



**Kaunga v District Land Adjudication Officer Igembe & 3 others; Kabaya (Interested Party)
(Judicial Review E003 of 2023) [2024] KEELC 13621 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW E003 OF 2023
CK YANO, J
DECEMBER 5, 2024**

BETWEEN

DOMICIANO KAUNGA EXPARTE APPLICANT

AND

DISTRICT LAND ADJUDICATION OFFICER IGEMBE 1ST RESPONDENT

DIRECTOR LANDS ADJUDICATION 2ND RESPONDENT

LAND REGISTRAR IGEMBE SOUTH 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

AND

JUSTUS KABAYA INTERESTED PARTY

JUDGMENT

1. Pursuant to leave granted on 2nd August 2023, the ex-parte applicant filed the notice of motion dated 22nd August 2023 and amended on 19th February, 2024. The application was brought under Order 53 Rule 1, 2 and 3 of the Civil Procedure Rules, 2010, Sections 8 and 9 of the [Law Reform Act](#) and all enabling provisions of the law. The applicant seeks for the following orders:-
 - a. That the Honourable court do issue an order of certiorari to call and quash the proceedings and decision of the Deputy County Commissioner Igembe South – Sub County in the appeal to the minister land Case no. 360 of 2017 made on 14th October, 2022, that orders parcel 4500/ Lower Athiru Gaiti A Adjudication Section to be registered in the name of the interested party as the owner thereof.
 - b. That the costs of this application be provided for.



2. The application is premised on the facts and grounds in the statutory statement and the verifying affidavit of the applicant and the annexures thereto.
3. The respondents filed grounds of opposition dated 3rd October, 2023.
4. The interested party filed a replying affidavit sworn on 18th September, 2023.

The Applicant's Case

5. The applicant avers that around the year 1973, he gathered a parcel of land around Kabuitu area and that during demarcation, the same was demarcated and he was issued with parcel No. 3664 Athiru/Gaiti A Adjudication Section.
6. The applicant states that he had various disputes with the interested party over the same land which has been determined by various forums in favour of either of them and the matter herein is only centered on the minister's decision delivered on 13th April 2023 which stated that the applicant has never demarcated the suit land. The applicant contends that it is not possible for the same land to be demarcated by two people and both parties be issued with records of ownership, as after demarcation the applicant developed the suit land with extensive miraa/khat plantation and various species of trees.
7. The applicant states that even during the hearing at the appeal to the minister, all the applicant's neighbours alluded to the fact that the suit land belongs to the applicant and even appeared before the appeal to the minister hearing, yet no one from the area witnessed to knowing the interested party.
8. The applicant states that his evidence, including gathering records, demarcation evidence and his own oral evidence was omitted during the hearing of the appeal which according to him, was done maliciously to give his opponent an upper hand. That the presiding officer was openly biased against the applicant as shown by the record itself.
9. The applicant avers that all the evidence he gave was not recorded and what was recorded as his evidence is falsehood. The applicant contends that fair hearing involves recording parties' evidence and considering the same during the decision making.
10. The applicant further contends that the 1st respondent lacked jurisdiction to hear a dispute over registered land.
11. In his submissions dated 22nd April 2024 filed through the firm of M/S & Mose Advocates, the applicant gave a background of the matter and relied on the case of Pastoli Vs Kabale District and others (2008) E.A 300 and the Municipal Council of Mombasa Vs Republic Umoja Consultants Ltd Civil Appeal No. 185 of 2007 (2002) eKLR, and cited Halsbury's Laws of England Vol (1) page 218 which outlined natural justice.
12. It is the applicant's submission that it is with no doubt that the 2nd respondent's decision was unprocedural, hence ultra vires and that there was an error of law on the face of the record hence illegal and prejudicial to the rights of the applicant. That the decision was made in bad faith and violated the legitimate expectation of the applicant, and constitutes an abuse of power by the 1st respondent.
13. The applicant submitted that in terms of Order 21 Rule 4 of the Civil Procedure Rules, the claim by the applicant is that the decision of the Deputy County Commissioner in the case was made through a process that was procedurally unfair, irrational and was made in ignorance of relevant considerations.
14. The applicant submitted that the DCC acted unreasonably, hurriedly, unfairly and arrived at a hurried decision and completely disregarded the testimony of the applicant's witness who appeared before the



