



**Republic v Others & another; Ngaine (Exparte Applicant); Kabira
 (Interested Party) (Environment and Land Judicial Review Case
 14 of 2014) [2024] KEELC 14001 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14001 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT MERU
 ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 14 OF 2014
 CK NZILI, J
 DECEMBER 18, 2024**

BETWEEN

REPUBLIC REPUBLIC

AND

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER, IGEMBE
 DISTRICT & OTHERS 1ST RESPONDENT**

KABERIA M’MUCHEKE 2ND RESPONDENT

AND

STANLEY M NGAINE EXPARTE APPLICANT

AND

PETER KABIRA INTERESTED PARTY

JUDGMENT

1. Before the court is the notice of motion dated 21.5.2014 seeking orders of certiorari to call for and quash the 1st respondent’s decision rendered on 27.2.2014 in Objection No. 1762, whose effect was to hive off 2 acres of parcel no. 1665 Akirang’ondeu "A" Akirang’ondeu – Laare Division Igembe District measuring 5.29 acres and to transfer the same and create Parcel No. 10673 in favor of the 2nd respondent.
2. The second prayer is for an order of prohibition stopping the 1st respondent from implementing the decision in favor of the 2nd respondent. The application is supported by a statement of facts verifying the affidavit and supporting affidavit dated 8.5.2014 and sworn on 8.5.2014 and 21.5.2014 by Stanley M’Ngaine.



3. The exparte applicant avers that in the 1980s, he purchased the suit property known as L.R No. 1665 Akirang'onde "A" Akirang'onde – Laare Division measuring 5.29 acres from the interested party as shown in the maps; he signed a valid agreement witnessed by a land officer clearly the entire purchase price and planted nappier grass tea, cypress trees, blue gum trees, miraa plants, and food crops. The exparte applicant avers that the 1st respondent correctly indicated the correct acreage of the suit premises as 5.29 acres.
4. Further the exparte applicant avers that following the demarcation, Parcel No. 1665 remained as one piece. The exparte applicant avers that on 27.2.2014 the 1st respondent gave a ruling that about 2 acres of land be deducted from his parcel of land and be given to the 2nd respondent as parcel No. 10673. He termed the findings as speculative based on extraneous factors in judicious, illegal, fraudulent, unlawful, biased, irrational, unjustified, unreasonable made in bad faith based on evidence of false witnesses and as arising out of an afterthought objection lodged after 20 years since becoming the owner of the land.
5. The exparte applicant avers that the letter dated 5.11.2012 was a clear testimony that the 1st respondent was responsible for the fraudulent activities relating to his parcel of land. Equally, the applicant relied on the grounds that the 1st respondent failed to:
 - i. Invite or record committee members present during the said proceedings as required by law.
 - ii. Awarded the 2nd respondent more than he had prayed for without basis.
 - iii. Failed to consider his evidence.
 - iv. His findings were speculations and based on extraneous factors.
 - v. The 1st respondent disregarded its record clearly indicating the measurement of 5.29 acres as gathered land as shown in the area map.
 - vi. He illegally created Parcel No. 10673 out of his land after the said decision.
 - vii. He failed to compensate the exparte applicant with about 2 acres to ensure that his land remained 5.29 acres as per the record.
6. By way of affidavit evidence, the exparte applicant reiterated that in the ruling dated 27.2.2014, Objection No. 1762 was allowed to the effect that about 1.5 acres be deducted from Parcel No. 1665 Akirang'onde "A" Akirang'onde – Laare D.O and be transferred to create Plot No. 5040 beyond to the 2nd respondent. The applicant termed the decisions as against the tenets of natural justice. The exparte applicant averred that following demarcation, Parcel No. 1665 remained 4.87 acres after statutory deductions. He annexed copies of ownership documents dated 28.8.2008, his letter dated 12.4.2014 to the 1st respondent requesting consent to sue dated 23.4.2014, an official receipt dated 2.4.2014 for Kshs.1,080/= for the proceedings and the decision dated 27.2.2014, letter dated 5.11.2012 to the applicant by the 1st respondents and photographs for the suit land as annexures SMN "1".
7. The application is opposed by a replying affidavit of Kabere M'Mucheke sworn on 2.9.2014, terming the 1st respondent's decisions rendered on 27.2.2014 in Objection No. 1762 as lawful, fair and based on the evidence before the officer.
8. The 2nd respondent avers that he was the rightful owner of the 2 acres of land that had been secretly, fraudulently and illegally demarcated under the exparte applicants L.R No. 1662 Akirang'onde "A" Adjudication Section, which he had gathered as part of various fragments of his land in 1970's under Parcel No. 259.



