



**Gilbert v District Land Adjudication and Settlement Officer Igamba Ng’ombe Sub-County
& 2 others; Rinkuri & 2 others (Interested Parties) (Environment and Land Judicial
Review Case E003 of 2022) [2024] KEELC 7132 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7132 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2022
CK YANO, J
OCTOBER 30, 2024**

BETWEEN

JAPHET NJAGI GILBERT 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

M’NYIRI RINKURI INTERESTED PARTY

IGNATIUS MUTEGI MUGA INTERESTED PARTY

NICHOLAS NGECE KUNGA INTERESTED PARTY

JUDGMENT

1. The ex-parte applicant filed the Notice of Motion dated 4th March, 2022 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) 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 directed to the 1st and 2nd respondent quashing the decision of the Proceedings to the Minister Case No. 1 of 2017 via a 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. 1 of 2017 made on the 13th January, 2022 in relation to Marembo Riantiga Adjudication Section 264.

2. The motion is grounded upon the facts set out in the statutory statement and affidavit of Japhet Njagi Gilbert, the Ex-parte Applicant dated 4th March, 2022.
3. The respondents filed grounds of opposition dated 28th June, 2022 and a replying affidavit sworn by C. K. Mbui the Land Adjudication and Settlement Officer in Meru South/Maara and Igambang'ombe, Sub-County dated 20th September, 2022.
4. The 1st Interested Party filed his replying affidavit dated 22nd June, 2023.
5. The 3rd Interested Party was joined to the suit and filed his Replying Affidavit dated 15th March, 2024.

The Applicant's Case

6. The Ex-parte applicant avers that Land Parcel Marembo/Rianthiga/264 was an ancestral parcel of land that his family gathered and has been utilizing until when his father, Bernard Gitari, passed on in 2011. That the 2nd interested party stormed into the said land parcel therefore making it difficult for the applicant and his family to continue utilizing it.
7. The applicant states that the adjudication proceedings began back in 2009. The Applicant attached copies of the committee proceedings marked "JNG1". The applicant states that having been dissatisfied with the decision of the committee, his father appealed against the 1st Interested Party to the Arbitration Board and the committee awarded the applicant's father the whole of parcel 264. The Applicant has attached a copy of the Adjudication Board Proceedings marked "JNG2."
8. The Applicant avers that the committee at the Arbitration Board illegally replicated the proceedings to form case No. 88 & 89 of 2010 which proceedings involved the same parcel of land being Marembo/Rianthiga/264 contrary to the *Land Adjudication Act* with an ill aim to protect the interest of the 1st Interested Party. That the two cases 88 and 89 of 2010 had two dissenting opinions which is a procedural impropriety on the committee that heard and determined the case. That in Case No. 88, his father was awarded plot 264 while in Case No. 89, the parcel was awarded to the 1st interested party.
9. The Applicant states that the record show that his father was not invited to participate in the proceedings of Case No. 89 of 2010 ignoring the fact that he had an interest in the land parcel 264 contrary to the *Land Adjudication Act*. The Applicant has attached a copy of the Adjudication Board Case 89 of 2010 marked "JNG2b."
10. The Applicant avers that it was absurd that the 1st interested party filed an appeal to the Board *via Case No. 89 of 2010* whereas he had not participated in the proceedings at the committee stage. That the committee at the Arbitration Board stage visited the land Marembo/Rianthiga/264 and prepared a demarcation map which aided in reaching at their findings. That in case No. 88 and 89 of 2010 at the Arbitration stage, the demarcation maps that were prepared by the committee differ even though they involve the same parcel of land 264 which raises questions on the procedure the committee that heard the case followed. That they ignored the evidence of the applicant. The Applicant has attached a copy of the demarcation maps marked "JNG3."
11. The Applicant contends that he is only aware of the demarcation map that was submitted in Case No. 88 of 2010 which clearly illustrates even the date that the map was prepared unlike in Case No. 89 of 2010. That the map was interfered with illegally with the aim to award the 1st interested party with his parcel.



