



**Republic Between Ex-Parte James Odhiambo Onyango v Land Registrar Ugenya Sub County
(Judicial Review Application E002 of 2024) [2025] KEELC 5209 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5209 (KLR)

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

AE DENA, J

JULY 10, 2025

**IN THE MATTER OF AN APPLICATION BY JAMES ODHIAMBO ONYANGO OF 2024
FOR LEAVE TO APPLY FOR ORDERS OF CERTORARI, MANDAMUS AND PROHIBITION**

AND

**IN THE MATTER OF ARTICLES 22, 23, 40, 47,
& 50 (1) OF THE CONSTITUTION OF KENYA**

AND IN THE MATTER OF THE LAND REGISTRATION ACT NO.3 OF 2012

AND

IN THE MATTER OF SECTION 78, 79 & 80 OF THE LAND REGISTRATION ACT, 2012

AND

IN THE MATTER OF TITLE NO EAST UGENYA/JERA/1291 REPUBLIC

BETWEEN

REPUBLIC BETWEEN EX-PARTE JAMES ODHIAMBO ONYANGO

BETWEEN

**REPUBLIC BETWEEN EX-PARTE JAMES ODHIAMBO
ONYANGO APPLICANT**

AND

THE LAND REGISTRAR UGENYA SUB COUNTY RESPONDENT



RULING

1. The application before me is brought by the ex parte applicant and seeks the following verbatim orders:-
 1. Spent
 2. Spent
 2. That this Honourable Court be pleased to grant to the Applicant leave to apply for an order of certiorari to remove to this Honourable Court, for the purpose of quashing, the decision of the Respondent of cancellation of title registered as entry No. 6 on the 29th day of July, 2021 against Title No. East Ugenya/Jera/1291.
 3. That this Honourable Court be pleased to grant to the Applicant leave to apply for an order of mandamus to compel the Respondent remove the cancellation of title registered as entry No. 6 or the 29th day of July, 2021 against Title No. East Ugenya/Jera/1291.
 4. That this Honourable Court be pleased to grant to the Applicant leave to apply for an order of prohibition prohibiting the Respondent from further placing any restriction, caution and/or encumbrance against Title No. East Ugenya/Jera/1291.
 5. That the grant of leave to operate as stay of any further administrative action by the Respondent against the Applicant.
 6. That the costs of this Application be provided for.
2. The application is premised on grounds on its face and the supporting affidavit of , James Odhiambo Onyango (herein the Ex-parte Applicant.) The Ex-parte Applicant avers he is the absolute registered proprietor of the interest the parcel of land known as Title No. East Ugenya/Jera/1291 (suit property). A copy of the green card is annexed as JOO1. That he acquired the subject property in June 2006 on a willing buyer willing seller basis from the then registered owner JOSEPH MOYO. Copies of the sale agreements are annexed as JO0-1.
3. The Ex-parte Applicant depones that he has been in occupation of the property since the year 2006 and have been living side by side with the aforementioned vendor together with his family. That having purchased the said property he sub-divided the same creating two parcels of land known as Title Nos. East Ugenya/Jera/1430 and East Ugenya/Jera/1431. The process of sub-division having been approved by the Respondent. A copy of green card is annexed as JOO 3.
4. It is averred that the cancellation of entry no. 6 against the title East Ugenya/Jera/1291 by the Respondent on the 29th day of July 2021, was marred by procedural impropriety as he was condemned unheard, thus violating the rules of Natural Justice. That the continuance existence of the said cancellation lacks proportionality to the aim it seeks to achieve as it violates the Ex-parte Applicant constitutional right to own and enjoy his property.
5. That there are numerous case laws to the effect that cancellation of a title deed can only be effected through a court order and the Respondent has acted ultra vires in its mandate by failing to inform the Ex-parte Applicant of its intention to cancel the subject title despite the occupation of the subject property since the year 2006.
6. It is deponed that the Respondent did not inform the the Ex-parte Applicant of who lodged a complaint to lead to the cancellation of the said title. That as far as the Ex-parte Applicant was



concerned even the family members of the vendor were surprised by the turn of events. Further that there is no record of any formal complaint being lodged to cancel the title. That the ironic thing is that the land parcel nos. East Ugenya/Jera/1430 and 1431 still exist to date and the same are yet to be interfered with to the point that a caution was irregularly placed on the same and removed by the registrar as entry number 4 on the 9th day of October 2023 as seen in NOO3.

7. The Ex-parte Applicant desires for the record to be set straight as the cancellation of the original property East Ugenya/Jera/1291 has a bearing on the new numbers. It is reiterated that the actions of the Respondent have greatly prejudiced the Ex-parte Applicants constitutional right to peacefully enjoy his property.

