



**Republic v Land Registrar, Naivasha & another; Kariuki & another (Exparte Applicants) (Suing as Legal Representatives of the Estate of William Kariuki Ndirangu - Deceased) (Environment and Land Judicial Review Case E002 of 2024) [2025] KEELC 3700 (KLR) (Environment and Land) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3700 (KLR)

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

**MC OUNDO, J**

**MAY 8, 2025**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL  
REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 22, 23, 25, 27, 28,  
29, 47, 48, 50, 73 AND 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE RULES, 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE LAND REGISTRAR, NAIVASHA ..... 1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL HIGHWAY AUTHORITY (KENHA) ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**HANNAH MWIHAKI KARIUKI ..... EXPARTE APPLICANT**

**LEWIS NDIRANGU KARIUKI ..... EXPARTE APPLICANT**

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF WILLIAM  
KARIUKI NDIRANGU - DECEASED**



## RULING

1. Pursuant to the Ex-parte Applicants having been granted leave of 21 days to file their Substantive Notice of Motion for the writs of Certiorari and Prohibition, and which leave was to operate as a stay, and having filed their Substantive Notice of Motion dated the 18<sup>th</sup> March, 2024, the 2<sup>nd</sup> Respondent has now filed a Notice of Motion Application dated 28<sup>th</sup> November, 2024 brought under the provisions of Section 8 and 9 of the Law Reform Act and Order 53 Rule 3 of the Civil Procedure Rules, 2010 asking the court to review and vacate the said orders of stay, that the Notice of Motion filed herein on 21<sup>st</sup> March 2024 be struck out for want of leave and or in the alternative, the said application by Notice of Motion be dismissed for want of prosecution.
2. The said Application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Colbert Ojiambo, the 2<sup>nd</sup> Respondent's Counsel who deponed that on 26<sup>th</sup> February, 2024, the Honourable Court had granted the Ex-Parte Applicants leave to apply for orders of Certiorari and Prohibition which Application was to be filed within 21 days. That the leave so granted was to operate as stay of decision and further administrative action in relation to the suit property by the 2<sup>nd</sup> Respondent.
3. That the 21 days granted lapsed on 18<sup>th</sup> March, 2024 without the filing of the said substantive application which was only filed on the 21<sup>st</sup> March 2024 and without leave. The same was therefore a nullity and inconsequential for want of prosecution.
4. That applications for judicial review of administrative decisions or actions were urgent in nature hence where the Ex-parte Applicants had refused or failed to take steps to prosecute the matter without any justifiable cause, it was only fair and in the interest of justice that the matter be dismissed for want of prosecution as the ex parte Applicants continued to enjoy interim orders of stay against the 2<sup>nd</sup> Respondent.
5. That the leave upon which the stay was granted had lapsed and consequently the order for stay ought to be vacated. That further, substantive Notice of Motion that had been filed without leave being a nullity, there was no basis upon which the stay orders could be anchored.
6. That it was an abuse of the discretionary power of the Honorable Court and the Court process generally for the Ex-parte Applicants to continue enjoying the discretionary stay orders while failing or refusing to discharge their duty of prosecuting the matter diligently and expeditiously. That the conduct of the Ex-parte Applicants in the instant matter had been a clear indication that they had lost interest in the matter thus it was only fair that the same be dismissed to allow the 2<sup>nd</sup> Respondent discharge its administrative functions. That further, the refusal by the Ex-Parte Applicants to take steps to prosecute his case, while enjoying stay orders against the 2<sup>nd</sup> Respondent had clearly portrayed them as underserving the exercise of discretionary power in their favour hence the stay order ought to be set aside or vacated altogether.
7. In response to the 2<sup>nd</sup> Respondent's Notice of Motion Application, the Ex-Parte Applicants through its Counsel, filed a Replying Affidavit dated 12<sup>th</sup> December 2024 stating that the Application for leave under certificate of urgency had been filed physically at the Environment and Land Court in Naivasha on the 22<sup>nd</sup> February, 2024. That unfortunately, the court was not sitting on the said date wherein the file had been forwarded to the Environment and Land Court Nakuru wherein the certificate of urgency had been determined.