12. The Applicant avers that the proceedings at the objection stage did not illustrate members of the committee that sat to hear and determine the case on the face of the proceedings contrary to the [Land Adjudication Act](#). The Applicant has attached a copy of the objection proceedings marked “JNG4.”
13. The Applicant states that the proceedings at the objection stage did not consider the evidence of his father and it indicated that the applicant’s father was an objector at that stage, whereas he attended the proceedings as the respondent. That there was not chance for him to act as an objector since he had been awarded his parcel 264 at the Arbitration Board stage. The applicant contends that the same would have been done to try and cure an illegality. That in fact the proceedings do not illustrate what his father, Bernard Gitari averred in the proceedings if at all he was given a chance to adduce his evidence as an objector. The Applicant states that the proceedings only show his father’s averments as the respondent which in that scenario was what transpired at the objection stage and that the rest was uttered by the committee which demonstrates biasness. That at objection stage, the name of the 1st interested party was introduced illegally by squeezing and scribbling his name in the proceedings whereas he was not a party in those proceedings which then awarded the 1st and 2nd interested party the land parcel 264. The Applicant noted that the handwriting differs. The Applicant has attached a copy of the 1st page of the objection proceedings marked “JNG5.” That at the objection proceedings, the 2nd interested party was the plaintiff whereas the applicant’s father was the Respondent who had been awarded parcel 264 and not what is indicated in the proceedings which form an opinion that they were uttered and tampered with.
14. The Applicant avers that at the objection stage and as a result of that procedural impropriety of trying to add the name of the 1st interested party in the proceedings, it was noted down that the applicant was both an objector and a respondent. That his father had been awarded parcel 264 in Case No. 88 of 2010 and there was no possibility that he would have objected to the decision that favoured him and that that was only done to try and cure an illegality by replicating the proceedings.
15. The Applicant states that the Deputy County Commissioner (DCC) took a wrong step in arguing that his father had sued the 2nd interested party wrongly whereas it is the 2nd interested party who had been awarded parcel 264 at the objection stage by illegally adding the name of the 1st interested party in the proceedings, although he did not even participate in the proceedings with the aim of confusing and causing an illegality. The Applicant has annexed a copy of the findings of the Minister marked “JNG6.”
16. The Applicant contends that the decision of the DCC was based on an illegality because he stated that the 2nd interested party was not registered with the land in the adjudication register whereas he had been issued with 2/3 of the portion from parcel 264 at the objection stage and it was his duty as the head of the committee to conduct due diligence on who was awarded the parcel or whether there were any changes. The applicant states that the Minister’s decision was biased since it denied the 2nd interested party and himself portions by basing his decisions from the proceedings at the objection stage rather than the evidence that was adduced before him which is contrary to the [Land Adjudication Act](#) which bestows the Minister authority to make any orders he deems fit. That the DCC was biased because he failed to examine the 1st interested party on how he had procured a certificate of title before the appeal had been heard and determined as per the allegations in Miscellaneous Civil Application No. 4 of 2020 at Chuka which was later dismissed as it was contrary to the procedure in adjudication sections under [Land Adjudication Act](#). The Applicant attached a copy of the said application marked “JNG7.”
17. The Applicant states that based on the evidence before the Minister, he did not find that the alleged registration of land parcel 264 in the name of the 1st interested party was fraudulent because the same had been issued before the case at the Minister was heard and determined contrary to the [Land](#)



Adjudication Act. That if the decision made by the Minister is implemented in relation to Marembo/Rianthiga Adjudication Section 264, he stands to suffer irreparable harm.

18. The Applicant avers that unless the court intervenes and uphold the law and the Constitution, injustices shall be occasioned to him. That it is in the interest of justice that the orders sought be granted.

The Respondents' Case

19. The respondents' grounds of opposition were as follows:
1. That the application is fatally defective, misconceived, and mischievous or otherwise an abuse of the court process and therefore are unsustainable in the obtaining circumstances.
 2. That the application has failed to meet the threshold for grant of the orders sought for the following reasons;
 - a. Section 29(4) of the Land Adjudication Act provides that notwithstanding the provisions of Section 38 (2) of the Interpretation and General Provisions Act (Cap 2) or any other written law, 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 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 Ministers. Thus the hearing of the proceedings by the Deputy County Commissioners was lawful since the minister is authorized by law to delegate his duties to hear the appeal to any person holding a public office.
 - b. That Section 29 of the Land Adjudication Act the decision of the Minister is final and not subject to challenge.
 - c. That Judicial Review proceedings purely deal with the procedure and process of decision making and not the merits and/or substance of the case.
 3. That the Plaintiff's Application is bad in law only meant to defeat the cause of justice hence it ought to be dismissed with costs to the respondent.
 4. That the application is otherwise frivolous vexatious and an abuse of the court process.
20. The respondents stated that the 1st respondent is duly appointed and empowered to act in accordance with the laid down laws and procedure under the Land Adjudication Act Cap 284 of the Law of Kenya. That parcel No. 264 Marembo/Rianthiga was initially recorded to Ignatius Mutegi Muga after he was awarded the same by the Land Adjudication Committee decision in Objection Case No. 48 and 51 of parcel No. 105 and 264 between Ignatius Mutegi Muga and Bernard Gitari. The respondents attached a copy of the proceedings marked "CKN1."
21. The respondents averred that Bernard Gitari appealed against the decision of the Land Adjudication Committee through A/Board Case No. 88/2010 for parcel No. 264 which the Arbitration Board awarded to him. The respondents have annexed a copy of the proceedings marked "CKN2."
22. The respondents stated that the issue of Arbitration Board Case No. 89/2010 has not been factored in any implementation as it was Bernard Gitari alone who was awarded the land at the Arbitration Board and entered in the demarcation book. They annexed a copy of the demarcation book marked "CKN3." That after the publication of Marembo/Rianthiga Adjudication Section and pursuant to Section 26 of Cap 284, all persons affected by the Adjudication Register and who considered it to be



