



**Kirimania v Deputy County Commissioner, Buuri East Sub-County & another;
Mukunju (Interested Party) (Environment and Land Judicial Review Case
E003 of 2023) [2024] KEELC 7551 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2023
CK YANO, J
NOVEMBER 14, 2024**

BETWEEN

JOSEPH KITHINJI KIRIMANIA EXPARTE APPLICANT

AND

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

ATTORNEY GENERAL 2ND RESPONDENT

AND

BENSON MUKUNJU INTERESTED PARTY

JUDGMENT

1. Pursuant to leave granted by the court on 21st February, 2023, the ex-parte applicant filed the Notice of Motion dated 14th March, 2023 brought under Order 53 rule 3(1) of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act, Cap 26 Laws of Kenya seeking orders:
 1. That an order of certiorari do issue, calling and bringing into this court and quashing the proceedings and decision of the 1st respondent, dated 9th November, 2022 in appeal to the Minister Case No. 118/2020 over land parcel/No. 599, situated in Ruiru Rwarera Land Adjudication Section.
 2. That costs of this application and the ex-parte chamber summons for leave be borne by the respondents and the interested party jointly and severally.
2. The motion is supported by the affidavit of JOSEPH KITHINJI KIRIMANIA, the Ex-parte Applicant dated 21st February, 2023 and the matter set out in the statutory statement of facts.



3. The Respondents filed a Replying affidavit dated 11th March, 2024.

The Applicant's Case

4. The applicant avers that he is the registered owner of land parcel number 599 Ruiru Rwarera Land Adjudication Section in Buuri East Sub County which he was allotted and got registered in 1967. That the said land measures 26 acres.
5. The Applicant avers that the land was acquired by his father and had it recorded in the applicant's name in 1967 while he was aged only 9 years. That his father has been cultivating the same since then. The Applicant has annexed copies of his identity card and confirmation letter marked JKK 1 and 2 respectively.
6. The Applicant states that in 1981, he went to work in Thika and left his father working and taking care of the land. That in 2017 the interested party and two other persons filed objection numbers 1830,3793 and 3065 against him which were heard on merit and it was found that the land in dispute was parcel number 742 and not 599 and therefore the interested party had misdirected his claim as he had nothing to claim from no.599 and that all the objections were dismissed on 8th April, 2019. The applicant has annexed a copy of the proceedings and the decision in objection number 1830,3793 and 3065 marked JKK 3.
7. The applicant avers that following the foregoing the interested party appealed to the minister vide appeal to the minister case number 118/2020 which was heard on 9th November, 2022. That while hearing the appeal on 9/11/2022, the Deputy County Commissioner(DCC) Buuri East Sub County heard the interested party but completely refused to give the applicant a hearing over his case on the basis that the land could not be his and proceeded to allow the appeal by ordering that he be deregistered as the owner of parcel number 599 and the same be registered in the name of the interested party. The applicant has annexed a copy of the proceedings and decision in appeal to the minister case number 118/2020 marked JKK 4.
8. The applicant states that the 1st respondent was biased against him and had made up his mind not to hear him. The applicant states that he has been condemned unheard and his land taken and given to the interested party. That the 1st respondent and the interested party publicly threatened, took steps and vowed to implement the challenged decision both in the Adjudication Section's Records/Register and on the ground by deregistering and forcibly refusing the applicant and his family members occupation of the suit land in order to enable the interested party assume actual possession and utility thereof.
9. The Applicant avers that on 12th October, 2022 while the matter was pending before the 1st respondent, the 1st respondent summoned them through the area chief. The applicant faults the 1st respondent for compromising the area chief to abet their illegal activities. It is the applicant's contention that the matter was heard without his participation and therefore was condemned unheard and his land taken away thus violating his right to a fair procedural hearing and legitimate expectations to be allowed to call witnesses to support him in the aforesaid objection.
10. The Applicant avers that the interested party was aware that he is not entitled to the said land and intends to hurriedly grab and sell it. That the register for Ruiru/Rwarera land adjudication section where parcel number 599 is situate is now complete and the statutory consent is not necessary.

The Respondents' Case

11. The respondents aver that the interested party lodged an appeal to the minister case number 118/2020 on land parcel number 599 against the ex-parte applicant when he was being dissatisfied with



the determination of the District Land Adjudication Officer. That on 14th October, 2022, the 1st respondent visited the suit land and it was his finding that the ex parte applicant had never been in possession of the suit land having no house or developments on the said land. The 1st respondent states that he observed that the interested party and his family had settled on the suit land with permanent housing and two grave sites, one belonging to the mother buried in February 1988 and another belonging to a grandchild buried in June, 2000. That during the hearing of the appeal he advised both parties to maintain status quo.

