



Kaura v District Land Adjudication and Settlement Officer Igamba Ng’ombe Sub-County & 2 others; Marua (Interested Party) (Environment and Land Judicial Review Case E003 of 2023) [2024] KEELC 6331 (KLR) (25 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6331 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2023
CK YANO, J
SEPTEMBER 25, 2024

BETWEEN

EDITH KAURA EXPARTE APPLICANT

AND

DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER IGAMBA NG’OMBE SUB-COUNTY 1ST RESPONDENT

DEPUTY COUNTY COMMISSIONER 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

AND

IGETA MARUA INTERESTED PARTY

JUDGMENT

1. The ex-parte applicant filed the Notice of Motion dated 19th April, 2023 brought under Article 23 (3) (f) and 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 other enabling provisions of the Law seeking for orders that:
 - a. An order of certiorari be issued to the 1st and 2nd respondents quashing the decisions of the findings of the Appeal Case No. 132 of 2019 to the Minister delivered on the 19th December, 2022 and certified on 31st January, 2023 by the Director of Land Adjudication Nairobi.
 - b. An order of prohibition to issue against the Respondents prohibiting them from implementing or enforcing the offensive recommendations and the decision contained in the proceedings of Appeal to the Minister No. 132 of 2019 delivered on the 19th December, 2022



and certified on 31st January, 2023 by the Director of Land Adjudication Nairobi in relation to parcel No. 1179.

2. The motion is supported by the facts and grounds contained in the application and the verifying affidavit of Edith Kaura, the Ex-parte Applicant dated 20th April, 2023 and the annexures thereto.
3. The Respondents filed grounds of opposition dated 24th November, 2023.
4. The Interested Party filed a Replying Affidavit sworn on 9th February, 2024.

The Applicant's Case

5. In the verifying affidavit the applicant avers that Land Parcel Kamwimbi "A" Adjudication Section parcel 2082 formed part of her land Kamwimbi "A" Adjudication Section 778 that her family gathered and has been utilizing. That on diverse dates, the 1st Respondent heard objection No. 698 lodged by the Ex-parte Applicant as the registered owner of adjudication of land parcel No. Kamwimbi "A" Section parcel No. 778 from which two (2) acres was hived off to create Kamwimbi "A" section parcel No. 2082 and subsequently awarded to the interested party. The Applicant attached a copy of the objection proceedings marked EK1.
6. The applicant avers that being aggrieved by the decision to award the suit property to the interested party, which decision she alleged was unfair, she lodged an appeal to the Minister of Lands and Physical Planning as provided under Section 29 of the [Land Adjudication Act](#). The Applicant attached a copy of the proceedings of the appeal to the Minister marked EK2. The Applicant further avers that the proceedings before the minister were flawed with gross irregularities and unprocedural conducts by the panel sitting in Appeal to the Minister case No. 132/2019 thus arriving to an unjust and unfair decision/finding.
7. The Applicant states that the 2nd respondent failed to recognize that the interested party herein was not part of the committee proceedings and he therefore missed a crucial step of the litigation process. The applicant attached a copy of the committee stage proceedings marked EK3. The Applicant further states that the 2nd respondent did not allow her to testify during the proceedings before him without any justifiable cause therefore breaching her right to be heard as the appellant in the case. That the 2nd respondent failed to recognize the glaring inconsistencies in the interested party's statement since in his findings he states that she is related to the interested party even though the interested party did not expressly explain how they were related yet they are from different clans.
8. The Applicant states that the interested party stated that the applicant's father was given land by one Ikianya, but later during cross examination stated that it is his father who issued the applicant with a piece of land. That the interested party did not explain how he claims to be related to the applicant and why his father would give a strange woman a piece of land and leave his own son without any portion of land. The Applicant further avers that the 2nd respondent failed to realize that the interested party herein had filed several cases against most of the owners of land around the Kamwimbi "A" adjudication section claiming to either have ancestral land rights or that the land belonged to their family at one point. The applicant gave an example of a claim against one of the applicant's neighbours, one M'ivita Ikanya, on whose land the interested party claimed ancestral rights, even though none of other family members have ever lived there.
9. The Applicant contends that none of those claims are properly substantiated since the interested party has never lived in any of the portions, including the suit portion herein No. 2082 and that none of the interested party's family members have ever lived in those portions and that neither have they ever been buried there. That it was unconceivable that the 2nd respondent found merit in the interested party's



testimony and concluded that the applicant and the interested party are related to each other and does not go on to state what kind of relation it was.

