



**Kuria & 5 others (Suing on their own Behalf and on Landlords, Letting Agents and Property Owners Association in Nyeri) v County Government of Nyeri (Environment and Land Judicial Review Miscellaneous Application 03 of 2019) [2024] KEELC 7165 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7165 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION 03 OF 2019**

**JO OLOLA, J**

**OCTOBER 31, 2024**

**BETWEEN**

**SAMUEL KARANJA KURIA ..... 1<sup>ST</sup> APPLICANT  
ANTHONY KIRIGIA MAINA ..... 2<sup>ND</sup> APPLICANT  
LUCY WAMUYU MWAI ..... 3<sup>RD</sup> APPLICANT  
IDD SULEIMAN ..... 4<sup>TH</sup> APPLICANT  
SIMON WANYIRI KANGERI ..... 5<sup>TH</sup> APPLICANT  
PST DOUGLAS KARANJA ..... 6<sup>TH</sup> APPLICANT  
SUING ON THEIR OWN BEHALF AND ON LANDLORDS, LETTING AGENTS  
AND PROPERTY OWNERS ASSOCIATION IN NYERI**

**AND**

**COUNTY GOVERNMENT OF NYERI ..... RESPONDENT**

**JUDGMENT**

**Background**

1. By the Notice of Motion dated 15<sup>th</sup> May 2019, the six (6) Applicants suing on their own behalf and on behalf of Landlords, Letting Agents and Property Owners Association in Nyeri County pray for the following:
  1. That the Applicants be granted an Order of Certiorari by the Honourable Court to stop/quash the decision of the County Government of Nyeri to publish the Draft Valuation Roll



2018 or 2019 (Whichever is the year of the proposed Draft VR(sic)) with respect to the existing and/or the extended rated area of Nyeri Town and any other affected area, so long as the Respondent have not complied fully with the stipulations of the national rating statutes, more especially Cap 266 and 267, and also opening the DVR (sic) to public inspection for a full and continuous statutory prescribed period, wherefore allowing the raising of objections by those rated therein;

2. That the Applicants be granted an order of prohibition to prohibit the Respondent from levying retrospective/prospective rates under the 2018 and/or 2019 Draft Valuation Roll in the existing rated areas and any other extended area so long as there is no full gazettment and/or public notices, and/or maps and/or descriptions declaring that this was planned and intended to be done for the areas in question;
  3. That the court be pleased to grant any other commensurate relief or reliefs taking into account that the operations of the Respondent have been mobile and shifting; and
  4. That the costs of this application be provided for.
2. The Motion is supported by a Statutory Statement of Facts dated 15<sup>th</sup> May 2019 as well as both a Verifying Affidavit and Supporting Affidavits sworn by the Applicants representatives. The Statutory Statement lists the grounds upon which the Reliefs are being sought at Paragraph 4 thereof as follows:
- a). That previous (sic) to the current Valuation Roll which is being prepared, there have been other Valuation Rolls and Supplementary Valuation Rolls which have been prepared for Nyeri Town C.B.D, since a Municipal Authority was established on all or part of the area in 1972. Underlying this preparation, was the principle of consultation with the residents which was strictly followed in practice and Nyeri Town rating was confined to the town's business areas or the CBD, which comprised LR. No. 1108 which has been divided into sections. In 1978, a conversion from RTA to RLA was done and the plots given Block I, II and III numbers which coincided with the town commercial area, where plot owners paid rates, and the Applicants now fear that the imposition of the projected high rates could result in them having huge, unpayable rate debts, with nothing to show for it, and the consequential financial concern and auctioning of their lands and homes by the Respondent;
  - b). That this principle, between 1972 and 1990 stopped the local authority from expanding rating from its hitherto existing administrative boundaries into the agricultural areas, which on the whole are not agriculturally productive, like in the other parts of the town where commercial agriculture is practiced. The Respondent now seeks to expand the rated area in a concentric circle around the CBD without any regard to ground inspection, residents' participation and civic consultation;
  - c). That the Respondent has failed to undertake a proper agricultural rental value rating as required by the *Rating Act*, to underpin the expansion of rating into the new areas, at a time when the local agricultural economy has been in long depression, with people buying food daily to survive and other parts of the area on long term relief food supplies and the valuer could have inserted in the Roll figures as rate valuations which are not based on ground land inspections, and/or done estimated future commercial use valuations, unrelated to the current agricultural use of the land, as it exists on the ground today;
  - d). That this has in turn led to overvaluation and under valuations of comparable properties and the figures entered in the proposed valuation Roll in areas like King'ong'o, Mathira,



Tetu, Gatitu, Ruring'u etc. compare badly, meaning that the Respondent has unwittingly perpetrated financial discrimination among neighbouring residents.