8. That however, due to the movement of the file between Naivasha and Nakuru Court, the orders had to be extracted at the Naivasha ELC for which the Ex-Parte Applicants had been unable to obtain the orders in good time as evidenced in the annexed copy herein which placed the date of issue of the said orders as the 29<sup>th</sup> February, 2024. That upon receipt of the orders, the Ex-Parte Applicants had then proceeded to prepare file and serve the substantive motion which was physically filed at the Environment and Land Court registry in Naivasha on the 18<sup>th</sup> March, 2024.
9. That unfortunately, the Ex-Parte Applicants had been informed that the Court had done away with physical filing of documents and that they had to proceed and apply for mapping in order to file the motion on the e-filing portal. That accordingly, counsel had applied for mapping on the same day but as the portal would show, he had only been mapped on the 21<sup>st</sup> March 2024 on which date he had proceeded to file the substantive Motion.
10. That having been issued with the orders on 29<sup>th</sup> February 2024, the 21 days period was to lapse on the 21<sup>st</sup> March 2024. That the substantive motion had been filed within time for which the slight delay had been occasioned by the Courts. That the Ex-Parte Applicants should not be made to suffer for what was beyond their control. That in any case, the Court was enjoined by Article 159 (2)(d) (sic) to administer justice without undue regard to technicalities.
11. That the 2<sup>nd</sup> Respondent's Application seeking for the court to review and vacate the order of stay whose effect was an eviction of the widow from the suit property was mischievous and in bad faith and would render the whole suit nugatory and occasion serious miscarriage of justice. That further, the alternative prayer sought by the 2<sup>nd</sup> Respondent to have the instant suit dismissed for want of prosecution was unfounded and premature. That in any event, the case herein had been filed in February 2024 and parties had been exchanging documents as late as August 2024 hence they could not understand the 2<sup>nd</sup> Respondent's haste to have the case dismissed for want of prosecution.
12. That the applicant had not been dormant for 12 months as prescribed in the general rule. He thus urged the Court to consider the nature of the present case and exercise its discretion in a manner that would enhance the administration and not miscarriage of justice and to dismiss the 2<sup>nd</sup> Respondent's Application dated 28<sup>th</sup> November 2024.
13. The 1<sup>st</sup> Respondent did not participate in the 2<sup>nd</sup> Respondent's Application.
14. The Application was disposed of by way written submissions, wherein the 2<sup>nd</sup> Respondent/Applicant summarized the factual background of the matter before framing its issues for determination as follows:
  - i. Whether the Notice of Motion filed on 21<sup>st</sup> March 2024 was filed without leave.
  - ii. Whether the Notice of Motion filed on 21<sup>st</sup> March 2024 should be struck out for want of leave.
  - iii. Whether there had been inordinate delay in prosecuting the matter by the Ex-Parte Applicant hence an abuse of the discretionary orders of stay.
  - iv. Whether the matter should be dismissed for want of prosecution and abuse of the court process.
  - v. In any event, whether the stay orders granted herein should be lifted pending the hearing and determination of the matter.
15. On the first issue for determination, the 2<sup>nd</sup> Respondent/Applicant submission was that whereas on the 26<sup>th</sup> February, 2024, the Ex-Parte Applicants been granted leave to apply for orders of Certiorari



