



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Danda v Senior Principal Magistrate Ndiwa Law Court & 3 others (Miscellaneous  
Judicial Review E013 of 2024) [2025] KEELC 1234 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1234 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**

**MISCELLANEOUS JUDICIAL REVIEW E013 OF 2024**

**FO NYAGAKA, J**

**MARCH 11, 2025**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO  
COMMENCE PROCEEDINGS IN THE NATURE OF JUDICIAL  
REVIEW FOR ORDERS OF PROHIBITION AND CERTIORARI**

**AND**

**IN THE MATTER OF THE LAW REFORMS ACT SECTION 8 AND 9 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ALL ENABLING PROVISIONS UNDER THE JUDICATURE ACT,  
THE MAGISTRATES COURT ACT, LIMITATION OF ACTIONS ACT AND ALL OTHER  
RELEVANT PROVISIONS OF THE CONSTITUTION OF THE REPUBLIC OF KENYA 2010**

**BETWEEN**

**ZADOCK NYANGAI DANDA ..... APPLICANT**

**AND**

**THE SENIOR PRINCIPAL MAGISTRATE NDIWA LAW  
COURT ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY LAND REGISTRAR HOMABAY COUNTY LAND  
REGISTRY ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY LAND ADJUDICATION OFFICER HOMABAY COUNTY  
LAND ADJUDICATION ..... 3<sup>RD</sup> RESPONDENT**

**THE HONOURBLE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**



## RULING

1. This is a Judicial Review application brought under the provisions of Order 53 Rule 3(1) of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act. The application is dated 13<sup>th</sup> November, 2024 seeking the following orders:
  1. The honorable Court be pleased to grant leave to the Applicant to apply for orders of certiorari removing into this Court for purposes of having quashed and stayed the entire proceedings before Ndhiwa SPM'S ELC No. E022 of 2024.
  2. The honorable Court be pleased to grant leave to the Applicant to apply for orders of prohibition removing into this Court for purposes of having to prohibit the Land Registrar Homa-Bay Land Registry from implementing the Judgment of the Minister pursuant to proceedings under the Land Adjudication Act in case no. 699 of 1985.
  3. Further to the foregoing, the Applicant be granted leave to apply for orders of certiorari to have the Judgment of the Minister order Appeal to Minister.
  4. Upon leave being granted the Applicant to apply for Judicial Review, such leave to operate as a stay of any further proceedings in Ndhiwa ELC No. E022 of 2024.
  5. There be no orders as to cost.
2. The application was supported by the grounds set out and the affidavit of Zadock Nyangai Danda sworn on 12<sup>th</sup> November, 2024. He stated that the Plaintiff in Ndhiwa ELC No. E022 of 2024 filed a suit seeking the court to implement a decision of the Minister delivered in 1986. He further stated that he filed a Defence and Preliminary Objection challenging the decree on the grounds that the same was obsolete and could not be implemented as the same had taken over 38 years. That a decree becomes obsolete after the expiry of 12 years. He also stated that the subordinate court cannot preside over proceedings intending to implement an obsolete decree.
3. The Applicant filed a further affidavit dated 21<sup>st</sup> January, 2025 where he attached the proceedings and ruling in Ndhiwa SPM ELC No. E022 of 2024.
4. The Respondents did not file any response to the application.

### **Submissions**

5. Counsel for the Applicant filed his submissions dated 27<sup>th</sup> January, 2025 where he identified one issue for determination being whether the application for leave to file Judicial Review application is meritorious. While submitting in the affirmative, he argues that the Plaintiff filed a suit seeking for orders that the court implements a decision of the Minister delivered in 1986. He submits that the decree by the Minister had become obsolete as 12 years had lapsed. He added that the honourable court did not have jurisdiction to implement such a decree. He argues that the 1<sup>st</sup> Respondent's actions vide her ruling dated 30<sup>th</sup> October, 2024 and the entire proceedings are administrative in nature. He urged the court to allow the application as prayed.

### **Analysis and Determination**

6. After considering the pleadings, the only issue that arises for determination is whether the application is merited.



7. Section 9 (3) of The *Law Reform Act* Cap 26, Laws of Kenya, provides as follows:

“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; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

8. In view of the above, an application for leave needs to be made within six months of the date of the judgment. In the instant case, the ruling sought to be quashed was delivered on 30<sup>th</sup> October, 2024. It is not in dispute that the application herein was filed within the stipulated timeline.

