



Republic v Deputy County Commissioner - Buuri East Sub County & 2 others; M'ikirima & 7 others (Interested Parties); Samwel (Exparte) (Environment and Land Miscellaneous Application E021 of 2023) [2024] KEELC 6814 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6814 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E021 OF 2023
CK YANO, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**DEPUTY COUNTY COMMISSIONER - BUURI EAST SUB
COUNTY 1ST RESPONDENT**

**LAND ADJUDICATION AND SETTLEMENT OFFICER BUURI 2ND
RESPONDENT**

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

SILAS KINYUA M'IKIRIMA INTERESTED PARTY

STELLA KINAITORE INTERESTED PARTY

ALEX KIGUNDA MUGUNA INTERESTED PARTY

BENARD GICHENGI KAMBORA INTERESTED PARTY

JULIUS MARETE M'IKIUGU INTERESTED PARTY

NEWTON MUTUMA MUTHEE INTERESTED PARTY

ROSE GACHERI CHARLES INTERESTED PARTY

SABINA M KIBOORI INTERESTED PARTY

AND

JEREMIAH MAINGI SAMWEL EXPARTE



JUDGMENT

1. Pursuant to leave granted by the court on 6th December, 2023, the ex-parte applicant filed the notice of motion dated 27th December, 2023 brought under Article 23 (3) (f) and 47 of *the Constitution* of Kenya and Section 7 and 8 of the Fair Administrative Act, 2015 and any other provisions of law. The ex-parte applicant is seeking the following orders;
 1. That this Honourable court be pleased to issue a writ of certiorari to call into the court and quash the objection proceedings, findings and decisions made by the 1st and 2nd respondents respectively, over land parcel No. 699 Ruiru/Rwarera Adjudication Section.
 2. That this Honourable court be pleased an order (sic) of mandamus, compelling the 1st respondent to hear and determine the appeal No. 278 of 2020 lodged by the ex-parte applicant afresh.
 3. In the alternative to (b) above (sic), the Honourable court be pleased to issue an order of Mandamus compelling the 2nd respondent to register mother land parcel No. 699 Ruiru Rwarera Adjudication Section measuring 22.5 acres in the name of the ex-parte applicant and cancel all resultant sub-divisions i.e Land parcels No. 699, 10885, 10886, 10887, 10888, 10889 Ruiru Rwarera.
 4. That the Honourable court be pleased an order (sic) of prohibition restraining the 2nd respondent from enforcing the decision made by the 1st respondent over land parcels No. 699, 10885, 10886, 10887, 10888, 10889 Ruiru Rwarera.
 5. Costs of this application be awarded to the applicant.
2. The application is based on the grounds on the face of the motion and the supporting affidavit sworn by Jeremiah Maingi Samwel, the applicant herein, on 27th December, 2023. The ex-parte applicant states that he was the registered owner of land parcel No. 699 RUIRI/RWARERA measuring 22.5 acres and was never accorded a chance to be heard and/or served with objection summons to attend the objection proceedings in objection Nos. 358, 3709 and 4344. That the 2nd respondent determined the objection in favour of the interested parties which decision led to cancellation of the ex-parte applicant's registration as owner of parcel No. 699 and sub division of the suit parcel into six resultant subdivisions land parcel No. 699, 10885, 10886, 10887, 10888 and 10889 Ruiru/Rwarera Adjudication Section in favour of the interested parties herein. That being aggrieved by the decision of the land adjudication officer of Buuri District determined on 19th March 2019 in respect of Land parcel No. 699 Ruiru/Rwarera, the ex-parte applicant lodged an appeal to the minister for Lands and Physical Planning as provided under Section 29 of the Land Adjudication Act. That the appeal was determined by the 1st respondent and the decision communicated to the applicant on 11th August 2023. That whereas the 1st respondent confirmed that the ex-parte applicant was the registered owner of the said parcel No. 699 measuring 22.5 acres and that the interested parties were squatters, the 1st respondent awarded the applicant a portion measuring 1.5 acres and awarded the rest of the land to the interested parties. That owing to the 1st and 2nd respondent's decisions, the ex-parte applicant has lost his land that was legally acquired and registered in his name. It is the applicant's contention that the decision made by the 1st respondent on appeal and the 2nd respondent during the objections were unfair and prejudicial as all along the ex-parte applicant was not given a chance to be heard in the objection proceedings and/or informed of the right to call witnesses and adduce evidence during the appeal hearing.



