlement & 2 Others Ex-Parte General Mbuuri Kabugu [2018] eKLR.

42. In the instant case, the DCC heard the appeal with the Assistant County Commissioner Igamba Ng'ombe being in attendance as seen in the proceedings. The Applicants have not demonstrated how the attendance of the Assistant County Commissioner Igamba Ng'ombe affected fair hearing of the Appeal and/or ousted the Jurisdiction of the Deputy County Commissioner to hear and determine the appeal. The record is clear from the proceedings exhibited by the applicants that the person listed to be in attendance are the Deputy County Commissioner, Nkaduda M. Hiribae and Fred Masinjira, Assistant County Commissioner Igamba Ng'ombe among other members. There is no evidence to support the applicant's contention that the proceedings were heard by the Assistant County Commissioner, Igamba Ng'ombe and not the Deputy County Commissioner. From the evidence adduced, I am persuaded that the appeal was heard by the Deputy County Commissioner.

43. The ex-parte Applicants also allege that the impugned decision was marred by illegality and procedural impropriety. From a perusal of the proceedings of the appeal to the minister, there is no iota of evidence of illegality as alleged by the ex-parte Applicants and it is trite law that he who alleges must prove.

44. Section 108 of the *Evidence Act* provides that the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

45. In the case of M'Bita Ntiro Vs. Mbae Mwirichia & Another (2018) eKLR, It was held:

> " The burden of proof as to any particular fact lies in the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of fact shall lie on any particular person."

46. On the allegation that the Respondents did not observe the rules of natural justice, I see no evidence of that. A perusal of the proceedings of the appeal to the minister indicate that all the parties, including the applicants were given a hearing and testified.

47. Further, on the allegation that the minister's decision was malicious and biased, I again see no evidence of that. The Deputy County Commissioner while hearing the appeal had the discretion of who to

believe and who not to believe. The impugned decision was a decision of the minister based on the evidence before him and the demeanor of the witnesses. I therefore reject this submission.

48. Furthermore, no evidence was tabled by the ex-parte Applicants of any interest, conduct or association of the Respondent as the primary decision maker, which would lead to an apprehension of bias in favor of the Interested Parties.

49. The impugned decision was indeed based on evidence adduced by the parties, including the applicants herein, and the rules of natural justice were adhered to and as such, the ex-parte Applicants right to fair hearing were never violated.

50. On whether the Ex-parte Applicants herein are entitled to the orders of certiorari and prohibition, it should be noted that judicial review orders are discretionary. In Zachariah Wagunza & Another Vs. Officer of the Registrar, Academic Kenyatta University & 2 Others (2013) eKLR, the court reiterated the broad grounds on which the court exercises its judicial review jurisdiction as was stated in the Uganda case of Pastoli Vs. Kabale District Local Government Council and Other (2008) 2 EA 300, and observed among other things that:

> " 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 the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of law or its principles are instances of illegality...
>
> 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 is usually in defiance of logic and acceptable moral standards.
>
> Procedural Impropriety, is when there is 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 act 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."

51. Similarly, in the case of Republic Vs. Director of Immigration Services & 2 Others Ex-parte Olamilekan Gbenga Fasuyi& 2 Others (2018) eKLR it was held that:

> " ...it is common ground that the prayers sought are Judicial Review remedies and the rules governing grant of judicial review orders do apply. Judicial Review is about the decision-making process, not the decision itself. The role of the court in judicial review is supervisory. It is not an appeal and the court should not attempt to adopt the forbidden appellate approach. Judicial Review is the review by a judge of the High Court of a decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction-reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised. Judicial Review is a means to hold those who exercise public power accountable for the manner of its exercise. The primary role of the courts is to uphold the fundamental and enduring values that constitute the rule of Law. Judicial Review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision.

As long as the process followed by the decision-maker are proper, and the decision is within the confines of the Law, a Court will not interfere."

52. According to Halsbury Law of England 4th Edition Vol. 1 (1) para 12 page 270;

> "The remedies of quashing orders (formerly known as orders of Certiorari) prohibiting orders (formerly known as orders of prohibition) mandatory orders (formerly known as orders of mandamus)...are all discretionary. The court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief."

53. The objective of Judicial review was observed in Chief Constable of the North Wales Police Vs. Evans (1982) 1 WLR where 1155 Lord Brightman noted:

> "Judicial Review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power...Judicial Review, as words imply is not an appeal from a decision but a review of the manner in which the decision was made."

54. In the instant case, the applicants have levelled various allegations that go to the merits of the case. This clearly spells out the issues is the decision and not the process.

55. The court in Commissioner of Lands Vs. Kunste Hotel Limited (1997) eKLR with authority reiterated Lord Brightman's view and observed:

> "...it must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision-making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected."

56. In the instant case the applicants have not demonstrated with sufficient clarity the illegality and the bias complained of.

57. It is my finding that the process followed by the 1st Respondent throughout the appeal proceedings as well as the making of the decision were fair, objective and procedural. The Ex-parte Applicants Notice of Motion lacks merit. The same is full of mere innuendoes and baseless claims by the applicants.

58. Consequently, the notice of motion Application dated 20th June, 2023 is dismissed with costs to the respondents and the Interested Parties.

59. Orders accordingly.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH JULY, 2024

In the presence of:

Court Assistant – Kiruja

Ms. Ochola for Ex-parte Applicant.

No appearance for Respondents.

No appearance for Interested Parties.

C.K YANO,

JUDGE