incorrect or incomplete were to submit a written objection within 60 days to the Adjudication officer, stating clearly the reasons for the objection.

23. The respondents stated that the persons that objected were Ignatius Mutegi Muga (objection 83 & 84), Bernard Gitari Mugerera (Objection 210) and M’Nyiri M.Rinkuri (objection 477) and the respondents were M’Imwitha M’Rintira and Bernard Gitari. The respondents attached a copy of the objection proceedings marked “CKN4.”
24. The respondents stated that the adjudication officer is empowered under Section 26 (2) to consider any objection made to him under subsection (1) and after such further consultation and inquiries as he thinks fit, he shall determine the objection. That the Land Adjudication Officer pursuant to Section 26 heard and determined the objection and ordered that parcel No. 264 be subdivided so that M’Nyiri M. Rinkuri takes a third and Ignatius Mutegi to take two thirds. The respondents stated that in order to implement the decision, one of the land owners had to retain the old number i.e 264 while the other had to be given a new number. That according to the demarcation book exhibited herein, M’Nyiri M. Rinkuri seems to have retained 264 and Ignatius Mutegi was given the new number. That therefore, for Bernard Gitari Mugerera to have appealed against Ignatius Mutegi Muga in appeal to the Minister Case No. 1 of 2017 citing parcel No. 264 which belongs to M’Nyiri M. Rinkuri and not Ignatius Mutegi is erroneous and ought to be verified. That Bernard Gitari ought to have pursued Ignatius Mutegi on his new parcel number during the filing of the appeal to the Minister’s case. The respondents contend that the Adjudication section underwent all the adjudication processes in accordance with the provisions of the Land Adjudication Act. That the Applicant has neither satisfied the conditions laid down by the Law for the court to exercise its discretion in his favour, nor has the Applicant proved the grounds relied upon in his prayer to warrant grant of the orders sought.
25. The respondents aver that the Application lacks merit and warrants dismissal with costs.

The 1st Interested Party’s Case

26. The 1st interested party states that he is not in a position to be able to respond satisfactorily to the issues thereof because he is a complete stranger in the matter. He states that the previous interested party, M’Nyiri Rinjuri, is his father who is now deceased. The interested party stated that he is among the deceased’s many children and his mother is alive and of sound mind and good health. That he is not at all or in any manner privy to the matters and issues raised by the Ex-parte Applicant in his application in the nature of the application herein.
27. The 1st interested party avers that he was not close to his late father and he never at any time shared with him or confided in him either any of his matters or those pertaining to this matter and that he has no interest or claim to anything in his estate. The 1st interested party states that he was enjoined in the matter without being consulted and without his consent which renders his participation merely academic, and useless and that the same is in utter violation of the rules of natural justice.
28. The 1st interested party avers that his father died destitute. That his participation in the matter will not serve the ends of justice. That considering that his father had other children and his wife is alive, he is not the right and proper person that ought to have been added as an interested party in the matter in place of the deceased as he is not capable of prosecuting the issue in dispute. The 1st interested party states that he is not aware of, has never been involved in and does not have any information or details about the matter the subject of this application. That he is not capable of satisfactorily prosecuting the issues in dispute and his being forced to do so will compromise, jeopardize and prejudice the whole process and the case.
29. The 1st interested party prayed to be removed and excluded from the proceedings hereof.