12. The 1st respondent avers that the ex-parte applicant threatened to evict the interested party causing a confrontation between the parties. That it is for that reason that he advised the ex-parte Applicant not to evict the interested party and maintain status quo. That as a result, the 1st respondent directed the chief to ensure status quo is maintained and that there is no breach of peace. That the ex-parte applicant is therefore making false assertions by stating that the 1st respondent has compromised the area chief and that he has been publicly threatened.
13. The respondents aver that the appeal was heard and determined legally, rationally and with procedural fairness. That a reading of the proceedings clearly shows that each party gave their statement as well as their witnesses. That each party was also allowed to cross examine the other's witnesses. That the ex-parte applicant is thus misleading the court by alleging that the 1st respondent refused to afford him a chance to be heard. The 1st respondent denied being biased against the ex-parte applicant.
14. The respondents contend that the issues ventilated by the ex-parte applicant are an appeal disguised as a judicial review. That the appeal was heard and determined legally pursuant to section 29 of the [Land Adjudication Act](#). The respondents aver that the appeal was heard with procedural fairness following the rules of natural justice and affording each party an opportunity of being heard and adducing evidence and without bias.
15. Pursuant to directions given by the court, the parties consented to disposing off the application by way of written submissions. The applicant filed his submissions dated 13th April, 2024 through the firm of Thurania Atheru & Company Advocates. The respondents did not file submissions within the time granted or at all.

Ex-Parte Applicant's Submissions

16. The Applicant gave a brief background of the matter and identified two issues for determination. The first issue for determination is whether the ex-parte applicant is entitled to orders of certiorari and the second is the issue of costs.
17. The Applicant cited Article 47 of [the Constitution](#) and submitted that the purpose of judicial review was set out in the case of Municipal Council of Mombasa vs Republic Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007 (2002) eKLR. Further, the applicant submitted on the circumstances under which the orders of judicial review can be issued and he relied in the case of Pastoli vs Kabale District Local Government Canal & Others (2008)2EA 300.
18. The Applicant pointed out that in the Appeal proceedings marked 'JKK4' in the ex-parte applicant's affidavit dated 21st February 2023, the 1st respondent relied solely on the scene visit allegedly of Ruiru Rwarera No.599 on 14th October, 2022 which was done in his absence. That the 1st respondent relied on the interested party's witness testimony which testimony he did not give the ex-parte applicant an opportunity to cross examine. That a close look of the Appeal proceedings reveals that only the interested party was given an opportunity to cross examine the statements by the applicant. That all the material relied upon to come to the ruling was that of the scene visit and the interested party only.



19. It was submitted that it is evident that the 1st respondent had already made up his mind after the alleged scene visit to the interested party's home and was clearly biased against the ex-parte applicant when hearing the appeal. That as a result, the ex-parte applicant was never given an opportunity to be heard and was condemned unheard making the ruling that was ultimately delivered tainted with procedural impropriety and unfairness.
20. The Applicant submitted that to complicate the matter further, the objection case from which the case lies found that the land in dispute was not P/No. 599 but P/No. 742 recorded for Eliud Kimathi M'Ari and others. That as such, the scene visit that was purportedly conducted by the 1st respondent on 14th October, 2022 could not have been P/No. 599 but of P/No. 742. That the ruling that the suit land be registered in the names of the interested party is strange and irrational because the land that they occupy (P/No.742) will not be registered in their names and they will be right where they began only that this time they have unconstitutionally deprived the ex-parte applicant of land that belongs to him. It is the Applicant contention further that the decision by the 1st respondent is irrational and impractical and violates the ex-parte applicant's right to fair administrative action, fair hearing and the right to property.
21. It was further submitted that the 1st respondent misdirected himself by conducting the scene visit without appraising himself of the full facts. That the objection case determined that the parcel in dispute was P/No.742 and not P/No.599. That as it stands they cannot be sure what parcel the 1st respondent visited on 14th October 2022, for all they know is that nobody has ever been to P/No. 599. It was submitted that, that should have been the first question the 1st respondent should have dealt with while sitting in appeal. The Applicant submitted that the 1st respondent never addressed himself to those questions because he never gave the ex-parte applicant a fair hearing and failed to consider relevant matters and was manifestly biased against the ex-parte applicant after the scene visit on 14th October, 2022.
22. The Applicant submitted further that the decision rendered by the 1st respondent is tainted by procedural impropriety and irrationality whose ultimate effect violates the ex-parte applicant's right to fair administrative action protected under article 47 of the Constitutions and the decision should be quashed.
23. The Applicant submitted that the application should be allowed with costs as the applicant has substantiated grounds to warrant the issuance of the orders of certiorari.

Analysis & Determination

24. The court has considered the application, the response and the submissions filed. I have also taken into account the authorities relied on. The only issue for determination is whether the Ex Parte Applicant is entitled to the Judicial Review Orders sought .
25. The purpose of Judicial Review was set out in the case of Municipal Council of Mombasa...Vs... Republic, Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007(2002) eKLR, where the Court of Appeal held that:-

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at. Did those who make the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter



by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review”.