9. The 2nd respondent avers that before the gathering, he was living in one of the fragments situated in the Nkonoi area where his parents and grandparents used to live and were buried, bordering the land of the P. P's land who only gathered a parcel measuring 3.33 acres and had constructed a permanent house and planted several crops.
10. The 2nd respondent avers that after the interested party later on sold part of his land to the exparte applicant, a demarcation officer came to show the exparte applicant boundaries of the portion sold and purported to extend the boundaries into his land, which move he resisted for the interested party had purported to sell part of his land Parcel No. 259.
11. Again, the 2nd respondent averred that after the adjudication register was published, he lodged objection No. 1762 against the illegal inclusion of his 2 acres in the exparte applicant's Parcel No. 1665 Akirang'ondu A Adjudication section within the stipulated period as per the applicable rules and procedures.
12. In addition, the 2nd respondent denied that the objections as filed out of time and its outcome was illegal or reached without a hearing, consideration and taking into account the evidence of the parties and the record held by the 1st respondent's office.
13. The 2nd respondent avers that the 2 acres were part of his ancestral land where his ancestors lived and were buried. The 2nd respondent avers that the 1st respondent rightly heard the objection with the assistance of the land committee members who fully participated in the proceedings, and no party or witness was denied hearing or raised an objection during the hearing.
14. Similarly, the 2nd respondent has averred that he has planted several food crops and miraa plants, unlike the exparte applicant, who has only planted eucalyptus trees on the land bordering his.
15. The 2nd respondent averred that his witness, Josphat Mati, gave factual evidence, which was also tested through cross-examination by the exparte applicant committee members and the 1st respondent. He denied that he was interested and had gathered 5.29 acres of land at the site he sold to the exparte applicant.
16. Consequently, the 2nd respondent averred that the reasons and facts stated by the applicant in his pleadings were not in support of the reliefs sought. There is no indication if his 1st respondent filed any response to the notice of motion.
17. The interested party supported the notice of motion through a replying affidavit sworn on 21.10.2014 and written submissions dated 11.12.2014. The interested party avers that the applicant purchased 5.29 acres of the suit land as indicated in land adjudication and paid him the entire purchase price of Kshs.25,000/=.
18. Equally, the interested party confirmed that it was the 1st and 2nd respondents who were interfering with the acreage of the land on the ground. The interested party also avers that it was not surprising that the 1st respondent had failed to respond to the notice of motion, yet he was the cause of the problem hereof. The interested party urged the court to grant the orders sought.
19. The exparte applicant relied on written submissions dated 5.12.2014, ideally rehearsing the contents of his pleadings. Judicial review is defined by the Black's Law Dictionary 9th Edition as a court's power to review the actions of other branches or levels of government or inferior tribunals on their factual and legal findings.
20. In *Dande & 3 others vs Inspector General National Police Service & others* (Petition 6 (E007) 4 (E005) and 8(E010) of 2022 (Consolidated) (2023) KESC 40 KLR (16th June 2023) (Judgment) the Supreme