3Rd Interested Party's Case

30. The 3rd interested party states that the Minister's decision and which are being sought to be quashed were finalized on 12th August, 2020 and no appeal was ever filed by any aggrieved party as required in Law. Relying on legal advice, the 3rd interested party avers that the Applicant's application dated 4th March, 2022 is incurably defective as it was not filed within six (6) months as required under Order 53 Rule 2 of the Civil Procedure Rules 2010. Further, that the applicant has no locus standi to institute the instant proceedings without the letters of Administration in respect of his deceased father, Bernard Gitari.
31. The 3rd interested party avers that he is now the lawful registered proprietor of LR. Marembo/Rianthiga/264 having purchased the same in 2000 for a valuable consideration from the first registered owner. He has annexed a copy of the Register (green card) marked "KN1".
32. The 3rd interested party states that it is in the interest of justice that the Applicant's application be dismissed for being a gross abuse of the court process.
33. Pursuant to directions given by the court, the parties consented to disposing of the application by way of written submissions. The ex-parte applicant's counsel filed their submissions dated 1st July, 2024 while counsel for the respondents filed their submissions dated 15th February, 2022 and the 1st and 3rd interested party filed theirs dated 24th July, 2024.

Applicant's Submissions

34. The Applicant gave a brief background of the matter and identified the issue for determination to be whether the suit meets the purview of Judicial Review Proceedings. The Applicant submitted that the principles of Judicial Review proceedings were set out by the Court of Appeal in the case of Republic Vs. *Kenya National Examinations Council Ex-parte Gatbenji and Others, Civil Appeal No. 266 of 1996*.
35. The applicant referred to the Minister proceedings marked annexure "JNG6" and stated that the adjudication proceedings before the DCC, Nkaduda, were heard on 22nd November, 2021. That it is also indicative from the green card that was produced by the ex-parte applicant that the first entry was registered on 28th November, 2014 and that the 1st interested party was the registered owner. The applicant pointed out that in the entry number 3 of the green card, the Chief Land Registrar dismissed the appeal to the minister that was still pending according to the *Land Adjudication Act* and went ahead to issue a title as per entry number 4. The Applicant questioned whether the Chief Land Registrar can cancel the decision of the Minister where the adjudication proceedings are still pending. The Applicant cited Section 29 of the *Land Adjudication Act* and submitted that Section 29 of the *Land Adjudication Act* does not give the Chief Land Registrar powers to dismiss an adjudication proceeding that is pending before the Minister. That the Land Registrar herein represented by the 3rd respondent acted illegally and beyond his powers.
36. The Applicant stated that the appeal to the Minister was heard on 22nd November, 2021 and the Registrar acted ultra vires by the fact that he allowed the registration of a new entry by issuing a certificate of title while aware that the appeal to the minister was still pending contrary to the *Land Adjudication Act*. That according to entry number 4, the certificate of title produced by the 1st interested party and marked as "NNK2" was issued on 1st September 2020 when the adjudication proceedings were still pending.



