



**Nabea v Tigania East District Land Adjudication and Settlement  
Officer & another; Muriungi (Interested Party) (Judicial Review  
008 of 2022) [2023] KEELC 690 (KLR) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 690 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
JUDICIAL REVIEW 008 OF 2022  
CK YANO, J  
FEBRUARY 15, 2023**

**BETWEEN**

**SIMON MUGAMBI NABEA ..... APPLICANT**

**AND**

**THE TIGANIA EAST DISTRICT LAND ADJUDICATION AND SETTLEMENT  
OFFICER ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JANET KANANU MURIUNGI ..... INTERESTED PARTY**

**RULING**

1. The applicant herein has filed an application by way of *ex-parte* chamber summons dated July 7, 2022 seeking the following orders:
  1. Certify the application extremely urgent and hear the same on priority basis in the first instance.
  2. Grant the ex-parte applicant leave to institute judicial review proceedings for an order of certiorari to bring into this court and quash the proceedings, findings and decision made by the first respondent on July 05, 2022 in Objection No 42 over the parcel of land No 9957 situated in Karama Adjudication Section within Tigania East District.
  3. Order that leave so granted do operate as stay of implementation of the decision made by the 1<sup>st</sup> respondent on July 5, 2022 in objection No 42 over the parcel of land No. 9957, situated in Karama Adjudication Section within Tigania East District, pending filing, hearing and determination of the substantive notice of motion application.



4. The Order that costs of this application abide the outcome of the substantive notice of motion application.
2. The application is grounded on the following grounds:-
  - a. That the Environment and land court vide its judgment in Meru ELC JR Application No 22 of 2017 and dated July 28, 2021 quashed the decision of the land Adjudication Officer, Tigania East District and directed that the matter is remitted back to the Land Adjudication Officer for a fresh hearing and determination of the matter.
  - b. That the 1<sup>st</sup> respondent called for a hearing on May 18, 2022 whereby the applicant appeared and called 3 witnesses while the interested party called one witness.
  - c. That the 1<sup>st</sup> respondent in his determination failed to appreciate the evidence adduced during the said hearing which led to an irregular decision tainted with inconsistencies.
  - d. That the 1<sup>st</sup> respondent did not appreciate/understand the applicable customary law and the basic rules of evidence since the said decision is a clear evidence of biasness as it is completely inconsistent with the evidence on record.
  - e. That as a result of the said decision the applicant herein stands to suffer irreparable loss since that land parcel is where he resides with his children.
  - f. That the impugned decision is *ab initio*, against the relevant statute and *ipso facto* illegal en masse.
3. The application is supported by the facts contained in the verifying affidavit sworn by the applicant on July 7, 2022 and the annexures thereto, the statutory statement of facts dated July 7, 2022, and supplementary affidavit sworn on October 23, 2022.
4. The main ground raised by the applicant is that the 1<sup>st</sup> respondent was biased in arriving at his decision.
5. The 1<sup>st</sup> respondent filed a replying affidavit sworn by Eliab Muchiri Kamaru on September 21, 2022 in opposition to the application. Briefly, the 1<sup>st</sup> respondent averred that the impugned decision was arrived at after careful consideration of all the evidence presented and was in no way as a result of collusion with the interested party. It is the 1<sup>st</sup> respondent's case that the applicant has not produced any evidence to prove the alleged biasness and collusion by the 1<sup>st</sup> respondent and the interested party. The 1<sup>st</sup> respondent contends that the applicant has neither satisfied the conditions laid down by the law, specifically the *Land Consolidation Act*, for the court to exercise its discretion in his favour nor has he proved the grounds relied upon in his prayers to warrant the judicial review orders sought.
6. In opposing the application, the interested party filed a replying affidavit sworn by herself on July 22, 2022 wherein she states inter alia, that the decision by the Land Adjudication and Settlement Officer assisted by the Adjudication Committee is well founded and fair.
7. The court directed that the application be canvassed by way of written submissions but only the applicant filed his submissions on September 26, 2022. The respondents and the interested party opted to rely on their respective replying affidavits filed herein.
8. The issue for my determination is whether the applicant has made out a prima facie case for leave to be granted and if granted, whether the same should operate as stay of the implementation of the decision made by the 1<sup>st</sup> respondent on July 5, 2022.