- appeal to the minister hearing yet no one from the area witnessed to knowing the interested party and reached a decision without even visiting the locus in quo to be able to appreciate the full facts and did not consider all the facts placed before him by the witnesses in totality.
15. The ex parte- applicant submitted further that his evidence and that of his witnesses was never examined or considered and that the 2nd respondent proceeded to write his findings without consideration of his evidence which led to a decision against the applicant. The applicant relied on the case of *Msaga Vs Chief Justice & 7 others NBI HCMA No. 1062 and Republic Vs Kenya Revenue Authority Ex parte Cosmos Limited (2016) eKLR*).
 16. It was submitted that from the material on record it is evident that there was bad faith as it is not possible for the same land to be demarcated by two people and both parties be issued with records of ownership. That the interested party is a stranger in the area and even during the hearing no one from the area witnessed to know the interested party and further that it is the applicant who has developed the suit land since its demarcation. That the interested party has at no given time occupied the suit land.
 17. The applicant cited the *Land Adjudication Act* which gives the Deputy County Commissioner power to hear and determine ministers appeals. That the Act requires the Deputy County commissioners to make just decision which in this case he failed to do.
 18. The applicant submitted that a look at his statement, it is clear that nothing on his testimony was captured. That in his cross examination only three paragraphs of his statements were put down by the presiding officer which is less than what was examined. That the same demonstrates that the applicant's evidence was omitted and he was disadvantaged. The applicant argued that failure to consider his full evidence and testimony disadvantaged him as his case was not considered in entirety, and hence there is need to give parties an opportunity to reconsider the appeal before another fairer arbiter.
 19. The applicant submitted that failure to record parties' evidence touches on procedural aspect of the process which is a key concern of judicial review process. Further that judicial review is no longer concerned with procedure only but also substantive right. The applicant relied on the case of *Dande and 3 others Versus I.G National Police Service and others Petition 6(E007) 4 (E005) 78 (E010) of 2022 Consolidated 2023* and submitted that judicial review has been entrenched and elevated to a substantive and justiciable right under *the Constitution* providing that every person has a right to an Administrative Action that is expeditious, efficient, lawful, reasonable and procedurally fair. As to whether a court can consider the merits of the decision as opposed to the process the applicant submitted that the court said it all depends on how a party approaches court. That the court stated that if a party invokes the jurisdiction of the court under *the constitution*, then the court ought to carry out a merit review of the case as set under Section 7 of the *Fair Administrative Action Act*.

Respondents' Case

20. The respondents' grounds of opposition were as follows;
 1. That the ex-parte applicant herein lacks locus standi to institute this suit.
 2. That the ex-parte applicant has not produced any evidence of ownership of the suit land.
 3. That the ex-parte applicant has not tendered any evidence that the decision of the 1st respondent was illegal, irrational or unreasonable.
 4. That the ex-parte applicant has not lodged a copy of the decision of the 1st respondent that he seeks this Honourable court to quash contrary to order 53 rule 7 of the Civil Procedure Rules 2010.