- Court cited Mark Ryan in his book "Unlocking Constitutional and Administrative law 3rd Edition Routledge Taylor & Francis Group (2014) page 506, that judicial review is constitutionally justified as a legal control on the misuse of public law powers including both statutory and common law prerogative powers.
21. The court observed that judicial review was introduced in Kenya in 1956 from England through Sections 8 & 9 of the Law Reform Act (Cap 26) and Order 53 of the Civil Procedure Rules to enable the High Court to issue the writs of mandamus prohibition and certiorari, on grounds borrowed from common law. The court observed that after 2010, judicial review had been elevated to a constitutional right to fair administrative action as a constitutional imperative, not just for state bodies but for any person body or authority.
 22. The parameters a party needs to achieve to succeed in an application for judicial review were set out in *Pastoli vs Kabale District Local Government Council and others* (2008) 2 EA 300. The court said that an applicant must show that the decision or act complained of is tainted with illegality, irrationality, and procedural impropriety. The court defined illegality as 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 contrary to the provisions of a law or its principles.
 23. Irrationality was defined as where there is such gross unreasonableness in the decision, taken that no reasonable authority addressing itself to the facts and the law before it would have made such a decision said to be in defiance of logic and or acceptable moral standards. On impropriety, it was defined as failure to act reasonably on the part of the decision-making authority in the process of deciding for example, by non-observance of rules of natural justice.
 24. In *Municipal Council of Mombasa vs Republic Exparte Umoja Consultants Ltd* (2002) eKLR, the court observed that judicial review is concerned with the decision-making process and with the merits of the decision. Certiorari is used to nullify or discharge a decision made where the proceedings were ultra vires and made or conducted without adherence to the rules of natural justice. See the word of Lord Wright in *General Medical Council vs Spackman* (1943) AC 627 on page 640.
 25. Prohibition, on the other hand, was defined in *Republic vs. KNEC exparte Gathenji & others Civil Appeal No. 266 of 1996*. The court said thus:

“Prohibition looks to the future so that if a tribunal were to announce in advance that it would not consider itself not bound by the rules of natural justice, the High Court would be obliged to prohibit it from action contrary to the rules of natural justice.....”
 26. Prohibition cannot be issued to quash a decision that has already been made but can only prevent the making of contemplated decisions. Prohibition is an order from the High Court directed to an inferior tribunal or body to discontinue proceedings therein, in excess of its jurisdiction or contravention of the law of the land. It lies not only for the excess of jurisdiction or absence of it, but also for a departure from the rules of natural justice. It does, however, lie to correct the course practice and or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings.
 27. The purpose of judicial review, therefore, is to ensure an individual is given fair treatment by the authority to which he has been subjected to and is, therefore, no part of that purpose to substitute the opinion of the judiciary or the individual judge for most of the authority constituted by the law to decide on the matter in question.
 28. Applying the foregoing caselaw to the instant notice of motion, the exparte applicant lists out the facts in part B of the statement of facts. He faults the decision-making process and the decision itself as



- injudicious, unlawful, illegal, biased, irrational, unjustified, unreasonable, made in bad faith, based on consideration of extraneous factors, arose out of an objection filed in time and speculative.
29. On the other hand, the 2nd respondent terms the objection as filed within time, the objection proceedings as procedurally, fairly handled and determined in total compliance with the rules of natural justice.
 30. The burden of proof is on the applicant in judicial review to demonstrate that there was a failure on the part of the 1st respondent to exercise a public function lawfully, fairly, rationally, procedurally, and legally. Section 107 (1) of the [Evidence Act](#) provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of a fact which he asserts must prove those facts.
 31. A party challenging an administrative action must, therefore, bring enough evidence to show that the decision was illegal, unjust, unreasonable, arbitrary, capricious, amounted to abuse of discretion and was against the rules of natural justice. See *Raila Amollo Odinga & another vs IEBC (2017) eKLR*. In *Municipal Council of Mombasa vs Republic & Umoja Consultants (supra)*, the court observed that the questions to ask are:
 - i. How was the decision arrived at?
 - ii. Did those who made the decision have power?
 - iii. Was the person affected by the decision heard before the decision was made?
 - iv. Did the decision maker in making the decision take into account relevant or irrelevant factors?
 32. What the exparte applicant is questioning is the hearing and determination of A/R Objection No. 1762 Akirang' Ondu A, Akirang' Ondu- Laare Division on 27.2.2014, against Parcel No. 1665. The applicant moved to court pursuant to a consent issued on 23.4.2014 under Section 8 (1) of the [Land Consolidation Act](#) (Cap 283).
 33. The exparte applicant avers that he acquired his land parcel measuring 5.29 acres after purchasing it from the interested party and obtained a confirmation of record from the 1st respondent. The applicant relies on annexures marked SN 1 dated 28.8.2008 and a letter dated 5.11.2012 from the 1st respondent showing his acreage.
 34. The purpose of judicial review is to ensure that public bodies do not exceed their mandate and carry out their duties in a manner not detrimental to members of the public. In *Republic vs Chesang M/S RM & others exparte Paul Karanja Kamange & others (2017) eKLR*, the court observed that judicial review is meant to uplift the quality of public decision-making process by ensuring the citizen get civilized governance by upholding the values of fairness, reasonableness and objectivity, in the conduct of the management of public affairs and to curb arbitrariness or abuse of power. In *SDA Church (E.A) Ltd vs P.S Ministry of Nairobi Metropolitan Development & another (2014) eKLR*, the court held that judicial review stems from the doctrine of ultra vires and rules of natural justice and how grown like the biblical mustard seed to branches of illegality, irrationality, impropriety and has become the most potent enforcer of [the constitution](#) and rule of law.
 35. The exparte applicant has pleaded that the 1st respondent heard the A/R objection without the participation of the land committee. The central players under the [Land Consolidation Act](#), unlike Sections 9 and 25 of the [Land Adjudication Act](#), are both the land adjudication committee and the land adjudication officer as held in *Peter Kimandui vs Land Adjudication Officer Tigania West District & others (2016) eKLR*.