9. In *Republic Vs County Council of Kwale & Another exparte Kondo & 57 others* Mombasa HCMCA no 384 of 1996, Waki J ( as he then was) held that;

“The purpose of application for leave to apply for judicial review is firstly to eliminate an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as whether they would safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived ... leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially.”

10. From the foregoing therefore it is clear that the grant of leave to commence judicial review proceedings is neither a mere formality nor is it to be granted as a matter of course. The applicant for leave is under an obligation to show to the court that he or she has a *prima facie* arguable case for grant of leave.
11. Applying the above principles espoused in law to this case, the exparte applicant claims that the impugned decision is riddled with bias and collusion by the 1<sup>st</sup> respondent and the interested party. Without delving into the depths of the dispute, it is my humble view that the said allegations raise very weighty legal and constitutional issues that call for consideration on merit during substantive hearing, if leave is granted. Whereas the court has noted that there were previous judicial review proceedings relating to the subject in dispute, the court cannot tell whether the complaints now raised are the same as those raised earlier. Accordingly, I find that the application as filed is not frivolous or vexatious. It was also filed expeditiously, within two days of the impugned decision. An allegation of bias or collusion are *prima facie* arguable allegation or issue which a court should investigate into in the exercise of its supervisory powers. Accordingly, I grant the order of leave as sought in the notice of motion dated July 7, 2022 and order that the substantive motion shall be filed and served on all the affected parties within 14 days of this ruling.
12. The other issue for determination is whether the leave granted should operate as stay of the implementation of the decision made by the 1<sup>st</sup> respondent on July 5, 2022 in objection No 42 over parcel of land No 9957 situate in Karama Adjudication Section within Tigania East District, pending hearing and determination of the substantive motion. The decision whether or not to grant a stay pursuant to leave is no doubt an exercise of judicial discretion and that discretion like any other discretion must be exercised judiciously. The circumstances under which the court may grant a direction that the grant of leave do operate as a stay of the implementation of the impugned decision until the determination of the substantive application, or until the judge orders otherwise is stipulated in Order 53 Rule 1 (4) of the *Civil Procedure Rules*.
13. In *Taib A Taib Vs The Minister for Local Government & others* HC MISCA No 158 of 2006, Maraga J ( as he then was) was of the view that

“As injunctions are not available against the Government and Public Officers, stay is a very important aspect of the judicial review jurisdiction.... In judicial review applications the



court should always ensure that the ex parte applicant's application is not rendered nugatory by the acts of the respondent during the pendency of the application and therefore where the order is efficacious the court should not hesitate to grant it though it must never be forgotten that the stay orders are discretionary and their scope and purpose is limited..."

14. In the instant case, the ex parte applicant asserts that he has been in possession and cultivation of the suit land and has extensively developed the same by growing various species of subsistence crops and that should the impugned decision be implemented, the applicant stands to suffer irreparable loss since he is likely to be evicted from the said parcel of land.
15. No doubt, if the above decision is implemented by the respondents, the ex-parte applicant may be evicted and stands to suffer irreparable loss. Further, should the decision be implemented, the substantive motion will be rendered nugatory. I have no doubt that unless the implementation of the said decision is stayed and or temporarily prohibited, the ex-parte applicant if successful will be rendered a pious explorer in the justice system.
16. For the above reasons, I am satisfied that a stay is necessary. I grant the prayer for stay of the implementation of the decision of July 5, 2022 made by the 1<sup>st</sup> respondent in objection No 42 over parcel No 9957 situate at Karama adjudication section within Tigania East District in favour of the interested party until the hearing and determination of the substantive motion or until further orders of the court.
17. In the result, this court finds that the application dated July 7, 2022 is merited and the same is hereby allowed as prayed.
18. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MERU THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2023**

**IN THE PRESENCE OF**

**C A KIBAGENDI**

**KIRIMI FOR APPLICANT**

**NO APPEARANCE FOR A G FOR RESPONDENTS**

**NO APPEARANCE FOR INTERESTED PARTY**

**C K YANO**

**JUDGE**