37. The Applicant submitted that the Minister acted ultra vires by allowing himself to hear and determine the appeal when the suit property was no longer under adjudication. That the adjudication proceedings were still pending. The Applicant cited Section 7 of the [Land Adjudication Act](#) Cap 284.
38. The Applicant submitted that a look at the proceedings presented before the court by the applicant at the Arbitration board stage and marked as annexure “JNG2”, on the face of the proceedings clearly lists a number of three members of the board to wit; Zacheaus Njagi, Kamwara Gichu & Joel Murungi who were present to hear and determine the adjudication case. That the law regulating the adjudication proceedings provided for not less than five members forming an arbitration board and therefore three members sitting was contrary to the law. That there were no reasons that were given in the proceedings as to why less members constituted the Board.
39. The Applicant submitted further that the minutes’ proceedings at the Objection stage held on the 27th October, 2010 and marked as annexure “JNG4” which gave rise to the decision by the minister did not show the names of the committee members who made the decision on the face of the proceedings. That it is then assumed that the adjudication officer made the decision alone. That as if that is not enough, the minutes do not illustrate the member who heard, signed and made the decision. The Applicant relied on the case of Republic Vs. Land Adjudication Officer Igembe/Tigania District (2009) eKLR.
40. The Applicant cited Section 24 of the [Land Adjudication Act](#) which defines an adjudication register to comprise of the demarcation map and the adjudication record. That the minutes of the arbitration board contains Case No. 88 and 89 of 2010. The Applicant submitted that the proceedings of Case No. 88 of 2010 are in relation to parcel 264, the suit land in contention involving Bernard Gitari (Deceased) who is father to the ex-parte applicant and Ignatius Mutegi, the 2nd Interested party in these proceedings as the defendant. That the said proceedings are dated and alleged to have been held on the 1st April, 2010 and proceeded before three arbitration board members. That those proceedings are labelled as Case No. 89 of 2010 involving the same parcel No. 264 between M’Nyiri Rinkuri (deceased) who was substituted by the 1st Interested Party and Ignatius Mutegi who is the 2nd interested party herein. That the proceedings involving Case 89 of 2010 do not illustrate the date when they were held. That these two proceedings, Case 88 and 89 of 2010, brought out two dissenting opinions whereby in 88 parcel 264 was awarded to the applicant’s family whereas in case No. 89 same parcel was awarded to 1st interested party. It is submitted that the applicant did not participate in the proceedings of Case No. 89 of 2010 nor was he summoned to attend despite having an interest. That the proceedings in Case No. 89 of 2010 that awarded the 1st interested party land 264 is not dated as to when they took place contrary to the procedure found in the [Land Adjudication Act](#). The applicant questioned how an aggrieved party was supposed to tell when the time starts running so that a complaint can be lodged to the objection stage. That the demarcation map prepared by the demarcation officer according to the powers bestowed to him under Section 18 of the [Land Adjudication Act](#) in Case No. 88 differs from that found in Case No. 89 of 2010 even though the suit land in contention was the same. The applicant questioned what then informed the adjudication register and the adjudication record as contained in Section 24 & 25 of the [Land Adjudication Act](#) since the minute proceedings in Case No. 88 & 89 of 2010 are replicated. That they hold a dissenting opinion in giving out same parcel of land to two different persons where same members of the board heard and determined the dispute and where two different demarcation maps have been created. That the minute proceedings are unreasonable, an illegality and the aim was to confuse the adjudication process so as to defraud the applicant of his parcel land 264. The applicant referred to his averments in paragraphs 14, 16 and 18 of the verifying affidavit and argued that as a result of the confusion that was created by the minutes at the arbitration board, the members then went further to scribble the minutes at the objection stage trying to cure an illegality



they had created by including the name of the applicant as the respondent ignoring the fact that he was still an objector.

41. It is the Applicant's submission that according to the [Land Adjudication Act](#) and its procedure, it is not possible for a person to appear both as an objector and a Respondent in a dispute because how then would he/she be litigating their own issues. That the same applies for the fact that in any suit a party cannot be plaintiff and the defendant in the same proceedings.
42. The Applicant submitted that it is clear that the process of how the decision was reached at the objection and the arbitration board by the members of the committee was marred with illegalities and unreasonableness trying to deny the applicant his right to ownership of his property under Article 40 of [the Constitution](#) of Kenya, 2010. The applicant pointed out that the 1st interested party via a Miscellaneous Application ELC No. 4 of 2020 involving M'Nyiri Rinkuri Vs. the Ex-parte applicant which was before this court had brought a frivolous application for the applicant and the 2nd Interested Party to withdraw their appeal at the minister before they could be heard whereby a certificate of title had been procured illegally. That the Court dismissed the application and ruled that the remedies provided by the [Land Adjudication Act](#) had not been exhausted.
43. The Applicant implored the court to consider the issue of equity by looking at the actions of the interested parties whose actions have been illegal all along with the end goal of taking away the ex-parte applicant's parcel of land. That the Interested parties have ignored to participate in the court proceedings from the onset, despite service being effected on several occasions and for that they impliedly believe that they are not interested in laying a claim against the parcel of land 264 in contention because they are fully aware the same belongs to the applicant.
44. The Applicant submitted that the onus of demonstrating that there was compliance with the law fell upon the Respondents and therefore pray that the application seeking the orders of certiorari and prohibition may be allowed and that the costs and interests of the suit also be granted to the ex-parte applicant.

Respondents' Submissions

45. The respondents identified two issues for determination. The first being whether the impugned decision was arrived at in the manner envisaged by the law. It was 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 Case No. 1 of 2017 vide the ruling delivered on the 13th January, 2022.
46. The respondents submitted that as concerns the order of Certiorari, it 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 Councils Vs. Republic Ex-parte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996.](#)
47. The respondents submitted that it is necessary to examine whether in the delivery of its impugned ruling, the Respondents acted within the authority granted to it by the [Land Adjudication Act](#), Cap 284 and observed the rules of natural justice. It was submitted 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 [Land Adjudication Act](#). 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 its powers and functions to hear appeals to the holders of the office of the Deputy County Commissioner as seen in the case of Republic Vs.



Cabinet Secretary, Ministry of Lands and Settlement & 2 Others Ex-Parte Gerald Mbuuri Kabugu [2018]eKLR.

