



**Aol v Owino & 3 others (Environment and Land Miscellaneous Application
E008 of 2021) [2022] KEELC 2766 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2766 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIIAYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2021
AY KOROSS, J
JULY 14, 2022**

BETWEEN

MARGARET AOL APPLICANT

AND

GEORGE HANINGTON OWINO 1ST RESPONDENT

KEFA OFULA WALGANO 2ND RESPONDENT

NOAH OOKO PINYA 3RD RESPONDENT

ABEDNEGO OCHIENG PINYA 4TH RESPONDENT

RULING

Applicant's Case and Submissions

1. The motion before me was dated 17/12/2021 and brought pursuant to the provisions of Article 159 of *the Constitution* of Kenya, Sections 1A, 1B, 3A, 63 (e), 79G and 95 of the *Civil Procedure Act*, Section 13 (1) and (7) of the *Environment and Land Court Act* and Order 50 and 51 of the Civil Procedure Rules. Some of the prayers sought are spent and the ones pending determination are as follows;
 - a. The court do extend the limitation period for the applicant to institute judicial review proceedings out of time against the tribunal award that was read and adopted in Siaya Miscellaneous Civil Application Number 56 of 2000;
 - b. Leave be granted to the applicant to apply for an order of certiorari to quash the proceedings and decision of the Land Dispute Tribunal in respect of Uholo/Ugunja/323 as adopted in Siaya Miscellaneous Civil Application Number 56 of 2000; and
 - c. Costs be in the cause.



2. The motion was founded on several grounds on face of the motion and on the supporting affidavit sworn by the applicant, Margaret Aol. The applicant contended that she was the widow of Aor Murende Aor also known as Owuor Murende (hereinafter “the deceased”) who was the 1st registered proprietor of the land parcel number Uholo/Ugunja/323 [suit property] who died on 18/05/1996. She contended that the respondents who were paternal relatives of the deceased appropriated the suit property to themselves without her knowledge and consent. Further, they instituted proceedings before the land disputes tribunal against her and other parties however, she was oblivious to those proceedings. The tribunal proceedings had been adopted as an order of the court and they had obtained eviction orders against her.
3. Her submissions dated 25/03/2022 reiterated these averments. She contended that she was served with an eviction order dated 14/09/2021 but the initial eviction order was dated 08/06/2004 and re-issued on 07/04/2011 and 14/06/2012. It was her submission that by effluxion of time as envisaged by Section 4(4) of the [Limitation of Actions Act](#), the respondents were estopped from evicting her.

Respondents Case and Submissions

4. Despite service and being given an opportunity to respond, they never participated in these proceedings and in essence, the motion is unopposed. However, this court is called upon to determine the motion on its own merits.

Analysis and Determination

5. Having carefully considered the applicant’s motion, supporting affidavit and written submissions, it is this court’s considered view that the single issue for consideration is whether the motion is merited.
6. The applicant never cited any authority in her submissions. However, her motion relied on all manner of provisions of law to buttress her prayer for extension of time. Article 159(2)(d) of [the Constitution](#) which provides that courts shall administer justice without undue regard to procedural technicalities cannot come to her refuge because in my humble view, this provision is not a panacea of all manner of shortcomings and limitation of time is a substantive issue that does not fall within the ambit of procedural technicalities.
7. This court is duty bound to give effect to the overriding objective under Section 1A of the [Civil Procedure Act](#) to facilitate the just determination, efficient and timely disposal of court proceedings. See Section 1B of the [Civil Procedure Act](#). The court, under Section 3A of the same Act, is equipped with powers to make such orders as may be necessary for the ends of justice to be met or to prevent abuse of the court process. These provisions of law albeit cited by the applicant cannot come to her assistance. This court has taken cognizance that this motion was filed 17 years after the decision of the tribunal was adopted as a judgment of the court.
8. 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]



9. 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]

10. Though Order 50 Rule 6 of the Civil Procedure Rules gives leeway for the courts to enlarge time, subsidiary legislation cannot oust the mandatory provisions of law; in this case Section 9 (3) of the [Law Reform Act](#).

11. It is trite law that once a provision of law be it in a Constitution, Statute or Common law has put strict timelines within which one may institute suit, then it behooves upon a litigant to be vigilant to ensure she pursues her claim 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*, the court had this to say on time barred 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.”

12. 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, [Stephen Michuki Kiunga \(Interested Party\)](#) [2021] eKLR and [Republic v National Irrigation Board & another Ex parte Peter Muriithi Muriuki](#) [2021] eKLR. See also the Court of Appeal decisions of [Wilson Osolo v John Ojiambo Ochola & another](#) [1996] eKLR and [Ako v Special District Commissioner Kisumu & another](#) [1989] eKLR which are binding upon this court. I am not inclined to hold otherwise.

13. From the pleadings and annexures, the cause of action arose on 8/06/2004 when the decision of the land disputes tribunal was adopted as an order of the court. The window period for instituting judicial review proceedings long closed and the intended ex parte applicant cannot seek to reopen it and her only recourse is to pursue other avenues to ventilate her grievances.

14. Utmost, it is my finding that the motion is not merited and I decline to extend time for the 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 them costs. Ultimately, I make the following disposal orders;

- a. The application dated 17/12/2021 is hereby dismissed with no orders as to costs.
- b. The file is marked as closed.

DELIVERED AND DATED AT SIAYA THIS 14TH DAY OF JULY 2022.

HON. A. Y. KOROSS

JUDGE

14/7/2022



Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

Mr. Ooro for the applicant

N/A for the respondents

Court assistant: Ishmael Orwa

