



**Marisin; Naiguta & 4 others (Interested Parties) (Environment and Land Judicial Review Case 2 of 2021) [2022] KEELC 15176 (KLR) (5 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15176 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 2 OF 2021**

**EM WASHE, J**

**DECEMBER 5, 2022**

**IN THE MATTER OF**

**KIPNGENY ARAP MARISIN ..... APPLICANT**

**AND**

**MEPOE OLE NAIGUTA ..... INTERESTED PARTY**

**THE DISTRICT LAND REGISTRAR, TRANSMARA ..... INTERESTED PARTY**

**DEPUTY COUNTY COMMISSIONER, TRANSMARA .... INTERESTED PARTY**

**DIRECTOR OF LAND ADJUDICATION ..... INTERESTED PARTY**

**ATTORNEY GENERAL OF KENYA ..... INTERESTED PARTY**

**RULING**

1. The 2<sup>nd</sup> to 5<sup>th</sup> interested parties (hereinafter referred to as “the applicants”) have filed a preliminary objection dated September 14, 2022 (hereinafter referred to as “the preliminary objection”) challenging the legality of the exparte applicants amended notice of motion application dated August 18, 2022 (hereinafter referred to as “the judicial review application”).
2. The applicants submit that the judicial review application filed by the respondent herein offends the provisions of section 8 and 9 of the *Law Reform Act*, cap 26 Laws of Kenya.
3. Similarly, the respondent’s judicial review application again offends the mandatory provisions of order 53 rule 2 of the *Civil Procedure Rules, 2010*.
4. On the September 21, 2022, the court gave directions that the preliminary objection be canvassed by way of written submissions.
5. The applicants complied by filing their submissions on the October 13, 2022 while the respondents filed theirs on the October 26, 2022.



6. Looking at the preliminary objection and the submissions by the applicants and the respondents herein, the issues for determination are basically two.
  1. Issue No 1- Does The judicial review application filed by the respondent offend the provisions of section 8 &9 of the [Law Reform Act](#), Cap 26 Laws of Kenya?
  2. Issue No 2- Does The judicial review application filed by the respondent Offend the Provisions of 53 Rule 2 of the [Civil Procedure Rules, 2010](#)?
7. The issues for determination having been identified, the court will now proceed to review the submissions of the applicants and respondents and make its determination.

**Issue No 1- Does the judicial review application filed by the respondent offend the provisions of section 8 &9 of the [Law Reform Act](#), cap 26 Laws of Kenya?**

8. The applicants in this preliminary objection submit that the leave granted to the respondent for filing of the judicial review application was in relation to the decision of the minister emanating from the Minister Appeal No 121 of 1999 involving Land Parcels Transmara/Olosakwana“B”/1117 and Transmara/Olosakwana“B”/72.
9. According to the applicants pleadings, the minister’s decision in Appeal No 121 of 1999 was that both parcels of Land known as Transmara/Olosakwana“B”/1117 & 72 belonged to 1<sup>st</sup> interested party.
10. Consequently, the chamber summons applications filed by the respondent seeking for leave to institute the judicial review application referred to the Minister’s decision pronounced in the Minister’s Case No 121 of 1999.
11. However, after the leave to institute the judicial review proceedings was granted, the respondents filed an amended judicial review application with a prayer seeking to review and/or quash the proceedings and decision emanating from the Minister’s Appeal No 268 of 1998.
12. In other words, the applicants state that the amended judicial review application filed on the August 18, 2022 invites the court to quash the decision emanating from the Minister’s Appeal No 268 of 1998 which is different from the Minister’s Appeal No 121 of 1999 which the respondent was granted leave through the amended chamber summons application dated October 14, 2020.
13. The applicant’s conclusion is that there was no leave granted to the respondent to challenge the minister’s decision emanating from the Minister’s Appeal No 268 of 1998 and therefore the court lacks jurisdiction to entertain the amended judicial review filed on the August 18, 2022.
14. In reply to the applicants submissions, the respondent submitted that the originally, there was an objections Proceeding No 442/1981.
15. Both parties not being satisfied with the decision pronounced in the objection proceeding No 442/1981 decided to make two different appeals to the minister.
16. The respondent herein filed the Minister’s Appeal No 121/1999 and 1<sup>st</sup> the interested party filed the Minister’s Appeal No 268/1998.
17. According to the submissions of the respondent, the Minister’s Appeal No 268/1998 filed by the 1<sup>st</sup> interested party was heard and determined in favour of the 1<sup>st</sup> interested party.
18. The respondent’s Minister’s Appeal No 121/1999 is yet to be heard and determined.



