



**Republic v The Cabinet Secretary Ministry of Lands and Physical Planning & 4 others; Musau & another (Interested Parties); Kisaulu Representative of John K. Mutungi (Deceased) & another (Exparte) (Environment and Land Judicial Review Case E003 of 2023) [2025] KEELC 720 (KLR) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 720 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2023**

**TW MURIGI, J**

**FEBRUARY 12, 2025**

**IN THE MATTER OF AN APPLICATION BY DAVID KISAU LU REPRESENTATIVE OF JOHN K. MUTUNGI (DECEASED) AND JOEL MICHAEL MWONGELA MUIA REPRESENTATIVE OF ISALAH M. MUTUNGI (DECEASED) FOR JUDICIAL REVIEW SEEKING ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

**-AND-**

**IN THE MATTER OF ARTICLES 23(3)(F), 25(C), 40,48 & 50 OF THE CONSTITUTION OF KENYA**

**-AND-**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**-AND-**

**IN THE MATTER OF AN APPEAL TO THE MINISTER IN CHARGE OF LANDS AND PHYSICAL PLANNING CASE NO. 150 OF 2012**

**-AND-**

**IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**

**-AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**



**THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL  
PLANNING ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .... 2<sup>ND</sup>  
RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL OF KENYA ..... 4<sup>TH</sup> RESPONDENT**

**MICHAEL WAMBUA ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**EZEKIEL MWAKA MUSAU ..... INTERESTED PARTY**

**SYLVESTER MULUMBA ..... INTERESTED PARTY**

**AND**

**DAVID KISAULU REPRESENTATIVE OF JOHN K. MUTUNGI  
(DECEASED) ..... EXPARTE**

**JOEL MICHAEL MWONGELA MUIA REPRESENTATIVE OF ISAIAH M.  
MUTUNGI (DECEASED) ..... EXPARTE**

### **JUDGMENT**

1. Pursuant to leave granted on 5<sup>th</sup> September 2023, the ex parte Applicants filed this Notice of Motion dated 21<sup>st</sup> September 2023 under Order 53 Rule 1 (1) and (3) of the Civil Procedure Rules and Sections 8 and 9 of the *Law Reform Act* Cap 26 Laws of Kenya seeking the following orders:
  1. An order of certiorari be issued to remove into this Honourable Court for the purpose of it being quashed, a decision made by and /or award by the 1<sup>st</sup> Respondent (the Cabinet Secretary Ministry of Lands and Physical Planning ) in respect of land parcel No. 4546 in Minister Appeal Case No. 150 of 2012 between John K. Mutungi deceased represented by David Kisaulu and Isaiah M. Mutungi deceased represented by Joel Mwangela Muia and Matthew Wambua Kituku deceased represented by Michael Wambua contained in the ruling dated 07/03/2023 awarding Michael Wambua the 5<sup>th</sup> Respondent all the disputed land. Whereby it was decided on the 7<sup>th</sup> March 2023 that Michael Wambua the 5<sup>th</sup> Respondent be awarded all the disputed land known as Land Parcel No. 4546.
  2. An order of prohibition be issued prohibiting the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and /or its employees from implementing the orders of the Cabinet Secretary Ministry of Lands and Physical Planning issued on 07/03/2023 and/or transferring, effecting registration in respect of all the disputed parcel of land known as Land Parcel No. 4546.
  3. An order of mandamus be issued compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to subdivide and issue title deeds of all that parcel of land known as Land Parcel No. 4546 to the 5<sup>th</sup> Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties as demarcated on the ground by use of sisal and silky oak Mukima and actual possession of the acreage on the ground as follows:
    - i. Michael Wambua 5<sup>th</sup> Respondent - 0.957 acres.



- ii. Ezekiel Mwaka Musau 1<sup>st</sup> Interested Party – 7.8 acres.
  - iii. Sylvester Mulumba 2<sup>nd</sup> Respondent -1.337 acres.
4. The costs of this application be provided for.
  5. Such further and other relief be granted to the Applicants as this court deems fit.
2. The application is premised on the grounds appearing on its face, the statement of facts together with the supporting affidavit of David Kisaulu sworn on his own behalf and on behalf of his co-Applicant.