- and Prohibition through a substantive Notice of Motion to be filed within 21 days, they had filed the same on the on 21<sup>st</sup> March 2024 the 21 days having lapsed on 18<sup>th</sup> March 2024 and this without leave for extension. Reliance was placed in the Supreme Court’s decision in the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] KESC 12 (KLR) (4 July 2014) (Ruling) as well as the provisions of Order 53 Rules 1 and 3 of the Civil Procedure Rules to submit that it was a mandatory requirement that leave be obtained first before an application for an order of mandamus, prohibition or certiorari could be made. That the Notice of Motion filed without leave was therefore a nullity and of no legal consequence.
16. While placing reliance on the decided case of *West Kenya Sugar Co Ltd v Angulu* (Appeal E004 of 2024) [2024] KEELRC 1698 (KLR) (26 June 2024) (Ruling) the 2<sup>nd</sup> Respondent submitted that time started running upon delivery of judgement or ruling, and not when the decree or Order was extracted. That it was a normal practice that a judgement or ruling would be delivered on a given date and a decree or order extracted on a different date. That however, what matters was the date of delivery and not the date when formal orders were extracted by or issued to the parties and that diligent parties always moved to extract the orders expeditiously.
  17. That the Ex-Parte Applicants did not make an attempt to apply for extension of time before filing the Notice of Motion on 21<sup>st</sup> March, 2024 and therefore the Court could not grant orders that had not been sought by a party
  18. On the third and fourth issue for determination, it had been submitted that since this matter had been filed under the certificate of urgency with strict timelines, it was in the public interest, and for proper public administration that the dispute be settled within the shortest time possible. Reliance was placed on the provisions of Section 9(3) of the *Law Reform Act*, Order 53 of the Civil Procedure Rules and the *Salat’s* case (supra).
  19. That the Ex-Parte Applicants were unapologetic for the delay and instead wondered why the 2<sup>nd</sup> Respondent was in a haste. That they had openly misled the Court that parties had been exchanging documents yet they had neither filed nor served a single document beyond the filing and serving of impugned Notice of Motion Application on 21<sup>st</sup> March 2024.
  20. That despite the matter having been urgent in nature, the Ex-Parte Applicants seem to have lost the urgency and interest in the matter after they had obtained the stay order hence it would do justice to both parties were the stay orders lifted. That the delay in taking diligent steps to prosecute the mater after obtaining stay orders was an abuse of the Court process and an injustice to the 2<sup>nd</sup> Respondent.
  21. In response and in opposition, to the application, the Ex-Parte Applicants/Respondents also summarized the factual background of the matter before framing their issues for determination as follows:
    - i. Whether the substantive Notice of Motion filed on 21<sup>st</sup> March 2024 was duly filed.
    - ii. Whether the instant suit should be dismissed for want of prosecution.
    - iii. Whether costs to follow event
    - iv. Conclusion.
  22. On the first issue for determination, it was their submission in affirmative that indeed the substantive Motion had been filled within time and that the alleged delay which was not inordinate was excusable as the same had been occasioned by the court’s migration from physical filing to virtual filling. That the delay had been beyond their control.