9. In the case of *Rhoda Wanjiru Kibunja v R.O Mbogo, Resident Magistrate, Children’s Court, Milimani & another* [2019] KEHC 12060 (KLR) the court held as follows:

“The power of the court to Review an administrative action is extraordinary. It is exercised sparingly, in exceptional circumstances where illegality, irrationality or procedural impropriety has been proved. This is the power the applicant is invoking in this case. However, as noted earlier, the impugned decision is a judicial function, which to me is not amenable to judicial review but is appealable to the High Court. In fact, the reasons cited by the applicant are grounds for appeal as opposed to grounds for judicial review. The applicant is on record stating that she did not appeal and that the time prescribed for filing an appeal has since lapsed, hence the reason she seeks to review the decision. The said reasoning is legally flawed, it offends the provisions of the law setting out time limits for filing appeals and seeks to open doors for a litigant to file an appeal disguised as a judicial review.”

10. It is also not in dispute that the Applicant seeks to quash and prohibit the ruling by the 1<sup>st</sup> Respondent vide the present application. I have perused the ruling dated 30<sup>th</sup> October, 2024 were the court had allowed the Plaintiff’s application dated 15<sup>th</sup> August, 2024 that sought for orders of temporary injunction.

11. That said, the outstanding question is, was the court acting in its administrative capacity? It is this court’s humble view that the impugned ruling by the 1<sup>st</sup> Respondent does not fall within the purview of judicial review. This is because the ruling impugned was delivered by the 1<sup>st</sup> Respondent in exercise of its judicial function. In making the ruling, the 1<sup>st</sup> Respondent was not acting as an administrative body but as a judicial body. It is this court’s view that the 1<sup>st</sup> Respondent’s decision was therefore judicial rather than administrative: the trail Magistrate was no acting in an administrative or quasi-judicial capacity. This is discernible from the copies of both the Complaint and Ruling annexed as ZND-1 to the Affidavit sworn by Zadock Nyangai Danda on 12<sup>th</sup> November 2024. The Complaint dated 16<sup>th</sup> June 2024 and verified by the Affidavit sworn by Joseph Olala Owino on the same date raised averments that there was a decree of the Minister that declared that parcel No. Kabuoch/Kaguria/Kaguta/184 belonged to the late father of the Plaintiff. Further, the said decision had never been reviewed, stayed or quashed. Then in the course of time, after the death of the father of the Plaintiff on 9<sup>th</sup> July, 2003 the defendant’s father fraudulently transferred the said parcel of land to his name. He gave the particulars of fraud. Upon realizing that the land had not been transferred to his late father’s name, the Plaintiff followed up with the Ministry which on 12<sup>th</sup> January, 2021 wrote to the Director of Land Adjudication



to take necessary steps to ensure the rightful owner was given his land. In sum the Plaintiff sought the relief that the Court annuls and or cancels the registration of the suit parcel of land in the name of Odanda Olala alias Danda Olala and reverts the registration to the name of Owino Mwayi (deceased). He also sought costs of the suit.

12. Clearly, the claim and reliefs sought were not for effecting the Minister’s decision. This was a claim on fraud and cancellation of title. The decisions made thereto by the first Respondent can only be and are in the judicial capacity of the said Respondent whose line of action or steps of action are stipulated in the Civil Procedure Act, Chapter 21 Laws of Kenya and the procedure thereto is detailed in Order 42 of the Civil Procedure Rules, 2010. In particular, Section 65(1) of the Act provides that “(1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court—” Section 79G of the Act then provides for appeals to be filed within 30 days of the decision, except that an extension may be sought for as permitted by law.

Further, Section 19(2) of the Environment and Land Court Act then provides that the procedure in the Civil Procedure Act applies to this Court. It stipulates that “The Court shall be bound by the procedure laid down by the Civil Procedure Act.”

13. The totality of the meaning of the above provisions is that a judicial function or power of a subordinate Court acting in that capacity in a civil matter as envisioned under Article 165(3) of the Constitution is not amenable or available to judicial review as administrative action. Rather, it is appellable in provided for in the law.
14. This Court is of the humble view that orders made by a Magistrate’s Court in exercise of its judicial function can only be appealed against, or reviewed where sufficient reason exists, instead of being subjected to judicial review. Consequently, I find that the instant application is without merit. This Court therefore dismisses it with no order as to costs. Costs are not awarded herein because the application was an Ex Parte Chamber Summons as provided by the law. The file is to be closed.
15. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM  
THIS 11<sup>TH</sup> DAY OF MARCH 2025.**

**HON. DR. IUR F. NYAGAKA,**

**JUDGE**

In the presence of,

Ms. Odera Advocate for the Applicant.