48. It is the respondent's submission that in the instant case, the ex-parte Applicant alleges that the impugned decision was marred by illegality, biasness and procedural impropriety. That in contrast, the respondents submit that the Adjudication Section that is subject of the suit Marembo/Rianthiga Adjudication Section underwent all the adjudication process in accordance with the provisions of the *Land Adjudication Act*. That includes the publication of Marembo/Rianthiga Adjudication Section and the subsequent objection appeals to said objections in instances where affected persons were unsatisfied with the decisions.
49. The respondents submitted that the Land Adjudication Officer pursuant to Section 26 heard and determined the objection and ordered that Parcel No. 264, land subject of the suit, be subdivided so that the 1st interested party takes a third and the 2nd Interested party takes the remaining two thirds. That the ex-parte Applicant, being dissatisfied with that decision, was afforded opportunity to challenge it which he did through Minister Case No. 1 of 2017. The respondents contend that the appeal process was undertaken lawfully. That the only error in question was attributed to the ex-parte Applicant who had cited parcel No. 264 which belongs to M'Nyiri Rinkuri and not Ignatius Mutegi. That the Ex-parte Applicant ought to have pursued Ignatius Mutegi on his new parcel number during the filing of the appeal to the Minister's case.
50. The respondents submitted that the impugned decision in the appeal to the Minister's case was arrived at after due consideration of evidence tabled before the decision maker including that of a site visit. That the DCC was statutorily mandated to issue the impugned decision which was legal and procedurally proper.
51. Regarding the issue of whether the rules of natural justice were observed, the respondents relied on the case of Republic Vs. County Director of Education, Nairobi & 4 Others Ex-parte Adfukadir Elmi Robleh [2018] eKLR where the court cited with approval the case of Msagha Vs. Chief Justice & 7 Others Nairobi HCMCA No. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553. In the latter case, the ingredients of natural justice were discussed. The respondents contend that the impugned Ruling was compliant with the stated rules. Regarding the first rule, the respondents argued 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 22nd of November, 2021.
52. With regard to the second rule, the respondents argued 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 parties. It was submitted that the impugned decision was indeed based on evidence material and that it referred to the testimonies issued 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 urged the court to find that the Respondents arrived at the impugned decision in a lawful and legal manner.
53. The second issue submitted on by the respondents was whether the judicial review remedies of certiorari and prohibition are available to the applicant. It was submitted 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 Vs. Director of Immigration Services & 2 Others Ex-parte Olamilekan Gbenga Fasuyi & 2 Others (2018) eKLR.



54. The respondents contend that in the instant case, the ex-parte applicant being aggrieved with the decision of the Deputy County Commissioner through those judicial review proceedings intends the court to delve into the substance of the Appeal proceedings and review the evidence. They argued 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. That a good example of that is found in paragraph 12 of the ex-parte applicant's verifying affidavit where he challenges the validity of documentary evidence in the form of demarcation maps.
55. The respondents submitted that all parties, including the ex-parte applicant, were afforded an opportunity by the Respondents to present their respective cases. 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 Vs. Kenya Power & Lighting Company Limited & Another [2013]eKLR and East African Community Vs. Railways African Union (Kenya) and Others (No. 2) Civil Appeal No. 41 of 1974 [1974]EA 425.
56. 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.

1st And 3rd Interested Parties' Submissions

57. The 1st and 3rd interested parties stated that it is notable that the 1st interested party was enjoined into these proceedings by default by way of substitution after the death of his late father M'Nyiri Rinkuri (deceased) who was the previous registered proprietor of the subject suit land. That the 1st interested party objected to his being enjoined in these proceedings as he has no interest whatsoever in and or over the suit land due to the fact that he is not privy to any issues touching the land which were absolutely the property of his late father.
58. The 1st and 3rd interested parties also pointed out that on 29th February, 2024, the 3rd interested party was granted leave by the court to participate in these proceedings so as to safeguard his current registered proprietorship interests on the suit land LR. Marembo/Rianthiga/264. That the 3rd interested party during the time of his application for joinder, annexed evidence under paragraph 6 of his affidavit sworn on 22nd June, 2023 and filed herein on 23rd June, 2023 a title deed in evidence of his absolute ownership of the suit land. It was submitted that the 3rd interested party is in occupation of the suit land at the total exclusion of either the Ex-parte Applicant and/or anybody else whomsoever and that he has been utilizing the same exclusively. That it is not true that the ex-parte applicant has ever been in occupation and/or utilization of the land at any given time. The interested parties cited Section 25(1) and 26(1) of the *Land Registration Act*, 2012 No.3 of 2012. They asked the court to note that the 3rd interested party purchased the suit land for valuable consideration and when there were no restrictions registered on the title at the time of the said purchase.
59. The 1st and 3rd interested parties cited Order 53 of the Civil Procedure Rules – 2010, which prescribes procedures to be followed when filing Judicial Review proceedings and Order 53 Rule 2 of the Civil Procedure Rules – 2010 that out rightly bars litigants from filing Judicial Review proceedings after the expiry of six (6) months from the date the decision subject to be quashed was rendered. It was submitted that the minister's decision and which is being sought to be quashed was rendered on 12th August, 2020 and no Appeal was ever filed by any aggrieved party. That the ex-parte Applicant filed the instant judicial review proceedings on 27th October, 2022 and which is rightly out of time by a period