### **Ex-parte Applicants' Case**

3. The deponent averred that Land Parcel No. 4546(the suit property herein) is ancestral land, originally owned by John K. Mutungi and Isaiah M. Mutungi who sold part of it to different parties including the 5<sup>th</sup> Respondent's late father and the Interested Parties herein.
4. He further averred that the suit property was the subject matter in Kilungu Case No. L14 of 1971 in which the 5<sup>th</sup> Respondent's father was ordered to vacate therefrom. That instead of vacating the land, the 5<sup>th</sup> Respondent's father purchased 0.957 acres from the original land parcel No. 3447 in the year 1982. He deposed that the suit property was hived off from P/NO 3447 and the boundaries were installed and are still in place.
5. He contended that the 1<sup>st</sup> Respondent failed to evaluate his evidence and that of the Interested Parties with regards to their possession of the suit property in arriving at his decision. He further contended that the 1<sup>st</sup> Respondent failed to conduct a site visit to verify the occupation and possession of the suit property by the parties herein.
6. He went on to state that the 1<sup>st</sup> Respondent failed to take cognizance of the order issued on 3<sup>rd</sup> November 2021 in Kilungu ELC Case No. 13 of 2018 directing the County Surveyor and the Registrar to visit the suit land so as to establish the actual possession, location, acreage and demarcation of the boundaries of the portions held by the 5<sup>th</sup> Respondent and the Interested Parties herein.
7. He averred that the 1<sup>st</sup> Respondent failed to evaluate his evidence that the 5<sup>th</sup> Respondent's father has never been in actual possession of the entire suit property but a portion measuring 0.957 which he purchased in the year 1982.
8. He further averred that the 1<sup>st</sup> Respondent failed to take cognizance of the evidence adduced by the Interested Parties that they had purchased and were in possession of portions within the suit property whose boundaries had been demarcated.
9. He contended that if the decision of the 1<sup>st</sup> Respondent is allowed to stand, they will be rendered destitute as the suit property is ancestral land which he holds in trust for his siblings.

### **5<sup>th</sup> Respondent's Response**

10. The 5<sup>th</sup> Respondent filed a replying affidavit sworn on 27<sup>th</sup> November 2023 in opposition to the application. He averred that John Kisaulu Mutungi sold the entire suit property to his late father vide a sale agreement dated 09/09/1982.
11. He further averred that the family and the committee planted sisal plants to mark the boundary and a sketch map was drawn by the Land Adjudication Committee to that effect. He further averred that the suit property boundaries are clearly shown in Makueni District Kalongo Adjudication Section Sheet No. 15, P/No. 4790 and in the map from the Survey of Kenya.



12. He went on to state that his father took possession of the suit property in the year 1982 and planted blue gum trees. He further stated that the Applicants admitted in Minister Appeal Case No 150 of 2012 that the 5<sup>th</sup> Respondent's family was the one utilizing the suit property.
13. He deposed that after the judgment in L.14 of 1971 was entered on 11/01/1971, the ex parte Applicant's family agreed to sell the suit property to his father which he purchased hence the issue of vacating the land does not arise. He further averred that the ex parte Applicant's father did not appeal against the decision by Kalongo Land Adjudication Committee awarding and placing the boundary in the suit property.
14. He went on to state that in the year 2005, John Kisaulu Mutungi, the 1<sup>st</sup> Ex parte Applicant's father filed an appeal eight years after the Committee had concluded the matter.
15. That in the year 1993 the Applicants sold land to the 2<sup>nd</sup> Interested Party but failed to give him his rightful portion from P/NO 3447. In that regard, the 2<sup>nd</sup> Interested Party wrote a letter dated 6/8/2002 to the Land Officer, Kilome Adjudication stating that he had no interest in the suit property but in P/NO. 3447. That later on the 2<sup>nd</sup> Interested Party sued his father vide Machakos PMCC No. 864 of 2000 and continued trespassing on his land.
16. The Applicant deposed that the 5<sup>th</sup> Respondent instituted Kilungu SRMCC No. 124 of 2014 (later registered as ELC No. 13 of 2018) and obtained orders against the 2<sup>nd</sup> Interested Party. That prior to instituting the said case, the ex parte Applicant's father joined forces and lodged objection proceedings Nos. 93, 104 and 678 in which the 2<sup>nd</sup> Interested Party claimed a portion of the suit property. That subsequently, the Land Adjudication Officer illegally awarded the 2<sup>nd</sup> Respondent a portion- being P/ NO 4790 to be excised from the suit property.
17. That being aggrieved he successfully appealed against the decision in Minister Appeal Case No. 117 of 2011 and the matter rested after the 2<sup>nd</sup> Interested party failed to take out judicial review proceedings within 6 months hence the suit property belongs to the 5<sup>th</sup> Respondent's estate. He contended that the judicial review proceedings herein are an attempt to reopen the case which was concluded by the Tribunal.
18. The deponent relied on the sale agreements (annexure MW16 and MW17) to challenge the acreage claimed by the Interested Parties which according to him is different from what was in the sale agreement.
19. He further deposed that the Applicant did not request the Minister to conduct a site visit on the suit property. He contended that there was no need for a site visit because he produced all the documents in support of his claim and the Minister was satisfied that the parties had ganged up to grab his land. He argued that the 2<sup>nd</sup> Interested Party has no claim to make going by the award in Minister Appeal Case No 117/2011. He contended that the proceedings herein are an attempt by the Applicant and the Interested Parties to deprive him of his land and added it is overtaken by events as the title deeds have since been issued.
20. In summary, the 5<sup>th</sup> Respondent stated that the decision of the Minister is not challengeable because it was lawful, fair and just. He contended that this court should limit itself to the process of arriving at the decision and not the merits of the case. He further contended that the Applicant has committed the offence of perjury by lying and misleading the court.