5. That the 1st respondent denies any involvement in the appeal case No. 360/2017 Parcel No. 4500 Lower Athiru Gaiti “A” Adjudication Section.
 6. That the ex-parte applicant was not a party to the proceedings in the Appeal and the claim that he was denied a fair hearing is thus unsubstantiated.
 7. That the application is fatally defective as it discloses no reasonable cause of action against the respondent and it is plainly incurable by any amendment.
 8. That the application is an abuse of the court process and should be dismissed with costs.
21. The respondents gave a background of the case and identified the issues for determination to be whether the applicant has locus standi and whether the applicant is entitled to the reliefs sought.
 22. It was submitted by the respondents that the document the applicant alleges to demonstrate his ownership is in the name of John Kirimi M’Mutha, not the applicant herein. Further, that the document refers to P/No. 3654 not P/No. 4500. That the applicant has not demonstrated how his claim to the suit land accrues. That he has not demonstrated any nexus between him and the “recorded owner” in the document he produces to claim ownership of the suit land. It is therefore the respondents’ submissions that the applicant lacks the capacity or locus standi to institute this suit. They relied on the case of Law Society of Kenya Vs Commissioner of Lands & others, Nakuru Hccc No. 464 of 2000 as cited with approval in Daykio Plantations Limited Vs National Bank of Kenya Limited & 2 others (2019) eKLR, Michael Osundwa Sakwa Vs Chief Justice and President of the Supreme Court of Kenya & another [2016] eKLR while referring to the matter of Priscilla Nyokabi [*Kanyua Vs Attorney General & interim Independent Electoral commission Nairobi HCCP No. 1 of 2010*](#) and the case of Khelef Khalifa El Busaidy Vs Commissioner of Lands & 2 others (2002) eKLR.
 23. It was submitted by the respondents that the applicant has not demonstrated any legal or personal interest in the suit property. That he has not produced any documentation that demonstrates any interest in the suit property and he has not shown any justification as to why the owner of the suit property could not file the suit by themselves. That no line of claim links him to the suit property.
 24. The respondents further submitted that there is no real nexus between the applicant and the decision he seeks to be quashed having not demonstrated any minimal interest in the suit property or the decision he challenges. That the applicant is not a party to the said decision he seeks the court to call and quash. The respondents relied on the case of [*Republic Vs Kenya Ports Authority Board of Directors & 2 others; Public Service Commission \(exparte\); Judicial Review Applicant 001 of 2022*](#)
 25. It is the respondents’ submissions that the applicant has not established any actual or threatened injury on his legal right or interest as a result of the decision he challenges. That devoid of sufficient interest in the suit, the applicant lacks the locus to institute this suit and as such this judicial review application is incompetent and should be struck out.
 26. Regarding the issue whether the applicant is entitled to the reliefs sought, it was submitted that the applicant seeks an order of certiorari to call and quash the decision the proceedings and decision of the Deputy County Commissioner Igembe South in the appeal to the minister land case No. 360/2017 on the subject land. That the application is premised on the grounds that the decision of the 1st respondent was illegal, unreasonable, irrational and made in ignorance of the law. The respondents submitted that the 1st respondent is the District Land Adjudication Officer Igembe and he was not involved in the appeal process that the applicant seeks orders to quash. That the applicant’s prayers are not related to the decision of the 1st respondent and it is fatally misleading as to what grounds the applicant seeks to quash the decision of the Deputy County Commissioner Igembe South. That it is worth noting that



- Deputy County Commissioner Igembe South whose decision is being challenged is not a party to the suit. The respondents submitted that it would be against the cardinal principle of natural justice for the court to issue orders against the Deputy County Commissioner Igembe south who is not a party to the suit. That this could be tantamount to condemning him unheard.
27. The respondents submitted that even then, the applicant has not adduced any evidence that the decision he seeks to challenge was illegal, irrational, or unreasonable. That he has not produced any proof of the suit land being registered thereby ousting the jurisdiction of the Deputy County Commissioner over the suit land. The respondents relied on the case of Republic Vs anti Counterfeit Agency Exparte Caroline Mangala t/a Hair Workds Saloon (2019) eKLR.
 28. The respondents submitted further that it is evident from the applicant's verifying affidavit that he seeks to challenge the merits of the decision of the Deputy County Commissioner Igembe South in which he was not a party to the appeal and hence not competent to seek a review of the decision herein. Further, that the respondents herein were not a party to the appeal that the applicant seeks to challenge and no cause of action arises against the respondents and the orders sought are therefore inapplicable.
 29. The respondents submitted that the applicant has no locus standi to institute this suit and as such the suit is incompetent, fatally defective and an abuse of the court process and should be dismissed with costs to the respondents.