of two years. The 1st and 3rd Interested parties relied on the case of *Osolo Vs John Ojiambo Ochola & Another* and cited Section 9(3) of the *Law Reform Act* which is replicated under Order 53(2) of the Civil Procedure Rules. The interested parties further relied on the case of *Ako Vs. Special District Commissioner Kisumu & Another (1989)eKLR*.

60. The 1st and 3rd interested parties further submitted that the ex-parte applicant has no locus to file the instant judicial review proceedings without the letters of Administration in respect of his deceased father (late Bernard Gitari) and who passed on in 2011.
61. It is the 1st and 3rd interested parties' submission that the judicial review proceedings filed out of time by the ex-parte applicant cannot stand courtesy of order 53 rule 2 of the Civil Procedure Rules 2010 and cannot be entertained by the court. that these proceedings are improperly before court, incompetent, wanting, hollow, without merit and an outright abuse of the court process. They prayed for the application to be dismissed with costs.

Analysis And Determination

62. I have considered the pleadings, the legal and statutory authorities and the written submissions filed. The issues for determination are:
 - i. Whether the instant judicial review is competent.
 - ii. Whether the ex-parte applicant has locus to file the suit in absence of the letters of administration in respect of the estate of his late father, Bernard Gitari (deceased).
 - iii. Whether the applicant is entitled to the orders sought.

Whether the instant judicial review is competent.

63. Judicial review jurisdiction is a special jurisdiction which is neither Civil nor Criminal and it is governed by Section 8 and 9 of the *Law Reform Act* which is the substantive law while Order 53 of the Civil Procedure Rules set out the procedural law. By those provisions the court is mandated to issue orders of mandamus, certiorari or prohibition in appropriate judicial review proceedings.
64. The *Land Adjudication Act* provides on how disputes are to be resolved including an appeal to the minister. It is apparent that the ex-parte applicant did pursue that right of appeal. He has also invoked the provisions of the *Law Reform Act* and the Civil Procedure Rules which entitle a party to apply for prerogative orders including orders of certiorari. I have no doubt in my mind that the ex-parte applicant is entirely within his right to pursue that avenue.
65. However, applications for prerogative orders of certiorari have a limitation period. The *Law Reform Act* Cap 26 Law of Kenya, provides as follows at Section 9(3): -

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”



66. The above provision is echoed in the Civil Procedure Rules, 2010, which in Order 53 Rule 2 provides as follows: -

“Order 53 Rule 2 - 2. Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

67. It is discernible from the above that one needs to file an application seeking leave to apply for orders of certiorari, within a period of 6 months of the decision. The decision of the 1st respondent that is sought to be quashed is dated 13th January, 2022. This application was filed on 4th March, 2022. The application is therefore within the timeframe stipulated under the Law. The application was filed within 6 months as stipulated in Order 53 Rule 2 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act and is therefore competent before the court contrary to the interested parties' submission.

Whether the Ex-parte Applicant has locus to file the suit in absence of the letters of administration in respect of the estate of his late father.

68. The 1st and 3rd interested parties have also submitted that the ex-parte Applicant has no locus to file the instant judicial review proceedings without the letters of Administration in respect to the estate of his late father who passed on in the year 2011.

69. In the case of Alfred Njau Vs. City Council of Nairobi [1983] KLR the Court of Appeal held inter alia that: -

“...Locus standi” literally means a place of standing and refers to the right to appear or be heard in Court or other proceedings and to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”

70. Like in all civil suits, in an application for Judicial review the applicant must be a person with a sufficient interest – (Locus Standi) and who commences proceedings promptly. To support this legal concept on judicial review, I rely on several literature review and court decisions, for example, Pharmaceutical manufacturers Association of South Africa in re-exparte president of Republic of South Africa – 2000 S.A 674 CC at 33 Republic Vs. Speaker of the Senate and Another Ex-parte Afrison Export Import Limited 2018 eKLR, Republic Vs. Stanley Mambo Amuti (2018) eKLR,” The Kenya National Examination Council Vs. Republic (Ex-parte Geoffrey Gathenji & Another Nairobi Civil Appeal No. 266 of 1996.

