



**Republic v Deputy Commissioner, Makueni Sub County & 3 others; Mulwa (Ex parte Applicant); Ngui (Interested Party) (Environment and Land Judicial Review Miscellaneous Application E001 of 2025) [2025] KEELC 5155 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5155 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E001 OF 2025**

**EO OBAGA, J**

**JULY 10, 2025**

**NO. 64 OF 1993**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4  
OF 2015**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF LAW REFORM ACT, CAP  
26, LAWS OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DEPUTY COMMISSIONER, MAKUENI SUB COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR LAND ADJUDICATION & SETTLEMENT OFFICER .... 2<sup>ND</sup>  
RESPONDENT**

**LAND REGISTRAR MAKUENI CUNTY ..... 3<sup>RD</sup> RESPONDENT**

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

**AND**

**FRANCIS MULWA ..... EX PARTE APPLICANT**

**AND**

**PHILIP WAMBUA NGUI ..... INTERESTED PARTY**



## RULING

1. This is a ruling in respect of a Chamber Summons dated 18<sup>th</sup> December, 2024 in which the Exparte Applicant seeks leave of the court to bring judicial review proceedings out of time. The Applicant states that on 29<sup>th</sup> October, 1978 he entered into a sale agreement with one Mwau Mwatha who sold him plot No. 1793 within Mukuyuni Adjudication Section.
2. At the time of demarcation, the Interested Party laid claim over the plot. The dispute was adjudicated upon by the Land Adjudication officer who ruled that the plot be registered for him and the Interested Party.
3. The Exparte Applicant filed an appeal to the Minister vide appeal No. 64 o 1993 (Francis Mulwa – vs- Philip Wambua Nguli). The Minister rendered his decision on 5<sup>th</sup> September, 2022 dismissing the appeal on the ground that the parties to the appeal could not be traced on the ground.
4. The suit property that is Ukia/Mukuyuni/1793 was registered in equal shares between the Exparte Applicant and the Interested Party. The Exparte Applicant was not aware of the Minister’s decision until the Interested Party casually mentioned to him that the decision of the Minister had been rendered.
5. The Exparte Applicant sought advice of an advocate who advised him that they file a suit in the Chief Magistrate’s Court. The Exparte Applicant filed a suit at the Chief Magistrate’s Court. This suit was dismissed as the magistrate had no jurisdiction to entertain it.
6. The Exparte Applicant contends that he has high chances of succeeding in his application for judicial review and that the delay in bringing the application for judicial review was because he was misadvised by his advocate. He contends that mistake of counsel should not be visited upon him.
7. The Exparte Applicant’s application was opposed by the Interested Party based on a replying affidavit sworn on 10<sup>th</sup> February, 2025. The Interested Party contends that the application is an afterthought which has been brought after dismissal of a suit which he had filed in the Chief Magistrate’s Court. The Interested Party further contends that judicial review proceedings are time bound and the Exparte Applicant has not pointed out the law which he is relying on to bring the application.
8. The Interested Party states that if the Exparte Applicant was misadvised by his erstwhile counsel, he should pursue the counsel for damages otherwise the application is misconceived, bad in law frivolous and an abuse of the process of the court.
9. The parties were directed to file written submissions. The Exparte Applicant filed his submissions dated 28<sup>th</sup> February, 2025. The Interested Party filed his submissions dated 10<sup>th</sup> March, 2025.
10. The Exparte Applicant whereas aware that there are no provisions under the Law Reform Act or Order 53 of the Civil Procedure Rules for extension of time to file judicial review proceedings resorted to Article 47 of the Constitution and heavily relied on the case of Republic –vs- Kenya Revenue Authority Exparte Stanley Mombo Amuti (2018) eKLR where the Judge while appreciating that there were no provision for extension of time to bring judicial review proceedings held that such extension can be granted where there is sufficient cause shown.
11. The Exparte Applicant also relied on the case of Kurui & Another –vs- County Adjudication Officer, Elgeyo Marakwet County & Another (Interested Party) Environment and Land Miscellaneous Application E001 of 2023) (2024) KEELC 1610 KLR (8<sup>th</sup> March, 2024 (Ruling) where the Judge



- followed the persuasive case of Republic –vs- Kenya Revenue Authority Exparte Stanley Mombo Amuti (Supra) and held that extension of time can be given where sufficient cause is shown.
12. Finally the Exparte Applicant submitted that mistake of counsel should not be visited upon an innocent party. He relied on the case of Wachira Wambugua –vs- Parliamentary Service Commission & Another (2023) eKLR where it was held as follows:
- “It is a well-established principle that mistakes of counsel should not be visited upon an innocent party unless such party was complicit in the said mistake”.
13. The Interested Party submitted that judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal and it is governed by Section 8 and 9 of the Law Reform Act which is the substantive law while Order 53 of the Civil Procedure Rules Set out the Procedural law.
14. 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”.
15. Section 9 (3) of the Law Reform Act is echoed in the Civil Procedure Rules under Order 53 Rule 2 which provides as follows:
- “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”.
16. I have carefully considered the Exparte Applicant’s application as well as the opposition thereto by the Interested Party. I have also considered the submissions by the parties and the authorities cited. The only issue for determination is whether the Exparte Applicant ought to be given extension of time.
17. As was submitted by the Interested Party, Judicial Review proceedings have special jurisdiction which is governed by the Law Reform Act and Order 53 of the Civil Procedure Rules. One cannot import any other other provisions to replace or supplement the same. In the case of Republic –vs- Chairman Amagoro Land Disputes Tribunal & Another Exparte Paul Mafwabi Wanyama (2014) eKLR Justice Maraga JA (as he was then) held as follows:
- “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 agreed with learned counsel for the Appellant that the learned judge erred in extending time which he had no jurisdiction to do”.

18. In the case of Wilson Osolo –vs- John Ojiambo Ochola & Another (1996) eKLR the Court of Appeal stated as follows:

“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”.

19. The impugned decision was made on 5<sup>th</sup> September, 2022. Even though the Exparte Applicant claims to have become aware of it in 2023, he did not do anything to file judicial review proceedings even under the provisions of the Fair Administrative Actions Act which does not require leave to do so. He instead went to file a suit in the Chief Magistrate’s Court. Even if I were to be persuaded by the persuasive decisions in Republic –vs- Kenya Revenue Authority Exparte Stanley Mombo Amuti (Supra) and Kurui & Another –vs- County Adjudication Officer, Elgeyo Marakwet County & Another (Supra), I would not have granted any extension of time to the Exparte Applicant.

20. I find that the Exparte Applicant’s application is devoid of merit. I proceed to dismiss the same with costs to 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 10<sup>TH</sup> DAY OF JULY, 2025.**

IN THE PRESENCE OF:

Mr. Kioko for Interested Party

Ms. Kellen for Exparte Applicant

Court assistant – Steve Musyoki

