



**Muiva v Makueni District Land Dispute Tribunal & 2 others; Muiva
(Interested Party) (Environment and Land Case Judicial Review Application
E002 of 2024) [2025] KEELC 3522 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3522 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E002 OF 2024**

EO OBAGA, J

MAY 5, 2025

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990

AND

**IN THE MATTER OF A DECISION OF THE MAKUENI DISTRICT
LAND TRIBUNAL CASE NO. 18 OF 2000 DELIVERED ON 18
TH OCTOBER, 2006 AT KILOME IN MAKUENI DISTRICT**

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW ORDERS OF CERTOIRARI OUT OF TIME**

BETWEEN

SARAH MBULWA MUIVA APPLICANT

AND

**MAKUENI DISTRICT LAND DISPUTE TRIBUNAL 1ST RESPONDENT
SENIOR RESIDENT MAGISTRATE COURT AT KILUNGU 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

AND

JOSEPH SILA MUIVA INTERESTED PARTY

RULING

1. This is a ruling in respect of Chamber Summons dated 8th April, 2024 in which the *Exparte* Applicant seeks the following orders:



1. Spent
 2. That this honourable court be pleased to grant leave to the Applicant to file an application for Judicial Review Order of Certiorari outside the Statutory period of six (6) months.
 3. That leave be granted to the Applicant to apply for Judicial Review Orders of Certiorari and Prohibition to remove into this honourable court and quash the decision of the 1st Respondent delivered on 18th October, 2006 and adopted by the 2nd Respondent as a judgment and/or decree of the court on the 4th March, 2008.
 4. That the leave so granted do operate as stay of the decision of the 1st Respondent delivered on 18th October, 2006 and adopted by the 2nd Respondent as judgment of the court on the 4th March, 2008 and implementation of the same.
 5. Costs of this application be provided by the interested party.
2. The Applicant contends that she was unable to bring Judicial Review proceedings to quash the decision of Makueni Land Disputes Tribunal which was rendered on 18th October, 2006 and was subsequently adopted as a judgment of the court on 4th March, 2008 because she was awaiting the determination of a succession cause which was pending in court.
 3. It is her contention that the delay in bringing Judicial Review proceedings was not deliberate and that she should be allowed to commence the Judicial Review proceedings. She states that the Tribunal which rendered the decision had no quorum; the Tribunal had no jurisdiction to deal with land which was registered in her name; that the Tribunal shared the land as if it was a succession court and that the tribunal did not give reasons why it arrived at the decision which was rendered.
 4. The Applicant's application was opposed by the Respondents through grounds of opposition dated 13th May, 2024. The Respondents contend that the application is fatally defective, incompetent and amounts to abuse of the process of the court. They state that the application has been brought after inordinate delay and that the Applicant has not demonstrated that he decision of the Respondents was irrational. In any case, they argue that their role ceased after the award was adopted as a judgment of the court.
 5. The Applicant's application was opposed by the Interested Party based on a replying affidavit sworn on 28th May, 2024. The Interested Party contends that this application has been brought too late and that the subject matter in issue has been settled by consent hence the same cannot be reversed.
 6. The Interested Party states that it is the Applicant who filed the succession cause and was aware of the decision of the Tribunal and therefore cannot be heard to say that she did not bring the Judicial Review proceedings due to the pending succession.
 7. The parties were directed to file written submissions. The Applicant filed her submissions dated 24th January, 2025. The Respondents filed theirs dated 27th December 2024. The Interested Party filed his submissions dated 4th February, 2025.
 8. I have carefully considered the Applicant's application, the opposition to the same by the Respondents and Interested Party, the submissions by the parties as well as the authorities cited. There is only one issue to be decided first because its determination will either pave way to the other orders or render them superfluous. The issue is whether the Applicant should be granted leave to file Judicial Review proceedings outside the 6 months statutory period provided for.



9. In the case of *Rosaline Tubei & 8 others -vs- Patrick K. Cheruiyot & 3 others* (2014) eKLR Justice Munyao stated as follows:

“It follows that a court cannot grant leave to a party seeking to file an application for Judicial Review out of time, and if such leave is granted, it can be challenged at the substantive hearing of the motion.

It is upon the exparte Applicants to find other avenues to push their grievances, for the door to access the remedy of Judicial Review, is now firmly shut and the key to open the door is not available, for it was thrown into the proverbial sea by effluxion of time”.

10. The Applicant claims that she was not able to bring Judicial Review proceedings because of the pending succession cause which has now been determined. This is not a good reason for extension of time. The Applicant was aware of the decision of the Tribunal and had every opportunity to have it quashed in the manner provided for in law. She did not do so. In fact she attempted to have the adoption of the award reviewed but her application was dismissed by the Kilungu Court.

11. The Applicant and the Interested Party together with others entered into consents which led to the sharing of the properties in issue. The consents were acted on and some of the beneficiaries have sold their portions to third parties. To grant leave to the Applicant in the face of these circumstances will cause serious injustice to the parties involved.

12. Leave for extension of time is being sought almost 18 years after the impugned decision was made. There were consents entered and to go back will clearly not be the right thing to do. I find no merit in the application for extension of time. I proceed to dismiss the application with no order as to costs as the Applicant and the Interested Party are related. The Applicant is a step mother of the Interested Party.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 5TH DAY OF MAY, 2025.

In the presence of:

Mr. Muthiani for Applicant.

Mr. Tamata for Interested Party

Court assistant – Steve Musyoki