71. Similarly, in the case of Julian Adoyo Ongunga Vs. Francis Kiberenge Abano Migori Civil Appeal No. 199 of 2015, Justice A. Mrima had this to say on the issue of a party filing a suit without having obtained a limited grant:-

“Further, the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus



standi can be equated to that of a Court acting without jurisdiction. Since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”

72. In this case, the ex-parte applicant pleaded that the suit land was ancestral land that his family gathered and has been utilizing until his late father passed on in the year 2011. That the 2nd interested party stormed the land making it difficult for the applicant’s family to continue using it. The applicant further pleaded that there were proceedings back in 2009 whose decision aggrieved his late father who appealed against the 1st interested party herein. In paragraph 9 of the verifying Affidavit, the applicant complains that his father was not invited to participate in the proceedings of Case No. 89 of 2010 although he had an interest in the land No. 264. The applicant is basically complaining on behalf of his late father. I have perused the court record and there are no letters of administration issued to the applicant as stipulated by Law. The applicant therefore lacked the legal capacity to institute and maintain the suit on behalf of his late father. For that reason, the suit is incompetent.

Whether the applicant is entitled to the orders sought.

73. Assuming I am wrong on the above, I proceed to the next issue. 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.

74. In the case of Republic Vs. 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...”

75. In the case of Municipal Council of Mombasa Vs. 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.”

76. The Applicant avers that it is absurd that the 1st interested party filed an appeal to the Board *via Case No. 89 of 2010* whereas he had not participated in the proceedings at the committee stage. That the committee at the Arbitration Board stage visited the land Marembo/Rianthiga/264 and prepared a demarcation map which aided in reaching at their findings. The Applicant states that in case No. 88 & 89 of 2010 at the arbitration stage, the demarcation maps that were prepared by the committee differ



even though they involve the same parcel of land 264 which raises questions on the procedure the committee that heard the case followed which he stated, clearly ignored the evidence of the applicant. The Applicant attached a copy of the demarcation maps marked “JNG3”. The Applicant contends that he is only aware of the demarcation map that was submitted in Case No. 88 of 2010 which clearly illustrates even the date that the map was prepared unlike in Case No. 89 of 2010. That the map was interfered with illegally with the aim to award the 1st interested party with the land. The Applicant avers that the proceedings at the objection stage did not illustrate members of the committee that sat to hear and determine the case on the face of the proceeding’s contrary to the Land Adjudication Act. The Applicant attached a copy of the objection proceedings marked “JNG4.” That the evidence of his father was not considered at the objection stage proceedings.

77. The Applicant states that the proceedings at the objection stage indicated that his father was an objector at the stage whereas he attended the proceedings as the respondent. That there was no chance for him to act as an objector since he had been awarded his parcel 264 at the Arbitration Board stage. The Applicant avers that the same would have been done to try and cure the illegality. That in fact the proceedings do not illustrate what his father averred in the proceedings if at all he was given a chance to adduce his evidence as an objector.
78. My analysis of the above indicates that the ex-parte applicant is attacking the merits of the case and not the process. Regarding the rules of natural justice, the Ex-parte applicant was given an opportunity to participate in the appeal proceedings. I have perused the copy of the Minister’s proceedings and it is clear that he participated in the appeal process on the 22nd November, 2021. To that end, all parties were afforded by the respondents an opportunity to present their respective cases which they rightly did. This is clearly a disguised appeal to the decision of the Minister. In the case of *Municipal Council of Mombasa Vs. Republic & Umoja Consultants Ltd (2002) eKLR*, the Court of Appeal held that: -

“...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.”

79. For the foregoing reasons, I am inclined to dismiss the Notice of Motion dated March 4, 2022 with costs to the Respondents and the 1st and 3rd Interested Parties.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 30TH OCTOBER, 2024

C.K YANO,

JUDGE

In the presence of:

Court Assistant – Kiruja

Ms. Mutegi holding brief for Ms. Kijaru for Applicant

Kirimi for 1st and 3rd Interested Parties

Ms. Kendi for Respondents

No appearance for 2nd Interested Party