### **The 1<sup>st</sup> Interested Party's Case**

21. The 1<sup>st</sup> Interested Party filed a replying affidavit sworn on 25<sup>th</sup> April 2024 in support of the application. He averred that he is the registered owner of land parcel No. Makueni/Kalongo/3447. He further averred that he owns a portion of the suit property having purchased the same in the year 2012. He complained that the 1<sup>st</sup> Respondent did not conduct a site visit to ascertain the portion occupied by the 5<sup>th</sup> Respondent and the boundaries therein. He averred that the 5<sup>th</sup> Respondent portion in the suit property measures approximately 0.957 acres, that the 2<sup>nd</sup> Interested Party's portion measures 1.337 acres while his portion measures 7.8 acres.
22. He further contended that the 5<sup>th</sup> Respondent has never challenged or tried to alter the boundaries on the ground. He further contended that the 5<sup>th</sup> Respondent was summoned by the County Land Registrar for a site visit on the suit property and P/NO. 3447 so as to establish possession, location and acreage on the ground but failed to turn up.

### **The 2<sup>nd</sup> Interested Party's Case**

23. The 2<sup>nd</sup> Interested Party filed a replying affidavit sworn on 2<sup>nd</sup> May 2023 in support of the application. He averred that he is the owner of a portion comprised in P/NO. 3447 Kalongo Adjudication Section. He further averred that the suit property emanated from P/NO. 3447 Kalongo Adjudication Section. He went on to state that on 12/05/1993, he purchased a portion of land from John Kisaulu Mutungi but the same was erroneously or illegally adjudicated in the suit property. He lamented that the 1<sup>st</sup> Respondent failed to evaluate his evidence before awarding the suit property to the 5<sup>th</sup> Respondent. According to him the documents presented by the 5<sup>th</sup> Respondent to the Minister are forgeries. He complained that the decision by the Minister is wrong, as it will take away his property hence the application should be allowed as prayed.

### **Applicants' Further And Supplementary Affidavits**

24. The ex parte Applicant filed a further affidavit sworn on 26<sup>th</sup> April 2024 and a supplementary affidavit sworn on 6<sup>th</sup> May 2024 in response to the 5<sup>th</sup> Respondent's replying affidavit. The deponent reiterated the contents of his supporting affidavit and added that John Kisaulu Mutungi and Isaiah K. Mutungi were not summoned at the committee stage of adjudication. He further averred that although Kimondu Munuvi was summoned, he had no authority to represent the other land owners.
25. He further averred that the suit property was illegally awarded to the 5<sup>th</sup> Respondent because his portion measures approximately 0.957 acres. That the annexures of the sale agreements by the 5<sup>th</sup> Respondents have differences with the sale agreements he annexed – in terms of the fonts and contents. He emphasized in the supplementary affidavit that the 5<sup>th</sup> Respondent's portion in the suit property measures 0.957 acres in size and not the whole of it.
26. The application was canvassed by way of written submissions.