3. The ex-parte applicant further contended that the 1st respondent's action was ultra vires for sitting as an arbiter of first instance and despite acknowledging that the ex-parte applicant was not heard at the objection stage, went ahead and failed to issue an order that objection nos. 358, 3709 and 4344 be heard a fresh by the 2nd respondent. That the decision offended the rules of natural justice as the ex-parte applicant was never accorded a chance to be heard at the objection stage before the committee and/or the adjudication officer and/or served with objection summons to require his attendance.
4. The ex-parte applicant avers that the 1st respondent's decision was unreasonable and that the 1st and 2nd respondents breached their obligations and duties to act fairly, to follow a fair decision making process, to make a reasonable decision and to act without unreasonable delay. The ex-parte applicant states that although the appeal is for 2019, it was only heard in the year 2022 which was after an unreasonable delay, and despite the applicant making several efforts and pleas to the 1st respondent to hear the matter without any undue delay. That the action of the respondents of delaying the hearing and determination of the appeal was actuated by malice and was a calculated move by the interested parties in connivance with the respondents to exhaust the applicant and deprive him of his proprietary interest.
5. In the supporting affidavit, the ex-parte applicant annexed copies of the objection proceedings decision of the adjudication officer, grounds of appeal, the decision and a letter communicating the decision. The applicant states that he obtained consent from the 1st respondent to pursue these court proceedings. The ex-parte applicant urged the court to allow the application as prayed.
6. In opposing the application, the respondents filed grounds of opposition dated 26th January, 2024 on the grounds that the application is an appeal disguised as a judicial review and that the issues ventilated in the application do not fall within the purview of judicial review, that the 1st respondent does not have the powers to revert matters to the 2nd respondent for a fresh hearing as the 1st respondent determines matters of persons aggrieved by the 2nd respondent's decision pursuant to section 29 of the Land Adjudication Act, that the applicant contends that he is the registered owner of the suit land, yet registration is not a preserve of the 1st and 2nd respondents, that the Land Consolidation Act provides for ascertainment and recording of rights and interests in land, that the orders sought are not capable of being granted against the 1st and 2nd respondents and that the application is fatally defective and badly drawn and should therefore be struck out in limine. The respondents urged the court to dismiss the application with costs to them.
7. The interested parties were duly served and indeed the 1st, 3rd, 4th and 5th interested parties attended court. However, none of them responded to the application either within the time granted by the court or at all.
8. On 10th July, 2024, the parties agreed and the court directed that the application be canvassed by way of written submissions. The ex-parte applicant was to file and serve his submissions within 7 days of receipt of responses by the interested parties while the respondents and the interested parties were to file theirs within 14 days of service of the applicant's submissions. The matter was fixed for mention on 30th September, 2024 to confirm compliance with the court's directions and to fix a date for judgment. When the matter came up on 30th September, 2024 none of the parties had complied with the court's directions of 10th July, 2024, and all the parties and/or their advocates were not present in court. Consequently, the court proceeded to write this judgment based on the documents filed and which are in the court record.
9. I have considered the application and the response filed. The issue that calls for determination is whether the orders sought are available to the applicant.



10. This is an application for Judicial review. It is trite law that the purview of Judicial review proceedings concerns itself with the procedure applied by a decision – maker in arriving at the impugned decision and not the merits of the decision. 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 made 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 uprocedurally, that his decision was unreasonable and that the impugned decision was illegal...”
11. In the case of Municipal Council of Mombasa Vs Umoja Consultants Ltd [2002] eKLR, the Court of Appeal held as follows-;

“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-maker 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.”
12. 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 ex-parte 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.
13. In this case, the ex-parte applicant avers that the 2nd respondent heard objections lodged against the suit land which was registered in his name. That the 2nd respondent decided in favor of the interested parties without according the ex-parte applicant a chance to be heard. The applicant on learning about the impugned decision, he immediately lodged an appeal which was heard and determined by the 1st respondent. The ex-parte applicant faults the 1st respondent for awarding him only 1 ½ acres of the suit land and awarding the rest of the land to the interested parties.
14. The court has perused the annexures filed by the ex-parte applicant. The applicant is the one who filed an appeal. It is evident that all parties, including the ex-parte applicant were afforded an opportunity to present their respective cases.
15. Indeed, the exparte applicant as the appellant in case No. 278/2020 was the first person to give his evidence before the interested parties testified. In my humble view, the process followed by the respondents throughout the objection proceedings and the appeal as well as the making of the decisions thereof were fair, objective and procedural. The ex-parte applicant’s contention that he was not accorded an opportunity to be heard during the objection proceedings is not supported by any evidence. Even his contention that he was denied a chance to adduce evidence and call witnesses in the appeal is contradicted by his own annexures which confirm that the applicant testified. There is no evidence on record that show that the applicant wanted to call witnesses and he was denied to call them. From the material on record, it is clear to me that the ex-parte applicant took part in the proceedings before the 1st and 2nd respondents. It is my finding and I so hold, that the ex-parte was



aggrieved by the decisions made by the 1st and 2nd respondents which were not in his favour. A reading of the application herein discloses that the applicant is challenging the merits of the decisions made by the 1st and 2nd respondents. 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. Whereas the ex-parte applicant alleges that 1st and 2nd respondents, actions were ultra vires, it is clear to me that the 1st and 2nd respondents acted within the powers conferred them by the law in particular the Land Adjudication Act and the Land Consolidation Act. Their actions cannot therefore be said to be ultra vires since the Acts gave them jurisdiction over such matters. Indeed, it was the ex-parte applicant himself who lodged an appeal with the minister under Section 29 of the Land Adjudication Act which appeal was heard by the 1st respondent on behalf of the minister as permitted by the law. The ex-parte applicant cannot now turn around and allege the actions by 1st respondent are ultra vires. In this case, it has not been shown that the impugned decisions were made contrary to the law or that the rules of natural justice were violated.

16. From the material on record, it is my finding that the process followed by the 1st and 2nd respondents in the objection and appeal proceedings as well as the making of the decision challenged herein were fair, objective and procedural. The ex-parte applicants' application lacks merit and must fail.
17. Consequently, the notice of motion dated 27th December, 2023 is dismissed.
18. Each party to bear their own costs.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF OCTOBER, 2024

IN THE PRESENCE OF

Court Assistant – Tupet.

Mwirigi Batista for ex-parte applicant

C.K YANO

ELC JUDGE

