



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT SIAYA

ELC MISC APPLICATION NO. E001 OF 2022

IN THE MATTER OF THE CONSTITUTION

AND

IN THE MATTER OF JUDICIAL REVIEW FOR ORDERS OF CERTIORARI

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

CHARLES ABADÉ WARAMBO.....1ST RESPONDENT

LAND REGISTRAR, SIAYA.....2ND RESPONDENT

HON.ATTORNEY GENERAL.....3RD RESPONDENT

INTENDED *EX PARTE* APPLICANT.....JOHN UMARA OGOL

RULING

The intended *ex parte* applicant's case

1. Pursuant to the provisions of **Order 53 Rule 1** and 2 of the **Civil Procedure Rules**, the *ex parte* Applicant has filed a Chamber Summons dated 31/01/2022 against the Respondents seeking the following reliefs:

- a) *That this honourable court be pleased to grant an enlargement of time for the intended *ex parte* applicant to apply for orders of certiorari, prohibition and mandamus against the respondents.*
- b) *That the draft Notice, draft statement of facts, draft notice of motion, supporting affidavit, verifying affidavit and list of documents be deemed as duly filed upon payment of requisite fees.*
- c) *That cost of this application be provided for.*

2. The Summons is supported by an affidavit sworn by **John Umara Ogol**, the intended *ex parte* applicant dated 31/01/2022. From the pleadings and annexures, the nature of the issue in dispute can be summarized as follows: LAND PARCEL NUMBER **East Gem/Gongo/244 (“the suit property”)** was first registered in the names of Saul Ogol Misula who was the *ex parte* applicant's father and one James Owino as tenants in common with equal shares. In **Land Tribunal Case Number SYA/46/2007**, one Amos Warambo Abade lodged suit at the Land Disputes Tribunal against the registered proprietors of the suit property and upon hearing the parties, the Tribunal awarded the suit property to Amos Warambo Abade. In the presence of all the parties, the decision of the Tribunal was adopted as a judgement of the court on 12/5/2005 in **Siaya PM Misc.Civil Case No.14 of 2005**. On 18/4/2018, the suit property was registered in the name of the 1st respondent who is a son of Amos Warambo Abade and who subsequently subdivided the suit property on 30/4/2018. From the draft pleadings it is evident he intends to challenge the manner in which the suit property was transferred to the 1st respondent.

The intended *ex parte* applicant's submissions

3. The intended *ex parte* applicant filed written submissions dated 17/02/2022. He contended that judicial review proceedings are recognised

as a constitutional issue and an administrative action. He contended that there were varying schools of thought on whether enlargement of time to file judicial review proceedings could be granted or not and on this, he placed reliance on the case of **Republic v Kahindi Nyafula & 3 others ex parte Kilifi South East Farmers Cooperative Society [2014] eKLR** where the court cited **Welamudi v the Chairman Electoral Commission of Kenya [2002] KLR 285** and **Republic v Kenya Bureau of standards & others [2006] EA 345**.

4. Placing reliance on **Article 47, Section 7(1) of Part 2 of the Sixth Schedule of the Constitution** and several authorities including **Republic v Kahindi Nyafula & 3 others (Supra)** and the South African case of **Pharmaceutical Manufacturers Association of South Africa Re ex parte President of the Republic of South Africa & others 2000 (2) SA 674 (CC) AT 33** he submitted that upon the enactment of the **Fair Administrative Action Act**, litigants could institute judicial review proceedings outside the mandatory six months period.

Analysis and determination

5. I have carefully considered the *ex parte* applicant's chamber summons, grounds in support, supporting affidavit and written submissions and the only issue falling for determination is whether the *ex parte* applicant should be granted leave to institute judicial review proceedings against the respondents outside the mandatory six-month period.

I will proceed to analyse the legal and jurisprudential framework on the single issue.

6. The legal framework that governs the period of time within which one can seek prerogative orders is **Section 9 (3) of the Law Reform Act** and **Order 53 Rule 2 of the Civil Procedure Rules**. **Section 9 (3) of the Law Reform Act** states thus:

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law..” [Emphasis added]

7. **Order 53 Rule 2 of the Civil Procedure Rules** provides as follows on the sixth month limitation period:

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired” [Emphasis added]

8. **Order 50 Rule 6 of the Civil Procedure Rules** provides leeway for the courts to enlarge time, however, subsidiary legislation cannot oust the mandatory provisions of law; in this case **Section 9 (3) of the Law Reform Act**.

9. It is trite law that once a provision of law be it in a Constitution, Statute or Common law principle has put strict timelines within which one may institute suit, then it behooves upon a litigant to be vigilant to ensure he pursues his cause of action within the stringent timelines. When such a suit is brought before a court of law, the court is called upon to interrogate the period within which time started running. In a recent Supreme Court of Kenya decision of **Kiluwa Limited & Another v Business Liason Company Limited & 3 Others, (2021) eKLR** the court had this to say on time bound claims;

“It is trite law that a party to be time barred from litigating its claim, such limitation of time must be stated in the Constitution, statute or as a principle of common law.”

10. This position of law has been upheld in a line of Environment and Land Court cases including: **Rosaline Tubei & 8 others v Patrick K. Cheruiyot & 3 others [2014] eKLR**; **Republic v Kahindi Nyafula & 3 others Ex Parte Kilifi South East Farmers' Co-Operative [2014] eKLR**; **Republic v District Land Adjudication and Settlement Officer Tigania East and West; Deputy County Commissioner & another Ex parte Stephen Kathuthu; Stephen Michuki Kiunga (Interested Party) [2021] eKLR** and **Republic v National Irrigation Board & another Ex parte Peter Muriithi Muriuki [2021] eKLR** and I am not inclined to hold otherwise.

11. From the pleadings and annexures, the cause of action either arose on 12/05/2005 when the decision of the Tribunal was adopted as a judgement of the court or when the 1st respondent subdivided the suit property on 30/4/2018. Whichever date it is, the window period for instituting judicial review proceedings long closed and the intended *ex parte* applicant cannot seek to reopen it and his only recourse is to pursue other avenues to ventilate his grievances.

12. Utmost, it is my finding that the chamber summons is not merited and I decline to extend time for the intended *ex parte* applicant to institute judicial review proceedings against the respondents. It is trite law that costs follow the event. However, none of the respondents filed their responses and for that reason I will not award costs to them. Ultimately, I make the following disposal orders;

a) The application dated 31/01/2022 is hereby dismissed with no orders as to costs.

b) The file is marked as closed.

Ruling delivered virtually.

DATED, SIGNED AND DELIVERED THIS 10TH DAY OF MARCH 2022

In the Presence of:

Mr. Ochanyo for the intended exparte applicant

Court assistant: Sarah Ooro

HON. A. Y. KOROSS

JUDGE

10/3/2022