### **The Applicants' Submissions**

27. The Applicants filed their submissions dated 7<sup>th</sup> May 2024. On their behalf, Counsel identified the following issues for the court's determination:-
  - i. Whether the 1<sup>st</sup> Respondent exercised their statutory duties as envisaged by the law
  - ii. Whether the Applicants are entitled to the orders sought.



28. Counsel submitted that the 1<sup>st</sup> Respondent's decision was marred with procedural irregularities as he failed to conduct a site visit on the suit property to ascertain the actual portion in possession by the parties herein. Counsel further submitted that the 1<sup>st</sup> Respondent failed to evaluate the evidence of the parties and to accept that the parties had demarcated their portions and taken possession thereof.
29. Counsel summarized the documents presented and argued that the totality of the evidence presented irresistibly leads to the conclusion that the decision of the 1<sup>st</sup> Respondent awarding the suit property to the 5<sup>th</sup> Respondent is irrational and marred with procedural irregularities. Counsel further submitted that the 1<sup>st</sup> Respondent ought to have taken into consideration all the relevant factors presented before him relating to demarcation and possession of the suit property.
30. With regards to the second issue Counsel submitted that the Applicants are entitled to the orders sought because the process of allocating the entire suit property to the 5<sup>th</sup> Respondent was flawed. Counsel contended that the Applicants will be deprived of their legal and ancestral right to the suit property if the orders sought are not granted.
31. In conclusion, Counsel submitted that the decision to award the suit property to the 5<sup>th</sup> Respondent was unreasonable and unprocedural as it was based on lies and concealment of facts on the part of the 5<sup>th</sup> Respondent.
32. To buttress his submissions, Counsel relied on the following authorities;-
  1. Zacharia Wagunza & Another vs Office of the Registrar Academics Kenyatta University & 2 others [2013] eKLR;
  2. Municipal Council of Mombasa vs Republic Another [2002] eKLR and Republic vs Director of Immigration Services & 2 Others exparte Olamilekan Gbebga & 2Others [2018] eKLR.

### **The 1<sup>st</sup> Interested Party's Submissions**

33. The 1<sup>st</sup> Interested Party filed his submissions dated 17<sup>th</sup> May 2024. On his behalf, Counsel submitted that the only issue for determination is whether the 1<sup>st</sup> Respondent exercised its statutory duties as envisaged in the law.
34. In his submissions, Counsel relied on the contents of the 1<sup>st</sup> Interested Party's replying affidavit. In addition, Counsel submitted that the Minister failed to take into account relevant factors which were essential in the determination of the dispute. In particular, Counsel submitted that the 1<sup>st</sup> Respondent ought to have considered the fact that the suit property is demarcated on the ground by use of sisal and silky oak (Mukima tree) and the parties herein have actual possession of the acreage on the ground.
35. Counsel contended that failure by the Minister to conduct a site visit in order to verify the demarcation of the suit property raises concerns on the adequacy of his decision making process thereby rendering the decision unjust and a procedural impropriety. Counsel submitted that the primary role of this court is to uphold the fundamental and enduring values that constitute the rule of law. Concluding his submissions, Counsel urged the court to allow the application as prayed.

### **The 2<sup>nd</sup> Interested Party's Submissions**

36. The 2<sup>nd</sup> Interested Party's filed his Submissions dated 31<sup>st</sup> October 2024.
37. On his behalf, Counsel submitted that the only issue for determination is whether the 1<sup>st</sup> Respondent exercised its statutory duty as envisaged by the law.