26. Further, circumstances under which orders of Judicial Review can be issued were elaborated by Justice Kasule in the Uganda case of *Pastoli ...Vs..Kabale District Local Government Canal & Others* (2008) 2EA 300 at pages 300-304.

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality, is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision 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 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 to act 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 legislature instrument by which such authority exercises jurisdiction to make a decision. (*Al-Mehidswi...Vs...Secretary of State for the Housing Department* (1990) AC 876”.

27. What Judicial Review Orders entails was elaborated in the case of *Kenya National Examination Council...Vs...Republic Exparte Geoffrey Gathenji & 9 Others*, Nairobi Civil Appeal No.266 of 1996, where the Court held that: -

“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See *Halsbury’s Law of England*, 4th Edition vol.1 at Pg.37 paragraph 128.”

28. From the foregoing cases, the applicable law in cases of Judicial review have already been established and this Court will now consider the above applicable law and further consider the available facts to determine whether the Exparte Applicant is deserving of the orders sought.

29. The Applicant has sought for orders of Certiorari to quash the decision of the 1st Respondent dated 9th November, 2022. The Applicant complained of denial of a fair hearing and bias on the part of the



- 1st respondent. An order of Certiorari can be made if the Court is satisfied that a tribunal decided a matter without affording a party a hearing. That would be against the rules of natural justice.
30. In the present case the applicant complained that while hearing the appeal 1st respondent heard the interested party but completely refused to give him a hearing over his case on the basis that the land could not be his and proceeded to allow the appeal by ordering that he be deregistered as the owner of parcel number 599 and that the same be registered in the name of the interested party.
31. I have perused the proceedings and the decision in the appeal case No. 118/2020 which is annexed to the applicant's affidavit and marked "JKK4". The ex-parte applicant herein was listed as a respondent while the interested party herein was the appellant. At page 2 of those proceedings, the interested party gave his statement while the applicant gave his statement on the next page and was even cross-examined by the interested party. The proceedings further confirm that the applicant called one Joseph Mugambi and Joseph Kathurima as witnesses. The two witnesses stated that they are brothers to the applicant. It is clear from the impugned proceedings that the applicant was given a hearing and indeed testified and called witnesses. The applicant was never condemned unheard as he alleges. From the material on record, I am satisfied that the applicant participated in the proceedings and is estopped from claiming that his right to a fair hearing was violated.
32. The second complaint raised by the applicant is that the 1st respondent was biased against him and that he had made up his mind and that is the reason he did not hear him. I opine that the Applicant cannot just allege an apprehension of bias, but he must show proof.
33. In the case of *Chania Gardens Limited v Gilbi Construction Company Limited & another* 2015eKLR, it was stated that the test for bias or prejudice must be that there is real danger that the arbitrator is biased, and in deciding whether bias has been established, the court personifies the reasonable man and considers all the material before it to determine whether any reasonable person looking at what the arbitrator has done, will have the impression in the circumstances of the case, that there was real likelihood of bias. But, of course, justifiable doubts as to the impartiality and independence of the arbitrator do not include peripheral or imagined or fanciful issues or mere belief by the applicant. See also *Sager V Smith* 2001 3 SA 1004 (SCA); *s v Robert* 1999 4 SA 915 (SCA). And the judgment of Leon JP in the Swazi Court of appeal in *Minister of Justice and Constitutional Affairs V Stanly Wilfred Sapire*; *In Re Stanley Wilfred Sapire* 2002 (Unreported) CiV. Appeal No. 49/2001 (Re Sapire) [2015] eKLR.
34. Applying the stringent tests discussed to the reasons mounted by the applicant in this case, it is my conclusion that the applicant's allegations of bias cannot pass the above tests. The material before me does not suggest bad faith, bias, or a reasonable possibility of ill motive. Bad faith and bias are serious allegations which attracts a heavy burden of proof.
35. It is clear from the above that this is a disguised appeal since the applicant is dissatisfied with the outcome of the Minister's decision. The allegations of him not participating in the proceedings are false as he was not denied his legitimate expectation to testify and to be allowed to call witnesses. Similarly, the allegation of bias has not been proved at all.
36. The case of *Commissioner of Lands vs Kunste Hotel Limited* (1997) eKLR reiterated Lord Brightman's view and observed:-

“...it must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision-making process. Its purpose is



to ensure that the individuals is given fair treatment by the authority to which he has been subjected.”

37. From the material on record, it is my finding that the process followed by the 1st Respondent throughout the appeal proceedings as well as the making of the decisions were fair, objective and procedural. The ex-parte Applicant was given an opportunity to testify and call witnesses which he did. Consequently, the Notice of Motion Application dated 14th March, 2023 is without merit and is dismissed with costs to the respondents and the Interested Party.
38. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 14th DAY OF NOVEMBER, 2024.

IN THE PRESENCE OF:

Court Assistant- Tupet

Atheru for ex-parte applicant

No appearance for A.G for respondents

No appearance for interested party.

C. K. YANO,

ELC JUDGE