Interested Party's Case

30. The interested party avers that the application is frivolous, vexatious, bad in law, misleading and does not reveal material facts herein and thus an abuse of the court process.
31. The interested party avers that the applicant is a stranger to him. That the process followed by the 1st respondent throughout the appeal proceedings as well as the making of the decision were fair, objective and procedural. The interested party annexed a copy of the appeal proceedings dated 14th October, 2022 Marked "DKA -1"
32. The interested party states that the ex-parte applicant was not even a party to adjudication objection no 360/2017 and has never filed an objection to that effect. The interested party annexed a copy of the objection proceedings dated 4th December, 2014 marked "DKA – 2".
33. The interested party states that the ex-parte applicant has not demonstrated with sufficient clarity how the decision made by the 1st respondent was erroneous. That the applicant has levelled various allegations that go to the merits of the case which clearly spells out the issue is the decision and not the process.
34. The interested party avers that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. That the applicant has not shown that the impugned decision was made contrary to the law or that the Rules of Natural Justice were violated.
35. The interested party states that the applicant has come to the court to defeat his right and he will suffer great injustice and prejudice if the application is allowed.
36. The interested party contends that the ex-parte applicant's application lacks merit and the same is full of mere innuendoes and baseless claims by the applicant. That in the circumstances the applicant's application should be struck out with costs to the interested party.
37. The interested party gave a background of the matter and identified the issues for determination to be whether the ex-parte applicant has the locus standi to institute these proceedings, whether the 1st



- respondent had jurisdiction to determine the appeal No. 360 of 2017 and whether the orders of judicial review are available.
38. Regarding the first issue, the interested party relied on the case of Mohamed Ahmed Khalid (chairman) and 10 others Vs Director of Land Adjudication & 2 others [2013] eKLR and submitted that considering that the *Land Adjudication Act*, Cap 284 has an elaborate procedure on how complaints are supposed to be dealt with, it is his submission that this court cannot substitute the established bodies which are supposed to deal with these complaints. That the applicant can only move this court for Judicial Review orders once he has exhausted the mechanisms that the law has put in place.
 39. It is the interested party's submissions that the applicant herein has never filed an objection as required by law. That if he did, he has not shown by way of evidence.
 40. The interested party submitted further that the applicant cannot demonstrate that his rights have been violated without exhausting the mechanisms provided under the *Land Adjudication Act*. That by failing to follow the procedure laid out by a statute with regard to Adjudication process, it is improper for him to invoke the court's jurisdiction to question either the procedural propriety or substantive merits of the adjudication process. The interested party submitted that the jurisdiction of this court is prematurely invoked. He relied on the case of Speaker of National Assembly Vs Karume (1992) KLR 21.
 41. It is the interested party's submission that he was rightly allocated the land by the Land Adjudication Committee. That the Ex-parte applicant was not even a party to Adjudication Objection No. 360/2017 and has never filed an objection to that effect, and therefore has not followed the due process.
 42. The interested party submitted that it is clear from the evidence before the court that no grounds of appeal were placed before the minister by the applicant herein and as such he proceeded to request for leave to apply for Judicial Review orders which is not as per the procedure laid down. That the law and its procedure are in existence to be followed and obeyed and any individual is expected to adhere to what is provided under the law.
 43. The interested party submitted that the applicant has decided to apply for orders of Judicial Review to the court from a decision of proceedings he was not a party to.
 44. Regarding the issue whether the 1st respondent had jurisdiction to determine the appeal No. 360 of 2017 the interested party cited Section 29(1) of the *Land Adjudication Act* Cap 284 Laws of Kenya and submitted that that section shows how the appeal must be instituted. That the allocation of land to the interested party was done procedurally and in compliance with the law. It is the interested party's submission that the applicant's application is one that is full of allegations and speculations and that the applicant has not proved with certainty any violation of his rights.
 45. It was submitted that from the material on record, it is clear that parties went through the proper procedure and were afforded an opportunity by the minister to present their respective case. It is the interested party's considered view that the process followed by the respondents throughout the appeal proceedings as well as the making of the decision were fair, objective and procedural. That the applicant has not disclosed any evidence as to illegality, unreasonableness, irrationality and abuse of the law.
 46. On whether the orders of Judicial Review are available, it was submitted by the interested party that 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. That the role of the court in Judicial Review is supervisory and the applicant has neither shown nor demonstrated that the impugned decision was made contrary to the law or that the rules of Natural Justice were violated.