10. The Applicant avers that the 2nd respondent's findings at the scene visit on land parcel 2082 was that there were miraa trees, a grave, mango trees, sisal and three mud houses. That the 2nd respondent did not indicate that all the developments done on the portion of land were all done by the applicant because she exclusively lived on that portion of land since time immemorial. The Applicant further states that it is not fair that the interested party gets her portion of land No. 2082 without any justifiable cause, except unsubstantiated claims that are so farfetched and cannot be properly put together as concrete evidence. That the action of the 2nd respondent of not affording the applicant a fair hearing is illegal, actuated with malice, unreasonable and biased.
11. The Applicant contends that the 1st and 2nd respondents breached their obligations and the duty to act fairly and the duty to follow a fair decision-making process. The Applicant states that unless this court intervenes and uphold *the constitution* and the law, injustice shall be occasioned to the applicant and her family. That it is in the interest of justice that the orders sought herein be granted.

The Respondents' Case

12. It is the Respondents' case that the application is fatally defective, misconceived and mischievous or otherwise an abuse of the court process and therefore unsustainable in the obtaining circumstances; that judicial review proceedings purely deal with the procedure and process of decision making and not the merits and/or substance of the case, but in this case, the Applicant is seeking that the court determines the merits of the decision; that the Application is bad in Law and only meant to defeat justice and that the application is otherwise frivolous, vexatious and an abuse of the court process and therefore ought to be dismissed with costs.

The Interested Party's Case

13. The interested party avers that he is the legitimate owner of Kamwimbi "A" parcel No. 2082 which was hived from Kamwimbi "A" section parcel land No. 778. That he participated as a respondent in the Appeal to the Minister Case No. 132/2019. The interested party contends that the Appeal to the Minister was heard fairly and that there were no irregularities and unprocedural conducts that he witnessed. That throughout the entire hearing, he was present and the Applicant was also present and that they both participated in the hearing of the case as evidenced by the proceedings. The interested party states that everyone was given an opportunity to ventilate their issues before a decision was arrived at.
14. The interested party states that his claim on the parcel of land Kamwimbi "A" section No. 2082 is on ancestral grounds. That the land belongs to his deceased father who had left it in the hands of his brother during the emergency. That it was during the emergency that they fled for their lives and went to live in camps. That by the time they came back to claim their land, they found that it had been illegally subdivided by their uncle.
15. The interested party avers that he was born on the suit land and has even buried some of his relatives therein, including his father, Kimbutu, his mother and one Mati Uthuri.
16. The interested party avers that the applicant is married to his brother as testified by the applicant's son by the name Fredrick Kiura Kirocho, and therefore they are related. That the applicant remained and remains with a larger portion of the land compared to the two acres that were awarded to the interested party.



17. The interested party depones that during adjudication, only a portion of the entire parcel of land was to be registered in the Applicant's name and not the entire portion. That the Adjudication officer deliberately registered the entire parcel of Kamwimbi "A" section parcel 778 to the Applicant herein. The interested party states that he made several complaints against the Adjudication officer since they had also made such mistakes with regard to other parcel of land in his ownership. The interested party attached letters marked "1M-1a & 1M-1b".
18. The interested party further states that there is no provision in Law that prohibits his participation in the case at the Arbitration Board level because he was defending his proprietary rights. That no one including the applicant objected to his participation in the case at the Arbitration Board.
19. The interested party avers that it is from Kamwimbi "A" section parcel of land No. 778 that his brother Njeru Nkoroi and him hived off land and donated it for the Kabururu market, dip and school and that no one raised an issue and or objection since it was his parcel of land. That they would not have been able to donate the land if it was not owned by them. The Interested Party states that he lives on land parcel No. 776 which is near the suit land due to fear because some years ago, some people murdered one Mutiiria on the suit land.
20. The interested party wants the applicant's case dismissed with costs.
21. Pursuant to directions given by the court, the parties consented to canvassing the application by way of written submissions. The applicant filed her submissions dated 19th July, 2024 in person while the Interested Party filed his submissions dated 20th June, 2024 through the firm of B. Musili Advocates and the Respondents filed theirs dated 24th July, 2024 through the office of the Honourable Attorney General.