19. Nevertheless, the decision of the minister from the respondent's Minister's Appeal No 268/1998 effectively rendered the respondent's Minister's Appeal No 121/1999 irrelevant as the subject matter has already been awarded to the 1<sup>st</sup> interested party.
20. It was on this basis that the respondent herein amended the substantive notice of motion and replaced the decision to be reviewed and/or quashed from Minister's Appeal No 121/1999 to Minister's Appeal No 268/1998.
21. The respondent's further submission is that the leave to amend the notice of motion dated November 9, 2020 was by consent and therefore the applicant is barred from raising any objection on the particulars of the amendments contained in the amended notice of motion application dated August 18, 2022.
22. Referring to section 9 (2) and (3) of the [Law Reform Act](#), the law provides as follows; -
  - “(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specific proceedings, be made within six months, or such shorter period as may be prescribed, after the act, or omission to which the application for leave relates.
  - (3) In the case of an application for an order of certiorari to remove any 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 judgement, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law.
23. Section 53 rule 2 of the [Civil Procedure Rules](#), cap 21 Laws of Kenya supplements the [Law Reform Act](#), cap Laws of Kenya by providing as follows; -

“Leave shall not be granted to apply for an order of certiorari to remove any judgement, order, decree, conviction or other proceedings for the purposes of its being quashed, unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any Act.”
24. The court having appreciated the provisions of both the [Law Reform Act](#) and the [Civil Procedure Rules](#), the question to be determined is whether or not leave was granted to the respondent to challenge the determination of the minister emanating from the Minister's Appeal No 268/1998.
25. The answer to this above question is in the prayers sought in the amended chamber summons application dated October 14, 2020.
26. According to prayer A of the amended chamber summons dated October 14, 2020, the respondents herein sought leave to seek for an order of *certiorari* to remove into the ELC Court for the purposes of its being quashed the decision of the Deputy County Commissioner, Transmara West in the Land Appeal to the Minister Case No 121/1999 involving the Parcel No Transmara/Olosakwana “B”/1117 and 72.



27. In line with the leave granted by the court pursuant to the amended chamber summons dated October 14, 2020, the original judicial review application filed on the November 9, 2020 further stated as follows; -
- “(1) On order of certiorari to remove into the High Court for the purposes of its being quashed the decision of the Deputy County Commissioner, Transmara West in the Land Appeal to the Minister Case No 121/1999 involving the Parcel No Transmara/Olosakwana “B”/72 and 1117 which were awarded to the 1<sup>st</sup> interested party.
28. It is therefore clear as day and night that the Leave granted to the respondent to institute judicial review proceedings of certiorari appertained to the Minister’s Appeal No 121/1999 and not the Minister’s Appeal No 268/1998.
29. The respondent’s counsel in his submission has stated that the court should allow the amendment pursuant to the provisions of the provisions of order 8 rule 5 of the *Civil Procedure Rules 2010*.
30. Order 8 rule 5 of the *Civil Procedure Rules 2010* provides that courts can exercise their discretion to allow amendments for the purposes of determining the real question in dispute between the parties therein.
31. The court is rather saddened by the turn of events in this proceeding.
32. The fact of the matter is that there is no decision pronounced in the Minister’s Appeal No 121/1999 by the Deputy County Commissioner, Transmara West.
33. In the court’s considered view, the leave granted pursuant to the amended chamber summons application dated October 14, 2020 was therefore null and void as it purported to deal with a decision that did not exist.
34. As a result of this nullity, all the respondent’s pleadings including the amended chamber summons application dated October 14, 2020, the substantive notice of motion application dated June 28, 2022 and the amended notice of motion dated 1August 8, 2022 are hereby declared annulity.
35. This court further makes a finding that it has no jurisdiction to entertain any proceedings and/or make any further determinations emanating from the purported Minister’s Appeal No 121 of 1999 as the same is still pending hearing and no decision has been made by the Deputy County Commissioner, Transmara West.
36. Order 8 rule 5 of the *Civil Procedure Rules, 2010* can not be of assistance to the respondent’s counsel as the amended judicial review application dated August 18, 2022 has been declared annulity.
37. In conclusion therefore, the court hereby makes the following orders as appertains the preliminary objection dated September 14, 2022.
1. The preliminary objection dated September 14, 2022 be and is hereby upheld.
  2. The leave to institute judicial review proceedings granted to the respondent pursuant to the order of October 15, 2020 be and is hereby declared annulity and Set-aside forthwith.
  3. The stay orders issued against the 3<sup>rd</sup> respondent on the June 21, 2022 against the decision rendered in the Minister’s Appeal No 121/1999 be and is hereby declared annulity and set-aside forthwith.



4. The amended notice of motion dated August 18, 2022 be and is hereby struck out forthwith.
5. Costs of both the amended chamber summons dated October 14, 2020 as well as the amended notice of motion dated August 18, 2022 are awarded to all the respondents herein.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 5<sup>TH</sup> DECEMBER, 2022.**

**EMMANUEL M WASHE**

**JUDGE**

**IN THE PRESENCE OF:**

COURT ASSISTANT: NGENO

ADVOCATE FOR THE 2<sup>ND</sup> -5<sup>TH</sup> interested party/applicant: MS NYAKORA

ADVOCATE FOR 1<sup>ST</sup> interested party/respondent: MR SHIRA

ADVOCATE FOR EX-PARTE applicant/respondent: MR RONo