36. Section 26 (1) of the *Land Consolidation Act* provides that the Land Adjudication Committee and its land officer must together consider an A/R Objection. The proceedings and decisions dated 27.2.2014 do not contain the names, ID card numbers, and signatures of the committee members who heard and determined the A/R Objection No. 1762. The 2nd respondent, in his replying affidavit, has not denied that fact. The 1st respondent failed to answer that complaint. The 2nd respondent cannot purport to answer the same on behalf of the 1st respondent that there was compliance with the law on hearing and determination of A/R objections by both the land adjudication officer and the land adjudication committee. See *Republic vs Land Adjudication and Settlement Officer Tigania East Kathio M'Igweta (Interested Party)* (2018) eKLR.
37. The role of this court is to superintend and ensure that land adjudicatory bodies adhere to the law, especially Article 47 of *the Constitution*. See *Tobias Achola Osidi & others vs Cyprianus Otieno Ogalo & others* (2013) eKLR.
38. The 1st respondent failed to respond to the notice of motion and confirm if the land adjudication committee, as the primary organ under the law, attended all the proceedings and was part of the decision-making process. See *Republic vs DLASO, Igembe District exparte M'Acita M'Mingaine & another* (2016) eKLR. See also *Republic vs DLASO Tigania East Exparte Paul Mwenda Maingi Manii Josph M'Mutura (IP)* (2022) eKLR.
39. Other than mentioning cross-examination by committee members, the proceedings do not include their names. The decision was not signed by all the committee members who participated in it. There is no indication if the committee members and the land adjudication officer considered all the records held by the 1st respondent, to verify the authenticity of the 2nd respondent's claim. The 1st respondent did not supply a record to show when the A/R objection was filed and processed to counter the allegations by the exparte applicant, that it was an afterthought.
40. The 2nd respondent has not attached rival documents to show that his A/R objection was filed on time after the adjudication register was published. Equally, the 2nd respondent has not attached anything to show that he complained about the alleged encroachment of his land after the scene visit by the demarcation officer.
41. The 2nd respondent filed or attached no record to show that he was a recorded owner of Parcel No. 259, which had allegedly been encroached on by the exparte applicant's land after the interested party sold it to him. In my considered view, therefore, I find the exparte applicant's notice of motion substantiated to the required standard. The proceedings and the decisions made on 27.2.2014 are hereby brought to this court and quashed on account of illegality, ultra vires and unreasonableness. The 1st respondent is prohibited from implementing the same. Costs to the exparte applicant.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 18TH DECEMBER, 2024

In presence of

C.A Kananu

No appearance

HON. C K NZILI

JUDGE