Ex-parte Applicant's Submissions

22. The Applicants gave a background of the case and pointed out that the application was brought under Article 23 (3) (f) and 47 of *the Constitution* of Kenya 2010, Section 8 and 9 of the *Law Reform Act* Cap 26 and Order 53 Rule 1(1), (2) and (3) of the Civil Procedure Rules 2010. That the principles and scope of judicial review are not novel issues in our jurisdiction, but it is a well-trodden path. That the court has aptly captured the same in various cases such as *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd.* [2002] eKLR and *Pastoli v Kabale District Local Government Council & Others* [2008]2 EA 300.
23. The Applicant submitted that the actions of the 2nd respondent during the hearing of the proceedings were irrational and unprocedural. It is the applicant's submission that the 2nd respondent delivered his judgment on 19th December, 2022 whereby he decided that the land in dispute was the ancestral land of the interested party, even though none of the witnesses testified that the parties to that appeal were related in any way. That in that case, the minister made a decision based on evidence that was not brought by any of the witnesses therefore arriving at a decision that was unfair and unjust. Further, that the minister purports to have visited the alleged ancestral land, but does not give clear findings of what he found there, except for the various trees, three mud houses and which he also failed to mention whom they belong to. That the findings of the site visit should have revealed the person who was in actual possession and use of the land.
24. It is also the applicant's submission that the 2nd respondent did not consider the applicant's evidence and decided in favour of the interested party even though his evidence and that of his witness were contradictory.



25. It is also the Applicant's submission that the 2nd respondent made his determination irrationally with no proper evidence or facts backing his conclusion of the matter and the case. The applicant also accused the 2nd respondent of procedural impropriety. He argued that the interested party was not a complainant at the proceedings at the committee stage and only joined the proceedings during the arbitration board hearing which awarded him land No. 2082. The applicant argued that this was a complete procedural error on the part of the board and the 2nd respondent.
26. The Applicant further relied on the case of *Keroche Industries Limited Vs. Kenya Revenue Authority & 5 Others* Nairobi HCMA No. 743 of 2006 [2007] KLR 240 which cited *Reg Vs. Secretary of State for the Environment Ex-parte Nottinghamshire County Council* (1986) AC on the scope of judicial review and submitted that the application is competent and is properly before court and urged the court to allow the application in terms of prayers (a) and (b) thereof.

Respondents' Submissions

27. The respondents identified two issues for determination, namely, whether the impugned decision was arrived at in the manner envisaged by the law and whether the judicial review remedies of Certiorari and Prohibition are available to the Applicant. Regarding the first issue, the respondents pointed out that the ex-parte Applicant seeks orders of Judicial Review in the nature of Certiorari and Prohibition against the decision of the Proceedings to the Minister Appeal No. 132 of 2019 in respect of land parcel number 1179 Kamwimbi "A" adjudication made vide the ruling delivered on the 19th of September, 2022. It is the respondents' submission that the order of Certiorari is now well established that the said order only issues if the decision being challenged was made without or in excess of jurisdiction or where the rules of natural justice were not complied with. The respondents relied on the case of *Kenya National Examination Council v Republic Ex-parte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996*.
28. The respondents submitted that it is necessary to examine whether in the delivery of the impugned ruling, the Respondents acted within the authority granted to them by the *Land Adjudication Act*, Cap 284 and observed the rules of natural justice. It is their submission that it is not in dispute that the *Land Adjudication Act*, Cap 284 provides for the delegation of powers by the Cabinet-Secretary in-charge of lands to hear and determine appeals. The Respondents cited Section 29(4) of the said Act. It is also the respondents' submission that it is equally not in contention that pursuant to the above-referenced provision, the norm has been that the Minister in-charge of lands would delegate his powers and functions to hear appeal to the holders of the office of the Deputy County Commissioner as seen in the case of *Republic v Cabinet Secretary, Ministry of Lands and Settlement & 2 Others Ex-Parte Gerald Mbuuri Kabugu* [2018] eKLR.
29. The respondents stated that in the instant case, the ex-parte Applicant alleges that the impugned decision was marred by illegality and procedural impropriety. That in contrast, the Adjudication Section that is subject of this suit underwent all the adjudication process in accordance with the provisions of the *Land Adjudication Act*. The respondents submitted that pursuant to Section 26, the Land Adjudication Officer heard and determined the objection and ordered that the suit land Parcel No. 1179 to remain in the name of the interested party herein. That the ex-parte applicant, being dissatisfied with that decision, was afforded opportunity to challenge it which he did through Minister Appeal Case No. 132 of 2019. The respondents contend that the appeal process was undertaken lawfully. It is the respondents' submission that the impugned decision in the appeal to the Minister's case was arrived at after due consideration of evidence tabled before the decision makers. That as such, the D.C.C was statutorily mandated to issue the impugned decision which was legal and procedurally proper.



