



**Republic v Cabinet Secretary for Lands & Physical Planning; Mbiti
(Ex parte Applicant) (Environment and Land Judicial Review Case
E005 of 2024) [2025] KEELC 3714 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3714 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2024
AK BOR, J
APRIL 30, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**THE CABINET SECRETARY FOR LANDS & PHYSICAL
PLANNING RESPONDENT**

AND

AUGUSTINE NJIRU MBITI EX PARTE APPLICANT

RULING

1. The Ex-parte applicant, Augustine Njiru Mbiti filed the application dated 25/10/2024 seeking leave to apply for an order of mandamus to compel the 1st respondent to discharge her statutory duty under Section 29 of the [Land Adjudication Act](#) by hearing and determining Minister’s Land Appeal Case No. 940 of 1990, Kirima Adjudication Section.
2. The application was made on the grounds that in 1979 or thereabout, during the adjudication process within Kirima Adjudication Section, the applicant purchased the land known as Mbeere/Kirima/1350 from Nthiga Javanson Kabuta for valuable consideration which he paid in full. That the seller declined to transfer the land to him and consequently he filed objection case no. 340/83 against him. Being dissatisfied with the decision of the land adjudication officer dated 8/11/1990 in the objection case, he filed Minister’s Appeal Case No. 940 of 1990 which to date has not been heard and determined. He stated that he had made several attempts to pursue the appeal without success. It was his position that the 1st respondent was under a duty pursuant to the [Land Adjudication Act](#) to hear and determine his appeal which he claimed had been pending for too long. He stated further that it is only fair that the appeal is heard and determined on merit.



3. The ex-parte applicant swore the affidavit in support of the application and attached copies of the objection proceedings and decision, grounds of appeal, the letter dated 13/9/1996 by the Land Adjudication and Settlement Officer and the search for the suit land.
4. In response to the application, the respondents raised a preliminary objection on the grounds that the application offended the provisions of Section 9(2) of the [Law Reform Act](#), Section 7 of the [Limitation of Actions Act](#) and Order 24 Rule 4(3) of the [Civil Procedure Rules 2010](#).
5. The court directed parties to file and exchange written submissions which it has considered. The respondents submitted that the preliminary objection was merited and reasonable as it raised a pure point of law as envisioned in the case of *Mukisa Biscuit Manufacturing Co. Limited v West End Distributors Ltd* [1969] EA 696. They submitted that section 9(2) of the [Law Reform Act](#) provides for a mandatory statutory limitation period of six (6) months in respect of applications for orders of mandamus, prohibition or certiorari from the date of the act or omission being challenged which period had long passed. Further, they submitted that judicial review remedies are discretionary and cannot be granted where there has been inordinate delay that is not excusable. They argued that the ex parte applicant's claim being based on an alleged administrative omission dating back to 1990 was barred under the general limitation period of 6 years for civil actions against the government. Additionally, that the applicant failed to comply with the procedural requirements rendering the application procedurally incompetent in violation of Order 24 Rule 4(3) of the [Civil Procedure Rules](#).
6. The ex-parte applicant in his submissions disagreed with the respondent's position that an application for an order of mandamus should be brought within a period of 6 months especially in the instant case where no timelines are set by the [Land Adjudication Act](#) for hearing and determination of land appeal cases to the minister. He submitted further that he had not violated Section 7 of the [Limitation of Actions Act](#) since his claim was not civil in nature. He contended that the respondents had not expounded in their submissions how Order 24 Rule 3 of the [Civil Procedure Rules](#) had been violated. He urged the court to disallow the preliminary objection.
7. The issue for determination is whether the preliminary objection has merit. A preliminary objection must raise a pure point of law, as was held in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. In this case, the respondents' preliminary objection raises the question of whether the application is time barred, which is indeed a point of law.
8. Turning to Section 9(2) of the [Law Reform Act](#), it is clear that leave to apply for judicial review orders of certiorari, mandamus or prohibition must be sought within six months from the date of the challenged act or omission. The act or omission in this case, which is the failure to hear and determine Minister's Appeal No. 940 of 1990 dates back over thirty years. Even if no specific time frame is set for hearing ministerial appeals under the [Land Adjudication Act](#), the applicant cannot sit on his rights indefinitely. The delay in bringing the application has not been explained. The applicant's argument that no timelines are set does not excuse his inaction for over three decades. Litigation must come to an end and allowing such stale claims to be resurrected would not serve the interests of justice.
9. The court agrees with the ex-parte applicant that this being an application for judicial review, Section 7 of the [Limitation of Actions Act](#) does not strictly apply as judicial review is concerned with the decision making process and not the broad claims specified in that Act.
10. As regards the alleged violation of Order 24 Rule 4(3) of the [Civil Procedure Rules](#), the respondents did not demonstrate how this provision, which deals with substitution upon the death of one of several plaintiffs or of sole plaintiff applies to the present case. This ground therefore fails.



11. The court finds that the preliminary objection on the grounds of time limitation under Section 9(2) of the [Law Reform Act](#) is merited.
12. The preliminary objection succeeds. The ex parte applicant's chamber summons application dated 25/10/2024 is dismissed with costs to the respondents.

DELIVERED VIRTUALLY AT EMBU THIS 30TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Ms. J. Irungu holding brief for Mr. J. Kiongo for the Respondents

Diana Kemboi- Court Assistant

No appearance for the Applicant