38. Counsel submitted that the decision of the 1<sup>st</sup> Respondent awarding the suit property to the 5<sup>th</sup> Respondent is tainted with procedural impropriety. Counsel further submitted that the 1<sup>st</sup> Respondent refusal to conduct a site visit violated their right to a fair hearing as they were denied an opportunity to present crucial evidence. Counsel submitted that the 1<sup>st</sup> Respondent's decision was marred with procedural impropriety and irrationality. It was submitted that the 1<sup>st</sup> Respondent failed to consider the judgment dated 22/4/1971 which ordered the 5<sup>th</sup> Respondent's father to vacate the suit property.
39. Counsel further submitted that the decision was irrational for the reason that the 1<sup>st</sup> Respondent failed to consider the evidence presented with regards to demarcation and possession of the suit property.
40. Counsel submitted that the 1<sup>st</sup> Respondent failed to exercise its statutory duty as envisaged under the law resulting in a decision that was procedurally improper, irrational and a clear violation of the principles of natural justice. Counsel urged the court to review the 1<sup>st</sup> Respondent's decision and restore the suit property to the original owners in accordance with the judgment dated 22<sup>nd</sup> April 1971.
41. To buttress his submissions, Counsel relied on the following authorities;
  1. Council of Civil Service Unions vs Minister for the Civil Service [1984] UKHL 9; Pastoli vs Kabale District Local Government Council & Others [2008] 2EA 300;
  2. Al-Mehdawi vs Secretary of State for the Home Department [1990] AC 876 and General Medical Council vs Spackman [1943] 2 ALLER 337

### **The 5<sup>th</sup> Respondent's Submissions**

42. The 5<sup>th</sup> Respondent filed his submissions dated 19<sup>th</sup> July 2024.
43. On his behalf, Counsel submitted that the court lacks jurisdiction to determine the issues raised herein as they will require scrutiny of oral and documentary evidence. Counsel submitted that these issues belong in the environment and land court and not judicial review.
44. Counsel submitted that the court cannot grant the reliefs sought as there is no evidence regarding the acreage of the disputed land. Counsel contended that if the court grants the orders sought, it would amount to sitting on appeal against the Minister's decision.
45. Counsel further submitted that this matter is res judicata in respect of the 2<sup>nd</sup> Interested Party as he lost in Appeal No. 117 of 2011 and did not apply for judicial review within 6 months. Counsel argued that the Applicants and the Interested Parties never presented the documents which they have annexed in support of the judicial review when the matter was before the Minister and as such, the minister could not have acted on them.
46. Counsel submitted that Section 29 of the *Land Adjudication Act* gives the Minister unfettered power and discretion in determining the matters before him and there is no requirement to visit the site. That in any case, no request was made to the Minister to visit the site. Counsel further submitted that the Applicants did not produce the order made in MELC No.13 of 2018 and are attempting to hoodwink the court into believing that the Minister was bound to take into cognizance of the order.
47. Concluding his submissions, Counsel urged the court to dismiss the application with costs. To buttress his submissions, Counsel relied in the case of Municipal Council of Mombasa vs Rep & another (2002) eKLR.
48. No submissions were on the record from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents



## Analysis And Determination

49. Having considered the application, the respective affidavits and the rival submissions, the following issues fall for determination:-

1. Whether the 1<sup>st</sup> Respondent's acted within its statutory duties as envisaged by the law.
2. Whether the Applicants are entitled to the orders sought.

50. The duty of a Court in Judicial Review proceedings was set out in the case of *Pastoli vs Kabale District Local Government Council and Others* (2008) 2 E.A 300 where it was held 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 or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality .... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards ..... Procedural impropriety is when there is a 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 procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.’

51. The parameters of Judicial Review were re-affirmed by the Court of Appeal in the case of *Municipal Council of Mombasa Vs Republic & Umoja Consultants Ltd* C.A Civil Appeal No. 185 of 2001 where it was held that:-

“Judicial Review is concerned with the decision making process, not 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.”

### Whether the 1<sup>st</sup> respondent acted within its statutory duties as envisaged by the law

52. The Applicants together with the Interested Parties contended that the 1<sup>st</sup> Respondent failed to act within its statutory duties as envisaged by the law.