30. With regard to the issue as to whether the rules of natural justice were observed, the respondents relied on the case of *Republic v County Director of Education, Nairobi & 4 Others Ex-Parte Abdukadir Elmi Robleh* [2018] eKLR in which the court cited with approval the case of *Msagha v Chief Justice & 7 Others Nairobi HCMCA No. 1062 of 2004 (HCK)* [2006]2 KLR 553 and submitted that the impugned ruling was compliant with the rules stated therein. The respondents submitted that the ex-parte Applicant was given an opportunity to participate in the appeal proceedings. That a cursory look at the copy of the Minister appeal proceedings will reveal that the ex-parte Applicant, as the Plaintiff, participated in the appeal process on the 7th April, 2022.
31. The respondents further submitted that no evidence was brought by the ex-parte Applicant of any interest, conduct or association of the Respondents as the primary decision maker, which would lead to a likelihood or apprehension of bias in favor of the Interested Party.
32. The respondents also submitted that the impugned decision was indeed based on evidence that was material. They noted that it referred to the testimonies given by various participants during the Minister appeal proceedings as well as a site visit. In light of the foregoing, the respondents urged the court to find that the rules of natural justice were adhered to and as such, the ex-parte Applicant's right to fair hearing was never controverted. Equally, they invited the Court to find that the Respondents arrived at the impugned decision in a lawful and legal manner.
33. On whether the judicial review remedies of Certiorari and Prohibition are available to the applicant, the respondents contend that judicial review proceedings purely deal with the procedure and process of decision-making and not with the merits and/or substance of the case. The respondents relied on the case of *Republic v Director of Immigration Services & 2 Others Ex-parte Olamilekan Gbenga Fasuyi & 2 others* [2018] eKLR.
34. The respondents contend that the ex-parte Applicant, being aggrieved by the decision of the Deputy County Commissioner through this judicial review proceeding intends that this court delves into the substance of the Appeal proceedings and review the evidence. They argue that although the application purports to call into question the process adhered to in arriving at the decision, the same is a disguised attempt to revisit the merit of the decision. The respondents submitted that all parties, including the ex-parte applicant were afforded an opportunity by the Respondents to present their respective cases.
35. It is the respondents' submission that owing to the serious nature of judicial review orders, it is not enough for the Ex-parte Applicant to claim that the Deputy County Commissioner acted illegally, unreasonably or in breach of rules of natural justice. That the actual sins by the impugned office must be exhibited for judicial review remedies to be granted as demonstrated in the case of *Republic v Kenya Power & Lighting Company Limited & Another* [2013] eKLR. The respondents also relied on the case of *East African Community v Railways African Union (Kenya) and Others (No.2) Civil Appeal No. 41 of 1974* [1974] EA 425.
36. The respondents urged the court, in the exercise of its discretion, to find that the Ex-Parte Applicant has not provided sufficient grounds to warrant an award of Judicial Review remedies of Certiorari and Prohibition. It is the respondents' submission that the Ex-parte Applicant's Application does not satisfy the requisite threshold to warrant the Court's exercise of its discretion in favour of the applicant. The respondents also urged the court to find that the applicant's claim is a challenge on the merits of the decision of the 2nd Respondent concealed as one against the procedure adopted, adding that the instant Application lacks merit and should be dismissed with costs to the Respondents.



Interested Party's Submissions

37. It is the interested party's submission that the Applicant is before the court seeking to quash the decision of the findings of the Appeal to the Minister case No. 132 of 2019 delivered on the 19th December, 2022 yet she participated in the proceedings in the said Appeal to the Minister as a plaintiff. The interested party pointed out that the applicant's National Identity Card was recorded against her name. That she even cross-examined the Interested Party.
38. Relying on the case of Republic v Public Procurement Administrative Review Board & 2 Others Ex-parte Rongo University [2018] eKLR, the interested party submitted that the grant of orders of certiorari, mandamus and prohibition is discretionary and the court is entitled to take into account the nature of the process against which judicial review is sought and satisfy itself that there is reasonable basis to justify the orders sought. The interested party relied on the case of Municipal Council of Mombasa v Republic & Umoja Consultants Ltd. [2002] eKLR.
39. The interested party submitted that in the present case, the manner in which the proceedings were conducted and the decision making process was without flaws and that the sitting panel considered all the relevant factors in order to award the interested party the suit parcel of land. That there is nothing on record that shows that the sitting panel in the appeal to the Minister case failed to follow the laid down procedure as provided in the Act, and therefore the court should hold that the Applicant has failed to prove her allegations.
40. The interested party submitted that it is a fundamental principle in Law that he who alleges must prove as it was noted in Justus Mathumbi & 9 Others v Cabinet Secretary Ministry of Land, Housing and Urban Development & 4 Others [2018] eKLR. That burden of proof lies on that person who would fail if no evidence at all were given on either side. The interested party also relied on the case of M'Bita Ntiro v Mbae Mwirichia & Another [2018] eKLR.
41. It is the interested party's submission that from the material on record it is evident that all parties, including the ex-parte applicant were afforded an opportunity by the Minister to present their respective cases. That the process followed by the respondents throughout the appeal proceedings as well as the making of the decision were fair, objective and procedural. That there is no evidence of irregularities and unprocedural practices as submitted by the Applicant.
42. The interested party further submitted that it has not been demonstrated that the appeal to the Minister was made contrary to the law or that the rules of natural justice were violated. Therefore, the interested party urged the court to dismiss the applicant's case with costs.

