



**Motuka; Henry Abuga County Surveyor, Nyamira & 2 others  
(Interested Parties) (Environment and Land Judicial Review Case  
E001 of 2022) [2022] KEELC 15466 (KLR) (21 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15466 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2022**

**JM KAMAU, J**

**DECEMBER 21, 2022**

**IN THE MATTER OF**

**GIDEON MOCHERE MOTUKA ..... APPLICANT**

**AND**

**HENRY ABUGA COUNTY SURVEYOR, NYAMIRA ..... INTERESTED PARTY**

**WILDFRED GEKONGE NGERESA ..... INTERESTED PARTY**

**THE PRINCIPAL MAGISTRATE, KEROKA LAW COURTS .... INTERESTED  
PARTY**

**RULING**

1. The *Ex-parte* Applicant filed a chamber summons Application on August 17, 2022 seeking for leave to apply for an order of *certiorari* to bring the order issued by the Principal Magistrate, Keroka in Keroka Principal Magistrate Court Case No ELC 15 of 2021 dated July 26, 2022 into this Court for purposes of quashing the said order. The Applicant came to Court within the requisite statutory 6 months period from the time the order was made. On October 5, 2022 I granted the Applicant leave to apply for the Judicial Review order of *certiorari* to quash the Decree of the said Principal Magistrate dated July 26, 2022. I additionally directed that the substantive Motion be filed within 15 days of service for the Hearing of the matter on November 7, 2022. And finally I ordered that the leave that the Court granted do operate as a stay of the Orders of July 26, 2022. The Applicant did not comply.
2. On November 7, 2022 the Applicant made an Application under Certificate of Urgency asking the Court to enlarge time for filing the substantive Motion for *certiorari* on the grounds that when the Orders for leave were granted on October 5, 2022, the Applicant's Advocates had logged in but lost connection midway and attempts to reconnect were futile and that he could not get the final Orders of the Court and that when he called the Registry later in the afternoon, a Registry clerk only told him that the matter was coming up for Hearing on November 7, 2022 "without giving him full details" and



thus misleading the Advocate for the Applicant. He only came to learn of the full Orders on November 7, 2022 when he came for the mention of the case. He concludes by saying that the failure to file the Application was inadvertent and honest mistake or omission. Nothing can be further from the truth as I will explain later. In his Replying Affidavit, the 2<sup>nd</sup> Interested Party rightly says that when the Orders were granted on October 5, 2022, the Applicant's Counsel was present in Court virtually and did participate fully. The 2<sup>nd</sup> Interested Party has raised very good questions for consideration in opposition to the Applicant's Application. the Applicant does not indicate who he called at the Registry and how authoritative the Registry clerk was to give correct information. I also agree with the 2<sup>nd</sup> Interested Party that there is no way a clerk could be reading from the file selectively. If the Applicant's Advocate is to be believed, when the clerk mentioned to him that the matter was to be mentioned on October 7, 2022 to confirm compliance, the Advocate should have enquired what was to be complied with. Further, it was incumbent upon the Applicant's Counsel to send his clerk or go personally to the Court Registry to find out the outcome of his client's Application for leave to commence Judicial Review proceedings. This is called due diligence. And for 23 days, the Advocate did not bother. He only got the mention date and turned up in Court, again virtually. Otherwise he could not have known what transpired in Court on October 5, 2022. What then was the purpose of seeking the Orders for leave if Counsel was not bothered to find out the results. A Counsel should be vigilant enough to find out what Orders were granted by the Court. Doing otherwise is failing his client. Clients are normally very eager to know what the Court ordered or directed. Most will even camp at the Advocate's office or keep calling him until they get this information.

3. I cannot imagine what Mr Rono told his client on the afternoon of October 5, 2022. There are therefore no good reasons advanced by the Applicant to have the time extended. Equity aids the vigilant and not the indolent. The Interested Parties have also told the Court that from the advice of their Advocates, the Court cannot extend the time for filing the substantive Motion when timelines for the same have been given but not complied with. Unfortunately, this advice is not supported by the law.
4. Although it is normally pleaded that mistakes of Counsel should never be visited upon an innocent client there are instances when the client may not be innocent, say like when he fails to turn up at the Advocate's office to sign documents needed to be filed in Court or fails to do so in time. We have not been told that this is the case here. In fact Counsel has absolved his client of the blame and put it squarely on himself.
5. The Court has wide discretion to extend time within which the substantive Motion is to be filed if it establishes that the delay is not inordinate, is excusable and has not occasioned prejudice to the Respondents as is provided for under Order 50 Rule 6 of the [Civil Procedure Rules](#).
6. Courts of law should pay homage to their core duty of serving substantive justice in Judicial Review proceedings before them so as to ensure that justice is served.
7. This Court has wide discretion to extend the time under Order 50 Rule 6 of the Civil Procedure Rules as read with Section 9(1) of the [Law Reform Act](#).
8. In Miscellaneous Civil Application JR 8/2014 [Kenya Bureau of Standards and 3 Others V Kenya Maritime Authority Exparte Car Importers Association](#) [2014] e KLR Mureithi J held inter alia, that whereas the provisions relating to the 6 months period for commencement of proceedings for certiorari is statutory being expressed by Section 9 of the [Law Reform Act](#), the requirement for filing of the Notice of the Motion upon grant of leave is prescribed by the subsidiary legislation of the Civil Procedure Rules, which contain a Rule (Order 50 Rule 6) providing expressly for enlargement of time for doing anything prescribed under the Rules.



9. In Miscellaneous Civil Application 12/2014 *Republic Vs General Manager, Moi International Airport & Another Exparte Jared Adimo Odhiambo & Another* [2014] e KLR the Court emphasized the need to place Order 53 Rule 3 of the *Civil Procedure Rules* in consistency with Article 159 principle that justice should be administered without due regard to procedural technicalities and therefore that the Court should invoke its inherent powers to extend time to achieve substantive justice.
10. I therefore find that Order 50 Rule 6 of the Civil Procedure Rules on enlargement of time under the Rules is applicable to Judicial Review applications contemplated in Order 53 Rule 3 of the Civil Procedure Rules and even if it was not so, this Court retains its inherent power to extend the time limited by Order 53 Rule 3, as a strict application of the Rule would not be a legitimate restriction on the right of access to justice which is a constitutional right stipulated in Article 48 of the *Constitution*.
11. In *Equity Bank Limited v West Link MBO Ltd* Civil Application (Appeal) no 78 of 2011, it was held that:

“ ..... Courts of law exist to administer justice and in doing so, they must of necessity balance between the competing rights and interests of different parties but within the confines of the law, to ensure the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without it being derived from the *constitution* or statute.”
12. Although no good reasons for the failure of the Applicant to file the substantive Motion in good time have been advanced I will allow him to file the substantive Motion within the next 48 Hours from the date hereof. However, I do order the Applicant to pay to the 2<sup>nd</sup> Interested Party’s Advocates Kshs. 7,500/= within the next 7 Days as a condition to the filing of the Notice of Motion.
13. The other Interested Parties did not participate in the current Application and are therefore not entitled to the same.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 21ST DAY OF DECEMBER 2022.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

**Court Assistant: Sibota**

**Applicant: Mr. Rono**

**Respondents: Mr. Ndiritu for 1st, 3rd & 4th interested parties**

