



**Republic v Deputy County Commissioner, Baringo North & 6 others;  
Boit (Interested Party); Cheptoo (Exparte Applicant) (Judicial Review  
20 of 2022) [2022] KEELC 13460 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13460 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ITEN**  
**JUDICIAL REVIEW 20 OF 2022**  
**L WAIHAKA, J**  
**OCTOBER 13, 2022**  
**FORMERLY ELDORET ELC JUDICIAL REVIEW CAUSE NO.9 OF 2020**  
**IN THE MATTER OF AN APPLICATION OF STEPHEN KIPROP CHEPTOO FOR**  
**JUDICIAL REVIEW PROCEEDINGS FOR ORDER OF CERTIORARI AND PROHIBITION**  
**AND**  
**IN THE MATTER OF THE LAND ADJUDICATION ACT (CAP 284) LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF PLOT NUMBER 260 KAPKIAMO**  
**ADJUDICATION SECTION (BARINGO NORTH SUB-COUNTY)**  
**AND**  
**IN THE MATTER OF THE DECISION OF THE DEPUTY**  
**COUNTY COMMISSIONER, BARINGO NORTH SUB COUNTY**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DEPUTY COUNTY COMMISSIONER, BARINGO NORTH . 1<sup>ST</sup> RESPONDENT**  
**CABINET SECRETARY FOR LANDS, HOUSING & URBAN**  
**DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**  
**LAND REGISTRAR, BARINGO LANDS REGISTRY ..... 3<sup>RD</sup> RESPONDENT**  
**COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER,**  
**BARINGO ..... 4<sup>TH</sup> RESPONDENT**  
**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 5<sup>TH</sup>**  
**RESPONDENT**



CHIEF LAND REGISTRAR ..... 6<sup>TH</sup> RESPONDENT

ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT

AND

WILLIAM ARGUT BOIT ..... INTERESTED PARTY

AND

STEPHEN KIPROP CHEPTOO ..... EXPARTE APPLICANT

### RULING

1. On January 26, 2022 this court dismissed the application by the *ex parte* applicant dated November 18, 2021 for none attendance.
2. On April 13, 2022, about 2 ½ months later, the *ex parte* applicant filed the notice of motion dated April 12, 2022 seeking an order setting aside the order dismissing the application and an order reinstating the application dated November 18, 2021.
3. The application is premised on the grounds that the applicant’s counsel was present in court virtually but owing to a technical hitch, the counsel was unable to communicate with the court; that the applicant is keen, interested and desirous of prosecuting the application that was dismissed; that the absence of the applicant’s counsel in court is excusable and that no prejudice will be occasioned on the respondents and the interested party if the orders sought are granted. Further, that it is in interest of justice that the orders sought be granted.
4. The application is supported by the affidavit of the *ex parte* applicant’s advocate, Edwin Kibet Mwaita, in which the grounds on the face of the application are reiterated.
5. The application is opposed on the grounds that the *ex parte* applicant’s counsel was not diligent and keen to prosecute the application despite having been afforded an opportunity to do so after the main suit was dismissed for want of prosecution and that the applicant’s main case has no chance of success because contrary to his contention that he was denied a fair hearing, there is evidence that he was accorded a fair hearing. Terming the application lacking in merit and an abuse of the court process, the interested party urges the court to dismiss it with costs.

### Determination

6. As pointed out herein above, this application seeks to set aside the order of dismissal of the *ex parte* applicant’s application dated November 18, 2018 on the ground that the *ex parte* applicant’s counsel was present when the matter was called out for hearing virtually but was prevented from participating in the proceedings by a technical hitch; his mobile gadget number 0722, 250,490 developed a technical hitch that compromised his communication with the court during hearing.
7. Whereas the reasons given for absence of the *ex parte* applicant’s counsel when the application was called for hearing, if proven, would form a good reason for setting aside the orders issued by the court, despite having deposed that he was admitted to the court session; the *ex parte* applicant’s counsel has not presented any evidence before this court capable of showing that indeed he was in attendance and that he was prevented from participating in the court proceedings by the said technical hitch. Moreover, there was unexplained delay of over 2 ½ months in filing the application to set aside the



order issued by the counsel. I find the delay, in the circumstances of this case to have been inordinate and inexcusable. That delay coupled with the previous conduct of the *ex parte* applicant that had led to dismissal of the main suit, makes this court not satisfied that the applicant has made up a case for exercise of the discretionary power vested in it in favour of the *ex parte* applicant.

8. The upshot of the foregoing is that the notice of motion dated April 12, 2022 is found to be lacking in merit and is dismissed with costs to the Interested Party. No costs are awarded to the respondents as they did not defend the application.
9. Orders accordingly.

**DATED, SIGNED AND DELIVERED, AT ITEN THIS 13<sup>TH</sup> DAY OF OCTOBER, 2022.**

**L. N. WAITHAKA**

**JUDGE**

**Ruling read virtually in the presence of:**

Mr. Mwaita for the applicant

N/A for respondents

Ms. Esang holding brief for Mr. Kipkeni for the Interested party.

Christine Towett: Court Assistant

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