47. The interested party submitted that nothing has been pointed out by the ex-parte applicant to prove or demonstrate that the decision making process was flawed to warrant issuance of Judicial Review orders by this court. That none of the known grounds for Judicial Review proceedings has been cited by the ex-parte applicant and therefore the motion dated 22nd August, 2023 is hollow and stands on quicksand.
48. The interested party cited Halsbury Law of England 4th edition Vol 1 (para) 12 page 270 which provides situations in which the three prerogative orders of certiorari, prohibition and mandamus may be granted. That the court has wide discretion to grant relief. The interested party also relied on the case of Zacharia Wagonza & another Vs Office of the Registrar, Academic Kenyatta University & 2 others (2013) eKLR in which the court reiterated the broad grounds on which the court exercises its Judicial Review jurisdiction as was stated in the Uganda Case of Pastoli Vs Kabale District Local Government Council and other (2008) 2 EA 300.
49. The interested party submitted that the objective of Judicial Review was observed in Chief Constable of the North Wales Police Vs Evans (1982) 1 WLR. It is the interested party's submission that in the instant case, the applicant has levelled various allegations that go to the merits of the case which clearly spells out that the issue is the decision and not the process. That the applicant has not demonstrated with sufficient clarity the nature of the erroneous decision that the minister made.
50. The interested party urged the court to find that the process followed by the minister throughout the appeal proceedings as well as the making of the decision were fair, objective and procedural and that the applicant's motion lacks merit and is full of mere innuendos and baseless claims by the applicant, and should be dismissed with costs.

Analysis And Determination

51. I have considered the pleadings, the legal and statutory authorities and the written submissions filed. The issues that call for determination are -;
 1. Whether the ex-parte applicant has the locus standi to institute this case.
 2. Whether the applicant is entitled to the reliefs sought.
52. Before deciding whether the applicant deserves the orders sought, I should as a preliminary issue first determine whether the ex-parte applicant has shown that he has an interest in the decision he seeks to quash. In other words, has the applicant demonstrated in what capacity he has instituted the suit?
53. In the case of Law Society Vs Commissioner of Lands & others, Nakuru High Court Civil Case No. 464, it was held that-;

“Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in court of law.”
54. Further, in the case of Alfred Njau and others Vs City council of Nairobi (1982) KAR 229, it was held that-;

“The term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.”