3. The County Government of Nyeri (the Respondent) is opposed to the grant of the Orders sought. In a Replying Affidavit sworn on its behalf on 8<sup>th</sup> February 2024 by Fredrick Macharia Maina, its Chief Officer Department of Lands, Housing, Physical Planning and Urbanization, the Respondent avers that the Applicants were granted leave on 23<sup>rd</sup> November 2019 to file and serve Judicial Review proceedings within 21 days but they failed to comply with the court orders.
4. The Respondent further avers that an order of Certiorari is directed at a specific administrative decision but the Applicants have failed to demonstrate that there was any. It is further the Respondent's case that the Applicants have failed to point out any specific Section of the *Valuation for Rating Act*, Cap 266 Laws of Kenya that had been contravened.
5. The Respondent further avers that the prayer to stop the publication of the Draft Valuation Roll, 2019 had been overtaken by events as the Draft Roll was published in the Daily Nation Newspaper of 4<sup>th</sup> March 2019 and addendum of the same published in the Standard Newspaper of 22<sup>nd</sup> March 2019.
6. The Respondent asserts that all the provisions of the *Valuation for Rating Act* were complied with and that upon the publication of the Roll as done on 4<sup>th</sup> March 2019, the Respondent had received a total of 1,135 objections. It is further the Respondent's case that following a Kenya Gazette Notice published on 22<sup>nd</sup> September 2023, the chair and members of the Valuation Court were appointed to hear and determine the objections and that the exercise came to a close on 30<sup>th</sup> January 2024.
7. The Respondent's Chief Officer Department of Lands deposes further that he physically attended the sittings of the Court and that save for the 4<sup>th</sup> Applicant, who refused to give evidence, the other Applicants were heard. The Respondent avers that all the issues raised by the Applicants fall within the jurisdiction of the Valuation Court and assert that this court has no jurisdiction to hear this matter under the doctrine of exhaustion as the Applicants are yet to exhaust the remedies available under the *Valuation for Rating Act*, Cap 266 Laws of Kenya.
8. In addition to their response, the Respondent filed a Notice of Preliminary Objection dated 8<sup>th</sup> February 2024 objecting to these proceedings on the grounds that:
  - i). The Notice of Motion was filed out of time in violation of the leave granted on 23<sup>rd</sup> April 2019 and is therefore incompetent and not properly before the court;
  - ii). The Notice of Motion contravenes the doctrine of exhaustion as the Applicants have not exhausted their remedies under section 10 of the *Valuation for Rating Act*, Cap 266 Laws of Kenya;
  - iii). The Notice of Motion is overtaken by events as the Draft Valuation Roll was published in the Newspaper on 4<sup>th</sup> March 2019 and all objections heard and determined;
  - iv). There is no administrative decision before the court capable of being quashed and/or prohibited as the Draft Valuation Roll does not come into force until it has been certified and laid before the local authority under Section 17 of the *Rating Act*, Cap 267, Laws of Kenya; and
  - v). The Notice of Motion is totally and incurably defective as it has not been filed in the name of the Republic.
9. Following directions given herein, it was agreed that both the Motion dated 15<sup>th</sup> May 2019 and the Preliminary Objection dated 8<sup>th</sup> February 2024 be heard and disposed of concurrently. I have



accordingly perused and considered both the objection and the judicial review application as filed by the Applicants. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.

10. Given its likely implications to the judicial review application, I shall first turn my attention to the points raised by the Respondent in its Notice of Preliminary Objection.
11. In its first ground of objection, the Respondent contends that the judicial review application ought to be struck out on the grounds that it was filed out of time and in violation of the order granting leave issued to the Applicants on 23<sup>rd</sup> April 2019. From the record, it was not in dispute that by an application dated 17<sup>th</sup> April 2019, the Applicants had sought the leave of this court to institute judicial review proceedings. On that same date, the Honourable Lady Justice L.N. Waithaka granted the Applicants leave to institute those proceedings within 21 days from the said date.
12. The Applicants did not however get to file the substantive application until some 23 days later when they filed the application on 16<sup>th</sup> May 2019. While the Respondent asserts that the delay renders the Motion before the court incompetent, I did not think the short delay was fatal to the Applicants' case.
13. As it were, following the promulgation of *the Constitution* of Kenya, 2010, the scope and extent of judicial review has been greatly expanded in this country. Article 23(3) (f) of *the Constitution* now expressly gives the courts power to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. Of greater significance however is Article 47 thereof which entitles every person who has been or is likely to be affected by administrative action to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
14. The Fair Administrative Actions Act, 2015 enacted pursuant to Article 47(3) of *the Constitution* has radically altered the judicial review land scape in Kenya in conformity with the transformative *Constitution of Kenya, 2010*. The Act defines “administrative action” to include, “powers, functions and duties exercised by authorities or quasi-judicial tribunals,” or “any act, omission or decision of any person, body or authority that affects the legal rights of any person to whom such action relates.
15. In light of that fact it is worthy of note that the Applicant’s Notice of Motion is expressed to be brought inter alia, under Article 47 of *the Constitution*. Under Section 7 of the Fair Administrative Actions Act, 2015 enacted pursuant to the said Article, leave is no longer required before one can institute judicial review proceedings. That section affords any person aggrieved by administrative action or decision to apply for review of the same either in a court of law or a tribunal possessed of jurisdiction. That being the case, I find and hold that there was no basis for the Applicants to seek leave to file their application and their failure to comply with the timelines granted do not render their application incompetent to warrant its being struck out.
16. On the second ground of the Objection, the Respondent asserts that the Motion herein contravenes the doctrine of exhaustion as the Applicants had not exhausted their remedies available under Section 10 of the Valuation for Ratings Act, Cap 266 of the Laws of Kenya.
17. The doctrine of exhaustion of administrative remedies is a legal principle that requires individuals to exhaust all available remedies with an administrative agency before seeking judicial review. The purpose of this doctrine is to allow administrative agencies to address issues before they are escalated to the courts.