23. That further, the subject matter of the case being a parcel of land owned by the Ex-Parte Applicants/ Respondents as beneficiaries of the Deceased whose title had been un-procedurally revoked by the 2<sup>nd</sup> Respondent/Applicant, it would be a grievous injustice were the matter stopped because of procedural technicalities.
24. That the application herein was mischievous and made in bad faith because the effect of its grant would be the eviction of the Ex-Parte Applicants/Respondents from the suit property which would render the whole suit nugatory and occasion a serious miscarriage of justice.
25. That the general rule for dismissal of applications for want of prosecution was where the case had been dormant for at least 12 months. This did not apply to the instant matter.
26. That no urgent administrative operations by the 2<sup>nd</sup> Respondent had been stalled by the stay orders, there had been no inordinate delay occasioned by the Ex-Parte Applicants/Respondents in setting down the matter for hearing and lastly, the 2<sup>nd</sup> Respondent/Applicant had suffered no prejudice as there had been no demonstration of any purportedly stalled administrative operations.
27. That the delay had been occasioned by the mapping process after the migration from physical filing to virtual filing which could be treated as the Counsel's mistakes which should never be visited upon an innocent client (the Ex-Parte Applicants/Respondents). Further, that the court had a wide discretion to extend time within which the substantive motion was to be filed if it establishes that the delay had not been inordinate but excusable and had not occasioned prejudice to the Respondents pursuant to the provisions of Order 50 Rule 6 of the Civil Procedure Rules.
28. They placed reliance in the decided case of Republic v General Manager, Moi International Airport & Another ex parte Jared Adimo Odhiambo & another [2014] eKLR to urge the court to find that there had been a good explanation for the 3 day's delay in filing the Substantive Notice of Motion, and further that the same having already been filed, no further delay would arise. They thus urged the court to exercise its judicial discretion and enlarge the time for filing of the substantive motion in the instant case and deem the notice of motion dated 18<sup>th</sup> March 2024 as having been filed within time and was properly on record. That the court should not punish the widow whose late husband's title had been revoked without giving her reasons for the said revocation and further that she should not bear the punishment for the digital migration of the judiciary or her lawyer's mistake.
29. Further reliance was placed in the decided case of *Mwangi v Attorney General & another (Judicial Review Miscellaneous Application E020 of 2022)* [2023] KEHC 23020 (KLR) (Judicial Review) (28 September 2023) (Ruling) to urge the court not to punish the exparte Applicants for their Counsel's mistake. That it was thus in the interest of justice that the instant case be determined on merit since the matter was ready for hearing as parties had already exchanged their papers and therefore it would be a miscarriage of justice if the case was struck out due to 3 days' delay in filing the substantive motion.
30. They placed reliance in the decided case of Republic v Ethics & Anti-Corruption Commission; Ex Parte Applicant Charles Mutuma Ringera Geoffrey Monari (Interested Party) [2022] eKLR to urge the court to find that the 2<sup>nd</sup> Respondent/Applicant would not suffer any prejudice were the substantive motion dated 18<sup>th</sup> March 2024 deemed to be properly on record.
31. As to whether the instant matter should be dismissed for want of prosecution, their reliance was hinged on the provisions of Order 17 rule 2 of the Civil Procedure Rules to submit in the negative to the effect that the said prayer had been premature since at the time of filing the instant Application by the 2<sup>nd</sup> Respondent, the suit herein had been roughly 9 months in court. That in any case, parties had been



filing and exchanging documents as late as July, 2024 thus the prayer for dismissal of the case for want of prosecution had been misguided.

32. They placed reliance in the decided case of *Invesco Assurance Company Limited v Oyange Barrack* [2018] eKLR to submit that the time period provided in law for filing of application for dismissal for want of prosecution was 12 months from the last time that there had been an activity on the case. That the instant case had not even been in court for 12 months thus the prayer for dismissal could not suffice. That the Application dated 28<sup>th</sup> November, 2024 be dismissed and the substantive application dated 18<sup>th</sup> March, 2024 be deemed to be properly on record.

### **Determination.**

33. The Application before me dated the 28<sup>th</sup> November, 2024 by the 2<sup>nd</sup> Respondent seeks that the court reviews and vacates its orders of stay, and that the Notice of Motion filed herein on 21<sup>st</sup> March 2024 by the Ex-parte Applicant be struck out for want of leave. That in the alternative, the said application by Notice of Motion be dismissed for want of prosecution.
34. The reason given by the 2<sup>nd</sup> Respondent was that on the 26<sup>th</sup> February 2024, pursuant to leave of 21 days having been granted to the Ex-parte Applicants, to file their Substantive Notice of Motion seeking orders for the writs of Certiorari and Prohibition and which leave was to operate as stay of decision and further administrative action in relation to the suit property, the Ex-parte Applicants had filed their substantive application on the 21<sup>st</sup> March 2024 after the leave had lapsed on 18<sup>th</sup> March, 2024 and without seeking leave. That the said Application was therefore a nullity and inconsequential for want of prosecution.
35. In response, the Ex-partes' argument had been that the delay of 3 days was not inordinate. That the same had been caused due to the movement of the file between Environment and Land Court-Naivasha and Environment and Land Court-Nakuru. That after orders had been issued in Nakuru Court, on the 29<sup>th</sup> February 2024, they had been extracted at the Naivasha ELC for which they had been unable to obtain them in good time. That further, there had also been a delay in filing their substantive application because of the migration of the Courts from physical filing to virtual filing. That the delay had been beyond their control. That the effect of granting the prayers sought by the 2<sup>nd</sup> Respondent would result into an eviction of the widow from the suit property which would render the whole suit nugatory and occasion a serious miscarriage of justice. That the matter had been in Court for less than 12 months and therefore was not ripe for a dismissal. That there had been no demonstration brought forth by the 2<sup>nd</sup> Respondent/Applicant of any prejudice suffered or of any purportedly stalled administrative operations.
36. That a Counsel's mistake should not be visited upon an innocent client (the Ex-Parte Applicants/ Respondents) and lastly that court had a wide discretion to extend time within which the substantive motion was to be filed if it established that the delay had not been inordinate but excusable and had not occasioned prejudice to the Respondents.
37. I have thus considered the application, the arguments for and against the same, the submissions authorities and the law herein. Subsequently the issue that arises for determination is whether the Application herein should be allowed on the account that the Ex-parte's Notice of Motion dated the 21<sup>st</sup> March 2024 was filed beyond 21 days prescribed under Order 53 Rule 3 (1) of the Civil Procedure Rules.