55. Therefore, locus standi is the right to appear and be heard in court or other proceedings and literally, it means “a place of standing”. Therefore, if a party is found to have no standi, then it means he/she cannot be heard, even on whether or not he has a case worth listening to. It is further evident that if this court was to find that the applicant has no locus standi, then the applicant cannot be heard and that point alone may dispose of the suit.
56. In the case of *Mumo Matemtu Vs Trusted Society of Human Rights Alliances & 5 others* [2014] eKLR, it was held that
- “It is proper to note that the evaluation of locus ought to be based upon the constitutional consideration of capacity (Article 2,22 and 258) the nature of the suit and the enforceability of the orders sought. These considerations inform the enforcement mechanisms and coherent clarity of the following inquiries: who will the orders be enforced against? Who bears the costs of litigation if at all? Who represents the parties in court.”
57. In this case, the respondents and the interested party have submitted that the applicant herein has no locus standi to institute the case for the reasons that the land the applicant claims indicates the owner as one John Kirimi M’Mwitha and not the applicant. It is therefore the respondents’ contention that the applicant has not demonstrated any legal or personal interest in the suit property. That he has not produced any documentation that demonstrates any interest in the suit property and has not shown any justification as to why the owner of the property would not file the suit by himself. That there is nothing linking the applicant to the suit property.
58. I have perused the pleadings herein. In his verifying affidavit, the ex-parte applicant states that in around the year 1973, he gathered a parcel of land around Kabuitu area and the same was demarcated in his name as P/No. 4500 Gaiti A Adjudication Section. The applicant deposed that he was officially issued with a booklet evidencing his ownership of the land and annexed a copy of the adjudication record marked “DK -1”.
59. Having perused annexure “DK – 1” in the applicant’s affidavit, it is clear that the same relates to P/No. 3664 and not P/No. 4500 which the applicant claims to be his. It is also evident that the owner indicated in that document is one John Kirimi M’Muitha and not the applicant herein. I have also perused the proceedings of the appeal to the minister case No. 360/2017 over parcel No. 4500 Lower Athiru “A” Adjudication Section. The appellant was one John Kirimi while the respondent was Julius Gitonga Kabaya (deceased) represented by Justus Kabaya M’Mukuri who is the interested party herein. The ex-parte applicant herein is only listed as one of the observers in those proceedings. The applicant therefore was not one of the principal parties, i.e either the appellant or respondent. I do not see any nexus between the applicant herein and the decision he seeks to quash. The applicant has not demonstrated any minimal interest in the property whose decision he is challenging. None of the parties to the minister’s appeal are challenging the respondents’ decision, yet the same was in favour of one and against the other. Having failed to demonstrate any legal or personal interest in the suit property, this court agrees with the submissions by the respondents and the interested party that the applicant has no locus standi in this matter. The applicant, in my view is a busybody.
60. Even assuming I am wrong on the above finding, has the applicant satisfied the court that he is entitled to the reliefs sought? The applicant seeks an order of certiorari to call and quash the decision of the Deputy County Commissioner, Igembe South sub-county in the appeal to the minister land case No. 360/2017. The application is premised on the grounds that the decision of the 1st respondent was illegal unreasonable, irrational and made in ignorance of the law.



61. I note that the parties in appeal to the minister land case No. 360/2017 were all given an opportunity to testify and even called witnesses. The role of this court in Judicial Review is supervisory. The applicant has neither shown nor demonstrated that the impugned decision was made contrary to the law or that the rules of Natural Justice were violated. 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. That has not been shown to be the case in the present case. The said Deputy County Commissioner acting on behalf of the minister conducted the impugned proceedings in line with the law, and specifically as provided under Section 29 of the [Land Adjudication Act](#). My reading of the various allegations levelled by the applicant against the respondents go to the merits of the case. This clearly spells out that the issue is the decision itself and not the process. In my view, the DCC, upon hearing all parties together with their witnesses, had the discretion on which of them to believe based on the evidence and material placed before him. This court cannot act as an appellate court over the decision of the respondents. The role of the court as I have stated is supervisory. In this case, nothing has been produced by the applicant to prove or demonstrate that the decision-making process that the respondents applied was flawed to warrant issuance of the Judicial review orders sought. In addition, the rules of natural justice were not violated in any way. It has also not been shown that the respondents acted without jurisdiction or ultra vires.
62. In the result, it is my finding that the notice of motion application dated 22nd August 2023 is without merit and the same is hereby dismissed with costs to the respondents and the interested party.
63. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 5TH DAY OF DECEMBER, 2024

IN THE PRESENCE OF

Court assistant – Lenah

M/s Asuma Holding brief for Mose for ex-parte applicant

Ms Ogola holding brief for Mr. Ogola for A.G for Respondents

C.K YANO

JUDGE