18. In matters concerning an objection to the preparation of a Valuation Roll, section 10 of the Valuation for Ratings Act, Cap 266 of the Laws of Kenya provides as follows:

“ 10. Objection to draft valuation and supplementary Valuation rolls

- 1). Any person (including the local authority or any person generally or specially authorized in that behalf by the local authority) who is aggrieved-
  - a). by the inclusion of any rateable property in , or by the omission of any rateable property from, any draft valuation roll or draft supplementary valuation roll; or
  - b). by any value ascribed in any draft valuation roll or draft supplementary valuation to any rateable property, or by any other statement made or omitted to be made in the same with respect to any rateable property, may, on the payment of a non-refundable fee of five hundred shillings and on the prescribed form, lodge an objection with the town clerk at any time before the expiration of the twenty-eight days from the date of the publication of the notice referred to in section 9(3).
- 2). No person shall be entitled to urge an objection before a valuation court unless he has first lodged the notice of objection, but it shall be competent for a valuation court to agree to consider an objection although notice thereof has not been given in accordance with this section.
- 3). The Town Clerk shall, within twenty-one days after the date on which a notice of objection is lodged with him, send a copy thereof to the rateable owner of the rateable property to which the objection relates, if that person is not the maker of the objection.”

19. Arising from the foregoing, it was clear that any person may raise an objection in relation to any draft Valuation Roll to any rateable property with the town clerk of a local authority which objection is thereafter submitted to the Valuation Court established for that purpose for consideration and determination.

20. From the material placed before me, the genesis of these proceedings can be traced to an advertisement placed in the Daily Nation Newspaper of 4<sup>th</sup> March 2019 wherein the Respondent’s County Secretary gave notice as follows:

“Ref: The Evaluation (sic) For *Rating Act* (Cap 266) Laws of Kenya-2018 Nyeri Municipality Draft Valuation Roll.

In pursuant to Section 9(3) of the *Valuation for Rating Act* (Cap 266) notice is hereby given that the 2018 Draft Valuation Roll in respect of Nyeri Municipality having been tabled before the County Executive Committee is now available for public inspection during the



normal working hours of 8:00am to 5:00pm at the Municipal Yard along Meghji Rupshi Road. The Valuation Roll has captured all the properties within the boundaries of former Nyeri Municipality including Chaka.”

21. The notice then proceeded to inform the ratepayers within its cited jurisdiction of their rights to file objections pursuant to and as provided under Section 10 of the *Valuation for Rating Act*. It was apparent that upon receipt of the notice and in compliance therewith, the Applicants herein raised objection after inspecting the draft Roll. That much is clear from Paragraph 7 of the Verifying Affidavit of Anthony Kirigia Maina (the 2<sup>nd</sup> Applicant) wherein he discloses that after filing his objection, he and some 46 other aggrieved persons met and elected some seven (7) committee members to follow-up the matter. It was also evident that Pastor Douglas Karanja (the 6<sup>th</sup> Applicant) raised an objection after paying the Kshs. 500/= fee that was stipulated for the process.
22. It was further evident that through a Gazette Notice Published on 22<sup>nd</sup> September 2023, the Respondent announced the appointment of the Valuation Court as provided under Section 12 of the Act and that the Court thereafter commenced its sittings. At Paragraph 16 to 18 of the Replying Affidavit of Fredrick Macharia Maina, it was evident that the sittings of the Court were gazetted and again, that some of the Applicants herein including Samuel Karanja (the 1<sup>st</sup> Applicant) Lucy Wamuyu Mwai (the 3<sup>rd</sup> Applicant) and the 6<sup>th</sup> Applicant attended the sittings that were held between 8<sup>th</sup> January 2024 and 30<sup>th</sup> January 2024.
23. The procedure for disposing of objections lodged under Section 10 of the Act is provided for at Section 16 thereof as follows:

“ 16. Determination of objections by Valuation Court.

