



Yulu v The Minister Housing and Land ‘Thro’ The County Commissioner Kilungu Subcounty; Nzamalu (Interested Party) (Environment and Land Judicial Review Case E003 of 2022) [2025] KEELC 5255 (KLR) (15 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5255 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2022**

EO OBAGA, J

JULY 15, 2025

BETWEEN

JACKSON MALUNI YULU EX PARTE APPLICANT

AND

THE MINISTER HOUSING AND LAND ‘THRO’ THE COUNTY COMMISSIONER KILUNGU SUBCOUNTY RESPONDENT

AND

BETH KAMBUA NZAMALU INTERESTED PARTY

JUDGMENT

Introduction

1. By a Notice of Motion dated 4th November, 2022, the *Exparte* Applicant sought the following orders:
 1. The Applicant herein Jackson Maluni Yulu be granted an order of *certiorari* to move into this Honourable Court and quash the proceedings, Judgment and Order made by the Deputy County Commissioner, Kilungu Sub County on 3rd February, 2022 in appeal to the Minister case No. 259 of 2021 between the Applicant and Interested Party.
 2. That an order of *mandamus* to compel the Respondent through the Cabinet Secretary Ministry of Lands to issue a title deed in respect to plot number 4154 Kyamuoso Adjudication Section to the Applicant.
 3. The Applicant Jackson Maluni Yuni herein be granted an order of Prohibition to prohibit the Respondents and his agents, surveyors from interfering with plot No. 4154 Kyamuoso Adjudication Section.



4. That such further and other reliefs that this honourable court may deem just and expedient to grant.
5. That costs of and incidental to the application be provided for.

Background

2. In or around early 2002, the Applicant borrowed a sum of Kshs.30,000/= from Samuel Nzamalu Muathe the late husband of the Interested Party. The interest was growing at Kshs.10,000/= per month. After three months, the borrowed sum together with interest had grown to Kshs.60,000/=. The Applicant was unable to repay the money. He agreed with the Interested Party's late husband that he was to sell to him his land at Kshs.90,000/=. An agreement to that effect was drawn on 11th May, 2002.
3. The Applicant filed a complaint to the committee which deliberated and ruled in favour of the Interested Party. The Applicant later filed an objection to the register before the Adjudication Officer. In a ruling delivered on 11th January, 2021, the Adjudication Officer found that the Interested Party's husband had purchased a portion of the Applicant's land. He directed that plot No. 1901 which had been recorded in favour of the Applicant in the register be subdivided and a new plot number 4154 be recorded in favour of the Applicant. The Interested Party was dissatisfied with the Adjudication Officer's decision and filed an appeal to the Minister.

Applicant's Case

4. The Applicant relied on his verifying affidavit sworn on 18th March, 2022. The Applicant contends that the plot in issue is plot No. 4154 which was given to him after he filed objection to the register before the Adjudication Officer. It is his contention that he sold a portion of his land and that if the Minister's decision is to be implemented he will suffer irreparable loss and damage.

Respondent's Case

5. The Respondent opposed the Applicant's application through grounds of opposition dated 20th February, 2024. The Respondent contends that the Applicant's application is groundless and is only meant to mislead the court. The Respondent further contends that the application is bad in law, incompetent and incurably defective and has no merits.

Interested Party's Case

6. The Interested Party opposed the Applicant's application based on a replying affidavit sworn on 5th February, 2024. The Interested Party contends that whereas the Applicant's application is dated 6th October, 2023, it bears a court stamp of 14th November, 2022. She states that the motion as drawn is totally misconceived, incompetent and fatally defective as the Republic is not named as the Applicant as is the practice and that the Attorney General is not made a party as is the practice.
7. The defects notwithstanding, the Interested Party states that the Applicant's application cannot be granted as it has not met the threshold for grant of judicial review. She states that the Applicant has not stated any reasons why the Minister's decision should be disturbed. The Interested Party contends that the Applicant was accorded a fair hearing by the Minister and that he has not demonstrated any errors or procedural improprieties which will call for the exercise of this court's special jurisdiction in judicial review matters.



8. The Interested Party contends that the Applicant has introduced an agreement which is not in the language of the court which is against his case and that the application has exposed the Applicant as a person who is out to lie as to what happened. The Interested Party took the liberty to attach the correct sale agreement with a translation thereon and a complete version of the proceedings before the Minister as what was served upon her was incomplete.
9. The Interested Party further contends that the Applicant has falsified documents filed in court with a view to hoodwink the court and that his application ought to be dismissed.

Parties Submissions

10. Directions on filing written submissions were given on 8th February, 2024. The *Exparte* Applicant filed his submissions dated 12th April, 2024. The Respondent filed their submissions dated 28th May, 2024. As at 27th February, 2025 when a judgment date was reserved, the Interested Party had not filed her submissions. Her counsel was given 7 days within which to file submissions. As at 6th June, 2025 when writing this judgment, the Interested Party had not filed her submissions.