38. Order 53 Rule 3(1) of the Civil Procedure Rules provides as follows:

“When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty one days by Notice of Motion in the High Court and there shall, unless the Judge granting leave has otherwise directed, be at least eight clear days between the service of the Notice of Motion and the day named therein for the hearing.”

39. The cause of action giving rise to the instant application is that on the 26<sup>th</sup> February, 2024, the Court had granted the ex-parte Applicants 21 days leave to apply for the orders of Certiorari and Prohibition against the Respondents, which leave was to operate as stay of the cancellation, revocation and/or expunging of records relating to title number Kijabe/Kijabe Block 1/30245 pending the hearing and determination of the Substantive Notice of Motion.

40. The ex-parte Applicants filed their Substantive Notice of Motion dated the 18<sup>th</sup> March 2024, on the 21<sup>st</sup> March 2024 which was 3 days after the lapse of the 21 days leave and without leave for extension.

41. Judicial Review proceedings under Order 53 of the Civil Procedure Rules are a special procedure wherein the law provides that the substantive Motion seeking for prerogative orders must be filed within 21 days. The Law Reform Act, which is the substantive law dealing with prerogative orders, does not provide for the enlargement of time within which a party should file the Motion.

42. The Court of Appeal in *Wilson Osolo v John Ojiambo Ochola & another* [1996] KECA 217 (KLR) held as follows:

“As can readily be seen that Order 53 Rule 2 (as it then stood) is derived verbatim from Section 9(3) of the Law Reform Act. Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil Procedure Rules, the procedure cannot be availed of the extension of time limited by statute, in this case, the Law Reform Act...

It was a mandatory requirement of Order 53 Rule 3 (1) of the Civil Procedure Rules then (and it is now again so) that the notice of motion must be filed within 21 days of grant of such leave. No such notice of motion having been apparently filed within 21 days on 15<sup>th</sup> February 1985 there was no proper application before the Superior court. This period of 21 days could have been extended by a reasonable period had there been an application under Order 49 of the Civil Procedure Rules.”

43. As was held in *Benjamin Leonard Mafay – v- United Africa Company Limited (UK) 1962 AC 152* ;

“If an act is void, then in law it is a nullity, it is not only bad, but incurably bad...and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

44. Consequently, I find that the provisions of Order 50 Rule 6 of the Civil Procedure Rules which allows the enlargement of time by the court for doing of a particular act does not come to the Ex-parte Applicant's aide and neither does Article 159 (2) of the Constitution for which reason, I find in favor of the Application dated the 28<sup>th</sup> November, 2024 and proceed to strike out the Notice of Motion dated the 18<sup>th</sup> March 2024 and filed on 21<sup>st</sup> March 2024, thereby vacating the orders of stay herein granted.

The 2<sup>nd</sup> Respondent shall have the costs.



**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