Analysis And Determination

43. I have considered the pleadings, the legal and statutory authorities and the written submissions filed. The issues that call for determination are:
 1. Whether the Respondents exercised their statutory duties as envisaged in the law.
 2. Whether the orders of Judicial Review are available.
44. It is trite Law 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 to the decision-making process and not the merits of the decision.



45. In the case of *Republic v Kenya National Examination Council Ex-parte Geoffrey Gathenji 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...”
46. In the case of *Municipal Council of Mombasa v Umoja Consultants Ltd.* [2002] eKLR, the Court of Appeal held that:
- “Judicial review is not 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.”
47. 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 applicant has 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.
48. 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 while Section 107 puts the burden of proof on the person who desires the court to give judgment as to any legal right or liability dependent on the existence of facts which he/she asserts.
49. In the case of *M’Bita Ntiro v 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 proved by any law that the proof of fact shall lie on any particular person.”
50. From the material on record, it is evident that all parties, including the ex-parte applicant were afforded an opportunity by the Minister to present their respective cases. In my considered view, the process followed by the respondent throughout the appeal proceedings as well as the making of the decision were fair, objective and procedural. There was no evidence that the 2nd respondent did not allow the applicant to testify during the proceedings before him. On the contrary and as evidenced by the proceedings, the applicant took part in the proceedings.
51. In this case, the Applicant argued that it was unconceivable that the 2nd respondent found merit in the interested party’s testimony and concluded that the applicant and the interested party are related. It is clear from that assertion that the Applicant is challenging the merits of the case. As already stated, judicial review remedy is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made but the decision-making process itself. The role of the court



in judicial review is supervisory, not an appeal. It has not been shown that the impugned decision herein was made contrary to the law or that the rules of Natural justice were violated.

Whether the orders of Judicial Review are available?

52. On the issue of whether the Ex-parte Applicant herein is entitled to the orders of certiorari and prohibition, it should be noted that the judicial review orders are discretionary. In the case of *Zachariah Wagunza & Another v Office 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 v Kabale District Local Government Council and Others* [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 contrary to the provision of law or its principles are instance 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 or to act with unprocedural fairness towards one to be effected 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.”

53. Similarly, in the case of *Republic v Director of Immigration Services & 2 others Exparte Olamilekan Gbenga Fasuyi & 2 Others* [2018]e KLR it was held that:

“.....It is common ground that the prayers sought at Judicial Review remedies and the rules governing grant of judicial review orders so 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 not 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.”

54. In this case, the applicant alleged that the proceedings before the minister were flawed with gross irregularities and unprocedural conducts by the panel sitting in Appeal to the Minister case no. 132/2019, thus arriving to an unjust and unfair decision. That the 2nd respondent failed to recognize



the glaring inconsistencies in the interested party's statements since in his findings he stated that the applicant is related to the interested party even though the interested party did not expressly explain how he was related to the applicant yet they are from different clans. The applicant further argued that the 2nd respondent failed to realize that the interested party herein had filed several cases against most of the owners of land around the Kamwimbi "A" adjudication section claiming to either have ancestral land rights or that the land belonged to their family at some point.

In my view, these allegations go to the merits of the case. This clearly spells out that the issue is the decision and not the process.

55. The case of Commissioner of Lands vs Kunste Hotel Limited (1997) eKLR 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. From the material on record, it is my finding that the process followed by the 2nd Respondent throughout the appeal proceedings as well as the making of the decisions were fair, objective and procedural. The Ex-parte Applicant's application lacks merit.

57. Consequently, the Notice of Motion Application dated April 19, 2023 is dismissed with costs to the respondents and the Interested Party.

58. Orders accordingly.

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

In the presence of:

Court Assistant – Moses

Ms. Kendi for Respondent

Ms. Musili for Interested Party

No appearance for the Applicant

C.K YANO,

JUDGE