Applicant's Submissions

11. The Applicant submitted that the Minister directed that the Applicant's plot No. 4154 be deleted from the Adjudication register and that the whole land remains with the Appellant without giving a well-reasoned decision. The Applicant submitted that this amounted to procedural impropriety rendering the decision procedurally unfair and unlawful.
12. The Applicant submitted that the Minister's decision was neither expeditious, efficient reasonable and procedurally fair. He further submitted that the Minister did not take into account the events of the fateful day before making the decision.
13. The Applicant relied on the case of *Onyango Oloo -vs- Attorney General* (1986 – 1989) EA 456 in which the Court of Appeal interpreted the meaning of "To consider". He also relied on Article 47 (1) and (2) of the *Constitution*.

Respondent's Submissions

14. The Respondent submitted that the Applicant has not demonstrated on how the Respondent's action was illegal, irrational or improper. The Respondent relied on the case of *Republic -vs- Zachariah Kabutu & Another (sued as Trustees and on behalf of and as officials of the Kenya Evangelical Lutheran Church); Jobanes Kutuk Ole Meyio & 2 others (Interested Parties); Exparte Benjamin Kamala & Another* (2020) eKLR which quoted the decision in *Council of Civil Service Unions -vs- Minister for the Civil Service* (1985) AC where it was held as follows:

“....Lord Diplock enumerated a threefold classification of grounds for judicial review, upon which he court can intervene and any of which would render an administrative decision and/or action ultravires. These grounds are illegality irrationality and procedural impropriety.....”.



15. The Respondent further submits that the Applicant is questioning the decision by the Respondent and not the manner the same was reached. The Respondent relied on the decision in *Municipal Council of Mombasa –vs- Republic & Another* (2002) eKLR where it was held as follows:

“Judicial review is concerned with the decision-making process, not with merits of the decision itself. Mr. Justice Waki clearly recognized this and stated so; so that in this matter, for example, the court would not be concerned with the issue of whether the increases in the fees and charges were or were not justified. 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 made the decision have the power, ie. 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 he 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 there was or there was not sufficient evidence to support the decision”.

Analysis and Determination

16. I have carefully considered the Applicant’s application as well as the opposition to the same by the Respondent and the Interested Party. I have also considered the submissions by the Respondent and the Applicant. The only issue for determination is whether the Applicant has met the threshold for the grant of the orders he is seeking. It is important to point out that judicial review is concerned with the process leading to the decision reached. It is not concerned with the merits of the decision. See the decision of *Municipal Council of Mombasa case (supra)*.
17. The three main grounds upon which one can bring judicial review proceedings were clearly set out by Lord Diplock in the case of *Council of Civil Service Union (supra)*. The three grounds were amplified in the case of *Pastoli –vs- Kabale District Local Government Council and Others* (2008) EA 300.

“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 improprietyillegality 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. It is, for example, illegality, where a Chief Administrative Officer of District interdicts a public servant on District Service Commission....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 law 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”

18. The Applicant did not cite any ground of either impropriety, illegality or irrationality in his verifying affidavit. It is only in his submissions that he tried to come up with the grounds but without success.



The Minister in his decision rendered on 3rd February, 2022 was fair, expedient and procedurally fair. The appeal was heard on 20th January, 2022 and decision rendered on 3rd February, 2022. The decision was a reasoned one which contained reasons why the Minister arrived at his decision.

19. The Minister had the jurisdiction to hear the appeal. The Applicant was given opportunity to be heard and opportunity to produce documents in support of his case. There was nothing illegal in the decision as the Deputy County Commissioner was the one with powers to make the decision on behalf of the Minister. There was nothing irrational in the Minister's decision. He considered the agreement which the parties entered into on 11th May, 2002. There was no procedural impropriety because the Minister followed the rules and was not unfair to the Applicant.
20. The Applicant tried to sneak in an agreement made on 10th May, 1998 to justify his contention that he could not have sold the entire portion of his land for Kshs.90,000/= in 2002 when he had purchased the same land for Kshs.200,000/= in 1998. This agreement which was in Kamba language without translation was not placed before the appeal before the Minister. A look at the proceedings before the Land Adjudication Officer shows that a different agreement may have been tabled there as the one before the appeal to the Minister which the Interested Party annexed to the replying affidavit did not have the issue of fixing sisal/plants to demarcate the property after completion of payment.
21. The Applicant also served documents which clearly show that they were altered. Though he had filed a substantive motion dated 18th March, 2022 while he was acting in person, he filed another one dated 4th November, 2022 but the one which he served the Interested Party was dated 6th October, 2023 but received in court on 14th November, 2022. Even the date of swearing was 6th October, 2023 and before different Commissioners of Oaths from the one who commissioned the affidavit of 4th November, 2022. The Applicant tried to rectify this in a further affidavit sworn on 11th March, 2024 arguing that it is the registry which stamped 14th November, 2022 instead of 6th October, 2023. This is the same affidavit which at paragraph 7 shows that the agreement before the Land Adjudication Officer was different from the one attached to the Interested Party's replying Affidavit which was the one produced by both the Applicant and Interested Party before the appeal which was before the Minister.

Disposition

22. It is clear from the analysis above that the Applicant's Notice of Motion dated 4th November, 2022 is devoid of merit. The same is dismissed with costs to the Respondent and Interested Party.

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 15TH DAY OF JULY, 2025.

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HON. E. O. OBAGA

JUDGE

IN THE PRESENCE OF:

Mr. Kiluva for Interested Party

Mr. Kuria for Ms. Mumo for Respondent.