- 1). Every valuation court shall, at sittings duly called by the clerk, consider the objections made under Section 10.
- 2). Not less than seven days before the day fixed for the consideration by a valuation court of any objection, the clerk shall send notice of the date to the persons mentioned in sub-section (3); but it shall be lawful for a valuation court to hear any objection at a shorter notice if all the persons entitled to be heard on the objection consent.
- 3). On the consideration of an objection the local authority and the person who lodged the objection and the rateable owner of the rateable property which is the subject of the objection may appear and be heard, either in person or by an advocate or accredited representative, and may examine any witness before the court, and may call witnesses.
- 4). After hearing the persons mentioned in sub-section (3) or such of them as desire to be heard, the valuation court shall confirm or may amend the draft valuation roll or draft supplementary valuation roll, by way of reduction, increase, addition or omission, as to it may seem just.”



24. Arising from the foregoing, it was evident that as at the time the Applicants instituted these judicial review proceedings on 16<sup>th</sup> May 2019, they had clearly not exhausted the procedure laid out in the *Valuation for Rating Act*, Cap 266 of the Laws of Kenya.
25. As Ngugi J (as he then was) stated in *John Githiri –vs- Trustees Nakuru Golf Club (2019) eKLR*:
- “There is no doubt that the doctrine of exhaustion of local remedies is one of esteemed juridical ancestry in Kenya. In *Republic –vs- IEBC. Ex Parte NASA- Kenya & 6 Others (2017) eKLR*, the court - a three – Judge Bench described our jurisprudential policy on the doctrine of exhaustion which the Respondents raised in a bid to preliminarily swat away the Applicant’s suit in the following words:
42. This doctrine (of exhaustion) is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly –vs- Karume (1992) KLR 21* in the following oft-repeated words:
- Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure provided should be strictly followed. Accordingly the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.
43. While this case was decided before *the Constitution* of Kenya, 2010, was promulgated, many cases in the post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provided the Constitutional rationale and basis for the doctrine. This is *Geoffrey Muthinja Kabiru & 2 Others –vs- Samuel Munga Henry & 1756 Others (2015) eKLR*, where the Court of Appeal stated that:
- It is imperative that where a dispute resolution mechanism exists outside the courts, the same be exhausted before the jurisdiction of the court is invoked. Courts ought to be a fora of last resort and not the first port of call the moment a storm brews..... The exhaustion doctrine is a sound one and served the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The Ex-parte Applicants argue that this accords with Article 159 of *the Constitution* which commands courts to encourage alternative means of dispute resolution.
45. We have read these cases carefully and considered the salutary decisional rule of law they announce...”
26. Applying those principles to the matter before me, it was evident that the judicial review application before me was instituted prematurely and without exhausting the mechanisms provided under the *Valuation for Rating Act*, Cap 266 Laws of Kenya. Having filed their objections to the draft Roll and even participated in the proceedings before the Valuation Court, it was imperative that the Applicants await a determination by the Valuation Court before taking any further steps.
27. The Valuation Court was the only forum where each ratepayer could be afforded an opportunity to be heard on whether in coming up with the draft Roll, the Respondent had taken due consideration of their local circumstances. The Court provided the ratepayers with a forum where they could cross-examine the respondent’s valuer and call their own witnesses to give their opinion or testimony as



to what they considered to be the proper value of their properties. It was only upon hearing their objections that the Valuation Court could amend the draft valuation Roll.

28. It was evident from the material placed before the court that even after they filed this matter in court, some of the Applicants attended to the Valuation Court which went on with its work and concluded its sittings on 30<sup>th</sup> January 2024. One of the purposes of the doctrine of exhaustion is to maintain comity between the courts and administrative agencies and to ensure that the courts will not be burdened by cases like this in which judicial relief is unnecessary.
29. It follows that I am persuaded that there is substance in the Respondent's second limb of objection. Having so found, I did not find any basis for the court to consider the other two grounds of objection.
30. In the premises I find and hold that the Notice of Motion dated 15<sup>th</sup> May 2019 was premature and misconceived. I dismiss the same with an order that each party bears their own costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

**In the presence of:**

Mr. Wanyiri Kohoro for the Applicants.

Mr. Wahome Gikonyo for the Respondent.

Court Assistant: Kendi

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**J. O. OLOLA**

**JUDGE**