Grounds of Opposition

8. The Land Registrar Ugenya Sub County entered appearance on 7/8/2024 through the office of the Attorney General and filed Grounds of opposition dated 7/8/2024. The grounds state that the application is misconceived, fatally defective, bad in law, incompetent and an abuse of the court process. That the respondent was working within their duties under section 14 of the [Land Registration Act](#). It is prayed that the suit against the respondent be dismissed costs.
9. On 25/09/2024 vide a Notice of Motion dated 25/09/2024 counsel for the applicant sought for joinder of Grace Oor Muyoyo as an Interested Party to these proceedings before the interpartes hearing of this application by dint of being the legal representative of the estate of the late Joseph Mayoyo Oor. The grant was pursuant to Ukwala Miscellaneous Succession Cause No. E041 of 2024. Further the said deceased was the one who sold the suit property to the Ex-parte Applicant and the intended party was the only surviving dependent to the estate. The application was supported by the affidavit sworn by the said Grace Oor Muyoyo and who deponed that no one in the family had requested for the cancellation of the title pursuant to the sale of the land by the deceased. Concern was raised by court on the presentation of the Interested Party by the firm of Lugano & Achura appearing for the Ex-parte Applicant. Subsequently on 3/03/25 Mr Lugano informed the court he had received a Notice of appointment from Mr. Indimuli.
10. The application dated was allowed on 3/3/2025 having not been opposed and this court having been satisfied that the Intended Interested Party is a necessary party. I then issued direction for the Interested party to respond to the present application and also issued directions on its disposal. The application was scheduled for hearing on 18/3/2025 when Mr. Indimuli informed the court he would not be objecting but would file the requisite response for purposes of the record. The court granted a further 14 days within which both Mr. Indimuli and Ms. Essendi were to respond and file submissions. Subsequently on 19/5/2025 Ms Essendi for the respondent indicated she would not file submissions and invited the court to reserve a date for ruling. Mr. Indimuli neither filed the reply nor submissions.

SUBMISSIONS

11. The Application was canvassed by way of written submissions. The applicants' submissions are dated 17/3/2025.

ANALYSIS AND DETERMINATION

12. Having considered the application and the supporting affidavit and the submissions two issues commend determination 1) Whether leave should be granted to as sought and 2) whether leave should operate as stay of any further administrative action by the Respondent against the Applicant.



13. The application has been brought under the provisions of Order 53 Rule (1)(1) and 2 of the and Sections 8 and 9 of the [Law Reform Act](#).
14. The entire Order 53 of Civil Procedure Rules provides the framework for applications for mandamus, prohibition and certiorari to be made only with leave.
15. Order 53 rule 1 provides as follows;
 - (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
 - (2) An application for such leave shall be made ex-parte to a judge in chambers and shall be accompanied by-
 - a. A statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and
 - b. Affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent over the same subject matter and that the cause of action relates to the applicants named in the application.
 - (3) The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.
 - (4) The grant of leave under this rule to apply for order of prohibition or certiorari shall if the judge so directs, operate as a stay of the proceedings in question until the determination of the application or until the judge orders otherwise.
16. Provided that where the circumstances so require, the judge may direct that the application be served for hearing interpartes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether the grant of leave shall operate as a stay may be heard and determined separately within 7 days.
17. Order 53 Rule 2 is on Time for Applying for certiorari in certain cases and is interalia to the effect that leave shall not be granted to apply for an order of certiorari to remove any judgement, order ,decree, conviction or other proceeding for purposes of it being quashed unless the application for leave is made not later than six months after the date of the proceeding
18. Section 8 of the [Law Reform Act](#) provides; -
 8.
 - (1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari.
 - (2) In any case in which the High Court in England is, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make a like order.
 - (3) No return shall be made to any such order, and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5) of this section.



- (4) In any written law, references to any writ of mandamus, prohibition or certiorari shall be construed as references to the corresponding order, and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.
- (5) Any person aggrieved by an order made in the exercise of the civil jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal.

19. Section 9 provides that:

9.

- (1) Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court—
 - (a) prescribing the procedure and the fees payable on documents filed or issued in cases where an order of mandamus, prohibition or certiorari is sought;
 - (b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;
 - (c) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made.
- (2) Subject to the provisions of sub section (3), rules made under sub section (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified 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 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.