53. Section 29(1) of the *Land Adjudication Act* provides that:-

1. Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—
  - a. Delivering to the Minister an appeal in writing specifying the grounds of appeal; and



- b. sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.
54. The procedure that must be adopted by the Minister while conducting an Appeal was stated in the case of *Republic Vs Special District Commissioner & Another* (2006) eKLR as follows:-
- “It is expected therefore that the District Commissioner receives the lower tribunal records which will include the written grounds of appeal of the aggrieved party, and these are the documents which form the lower...court record that will assist him to, “...determine the appeal and make such order thereon as he thinks just ....” It is fashionable in this kind of applications, for Interested Parties to argue that the District Commissioner has a free hand to conduct the appeal in any manner he wishes. That the Act has not specified a procedure for him to follow in determining the appeal so long as he finally makes such orders thereon as he thinks just.”
55. It is not in dispute that the 1<sup>st</sup> Respondent had power to hear and determine the Appeal Case No. 150 of 2012 in accordance with Section 29 of the [Land Adjudication Act](#).
56. The Ex-parte Applicants faulted the decision of the 1<sup>st</sup> Respondent on the grounds that it was irrational and was marred with procedural impropriety. Their main complaint against the Minister was that she failed to conduct a site visit to verify the actual acreage and possession by the parties herein.
57. Procedural fairness is contemplated in Article 47 of [the Constitution](#) and Section 4 of the [Fair Administrative Action Act](#).
58. Article 47 of [the Constitution](#) provides that:
1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
  2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
59. Section 4 of the [Fair Administrative Action Act](#) provides that: Section 4 of the [Fair Administrative Action Act](#), 2015 imports the rules of natural justice and provides as follows:-
1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
  2. Every person has the right to be given written reasons for any administrative action that is taken against him.
  3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the affected person the decision-
    - a. prior and adequate notice of the nature and reasons for the proposed administrative action.
    - b. an opportunity to be heard and to make representations in that regard.
    - c. notice of a right to review or internal appeal against an administrative decision where applicable.
    - d. a statement of reasons pursuant to section 6.



- e. notice of the right to legal representation where applicable
  - f. notice of the right to cross examine.
  - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.
60. The administrator shall accord the person against whom administrative action is taken an opportunity to-
- a. attend proceedings in person or in the company of an expert of his choice;
  - b. be heard;
  - c. cross examine persons who give adverse evidence against him; and
  - d. request for an adjournment of the proceedings where necessary to ensure a fair hearing.
61. It is clear from the above provisions that the tribunal or authority entrusted with the mandate of making decisions must act in a fair manner. Procedural fairness is a Constitutional requirement in administrative actions.
62. In the matter at hand, it is clear from the proceedings in Minister Appeal Case No. 150 of 2012 that the parties herein were afforded an opportunity to be heard and present their respective cases.
63. The Applicants contended that the decision is marred with procedural irregularities as the Minister did not conduct a site visit before rendering her decision. There is no requirement in law stipulating that the Minister must visit the locus in quo before rendering his/her decision. The Applicants have not demonstrated the existence of procedural impropriety in the circumstances of the case.
64. There is no evidence to demonstrate that the Minister took into account irrelevant considerations or that she failed to take into account relevant considerations in the appeal. The Court is satisfied that the Applicants actively participated in the said proceedings. The Court would hardly intervene unless it is clearly demonstrated that the decision maker acted upon no evidence, or that she took into account irrelevant considerations and omitted the relevant factors. The Applicant has not demonstrated that such was case in the instant application.

#### **Whether the applicants are entitled to the orders sought**

65. The Applicants contended that the 1<sup>st</sup> Respondent did not visit the site to verify the portions occupied by the parties herein. They further contended that the 1<sup>st</sup> Respondent did not take cognizance of the evidence presented by the parties on demarcation and possession of the suit property. The purpose of judicial review is not to review the decision but the decision making process. This was stipulated by the Court of Appeal in the case of Republic Vs Kenya Revenue Authority Exparte Yaya Towers Limited (2008) eKLR, where it was held that:
- “The remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision-making process itself. It is important to remember in such case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected....”
66. The Applicants as well as the Interested Parties levelled various allegations that go to the merit of this case. The Applicants have not demonstrated that the decision making process was flawed therefore



resulting in an illegal decision. From the foregoing, I find that the Applicants are not entitled to the orders sought.

67. In the end, I find that the application is devoid of merit and the same is hereby dismissed. Each party to bear its own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**HON. T. MURIGI**

**JUDGE**

In the presence of

Mwikali holding brief for Murimi Murango for the ex parte Applicant.

