



**Republic v District Land Registrar Busia & 2 others; Sumba  
(Exparte Applicant) (Environment and Land Judicial Review Case  
E001 of 2024) [2025] KEELC 3375 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3375 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2024**

**BN OLAO, J  
APRIL 28, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DISTRICT LAND REGISTRAR BUSIA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SURVEYOR, BUSIA ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**WILLIAM WANDERA SUMBA ..... EXPARTE APPLICANT**

**RULING**

1. Having been granted leave to file Judicial Review Proceedings to call into this Court the decision of the Land Registrar Busia for purposes of issuing orders of Certiorari, Prohibition and Mandamus, the Exparte Applicant was directed to file and serve the substantive Motion together with all the relevant documents upon the Respondents. Such documents would no doubt include the decision of the Land Registrar Busia. However, other than pleading that the decision of the Land Registrar and Surveyor Busia was made on 14<sup>th</sup> May 2024, the said decision was not annexed to the Application. Order 53 Rule 7 (1) of the [Civil Procedure Rules](#) provides that:

“In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the Applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the



motion he has lodged by a copy thereof verified by affidavit with the registrar, or accounts for his failure to do so to the satisfaction of the High Court.”

The provision requires that any party seeking an order of certiorari must annex to the application a copy of the verified order which he seeks to challenge or if he cannot, a satisfactory reason for failure to do so must be given to the Court. That provision is mandatory. In the case of *Musa Kingori Gaita -v- Kenya Wildlife Service* 2006 eKLR, the Court of Appeal cited with approval the following dicta from the case of *Samson Kerera M’ruchu -v- Minister For Lands And Settlement* C.a. Civil Appeal No21 of 1999 in reference to that provision:

“Compliance with the above provision is a pre-condition to seeking an order of certiorari. An Applicant who fails to comply with the requirements of that provision disentitles himself to a hearing of his Motion under Order 53 Rule 3 of the Civil Procedure Rules. It would appear to us that the failure to comply with Rule 7(1) above does not render the application incompetent ab initio but renders proceedings continued in violation thereof a nullity. We say so advisedly as a copy of the decision sought to be quashed may be lodged before the hearing of the Motion for an order of certiorari.”

In this case, the Ex-parte Applicant neither filed the decision sought to be quashed at the leave stage and has not even done so after leave was granted. There is therefore nothing before this Court to warrant the issuance for any orders of certiorari, prohibition or mandamus. Indeed, as per the decision in *Samson Kerera M’ruchu -v- Minister For Lands And Settlement*(supra), there is nothing to justify any hearing of the Motion. That is why I have opted to deliver a ruling rather than a judgment.

2. The up-shot of all the above is that the Ex-parte Applicant’s Notice of Motion dated July 1, 2024 and filed on July 26, 2024 is in-competent. It is accordingly struck out with no orders as to costs.

**BOAZ N. OLAO**

**JUDGE**

**28<sup>TH</sup> APRIL 2025**

**Ruling dated, signed and delivered by way of electronic mail on this 28<sup>th</sup> day of April 2025.**

Right of Appeal

**BOAZ N. OLAO**

**JUDGE**

**28<sup>TH</sup> APRIL 2025**