20. The objective and purpose of the requirement for leave were explained in the case of *Road Hauliers Association of Kenya (Local Transporters) v County Government of Mombasa & 2 others (Judicial Review Application E010 of 2024)* [2024] KEHC 6257 (KLR) (30 May 2024) (Ruling) cited Republic v County Council of Kwale & Another, Ex Parte Kondo and 57 others where it was held that:

‘The purpose of application for leave to apply for Judicial Review is firstly to eliminate at an early stage any applications for Judicial Review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for Judicial Review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with the



administrative action while proceedings for Judicial Review of it were actually pending even though misconceived...Leave may only be granted therefore if on the material available before the court the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised Judicially”.

21. I must clarify that what is before me is an application for leave to apply for orders of certiorari, mandamus and prohibition and for the said leave to operate as stay of any further administrative action by the Respondent against the Applicant. It is therefore not the substantive application contemplated under order 53 rule 3 which is after the said leave is granted. I have sought to clarify this position at the earliest opportunity because my perusal of the submissions filed by counsel seem to be addressing what ought to be canvassed under the substantive Notice of Motion.
22. I have seen the grounds of opposition filed by state counsel on behalf of the Land Registrar but the same were not prosecuted or expounded upon except for the fact that the Land registrar was discharging his duties under the provisions of section 14 of the [Land Registration Act](#).
23. Order 53 rule 1 of the Civil Procedure Rules places the burden on an applicant of demonstrating that the decision made by the administrative body is illegal, unfair and irrational hence establishing a prima facie case. If the court is not persuaded that the applicant has an arguable case, leave will be denied and the matter will end there.
24. I have therefore considered the application for leave, the accompanying Statutory Statement and Verifying Affidavit sworn by the applicant from the prism of Order 53 of the Civil Procedure Rules with a view of ascertaining that the applicant has complied with the strictures of Order 53 of the Civil Procedure Rules.
25. I have noted compliance in terms of the format and the documents that must accompany the application for leave that is to say Statutory Statement and Verifying Affidavit sworn by the applicant. I have noted the alleged beneficiary interest of the applicant, the cancellation in the green card for parcel 1291 at entry No.6 dated 29/7/21 relating to entries 3,4,5 touching on James Odhiambo Onyango the applicant herein. I have also seen the entry dated 9/10/23 on the green card for parcel 1431. I am further satisfied that the applicant has prima facie an arguable case that is fit for further investigations.
26. Is there an administrative action? The provisions of the [Fair Administrative Action Act](#) therefore must come into play. The land Registrar is a government official/agent. It is stated in the grounds of opposition that the land registrar was exercising his mandate under the provisions of section 14 of the [Land Registration Act](#).
27. But we must surmount one hurdle being that of the timeline of 6 months imposed under Order 53 and section 9(3) of [Fair Administrative Action Act](#) within which the application must be brought. The decision sought to be impugned by quashing is the decision of the respondent of cancellation of title registered as entry No. 6 which entry was made on 29/07/2021. The instant proceedings were filed in July 2024. Clearly this is way out of time. I have not seen any provision for extension of time.
28. The Court of Appeal case in Wilson Osolo v John Ojiambo Ochola & another [1996] eKLR expressed itself on the issue of extension of time thus;

“It 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 that procedure cannot be availed of for the extension of time limited by statute, in this case the Law Reform Act.” There is no provision for extension of time to apply for such leave in the Limitation of Actions Act (cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a limitation period. But this Act has no relevance here.”

29. I am also guided by the case of Republic v Chairman Amagoro Land Dispute Tribunal & another Ex-parte Paul Mafwabi Wanyama [2014] eKLR wherein D. Maraga JA (as he then was) held that:-

“The judicial review proceedings before the learned judge, which have given rise to this appeal were therefore special in nature and the learned judge erred in importing provisions of the civil Procedure Act and rules to proceedings governed by the said provisions of the Law Reform Act and Order 53 Civil Procedure Rules. We agree with learned counsel for the appellant that the learned judge erred in extending time which he had no jurisdiction to do.”

30. My hands are tied as procedural rules are necessary for the delivery of justice.

31. I think Counsel for the applicant needs to go back to the drawing board and explore the alternative means by which the applicants grievances may be properly brought before the court.

32. The upshot of the above is that I must strike out the application dated 16th July 2024 for failing to meet the requirements as to time within which an application for judicial review for the orders sought must be made. There shall be no orders as to costs.

Orders accordingly.

DELIVERED AND DATED AT SLAYA THIS 10TH DAY JULY 2025

HON. LADY JUSTICE A.E. DENA

JUDGE

10/07/2025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Lugano for Exparte Applicant

Ms. Mwenda holding brief for Ms.Essendi for the Respondent

No appearance for Interested Party

Court Assistant: Ishmael Orwa

