



Republic v Naivasha District Land Registrar & 3 others; Macharia (Exparte Applicant) (Environment and Land Judicial Review Case 1 of 2023) [2024] KEELC 488 (KLR) (2 February 2024) (Judgment)

Neutral citation: [2024] KEELC 488 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2023**

A OMBWAYO, J

FEBRUARY 2, 2024

**IN THE MATTER OF: TIMOTHY NGANGA MACHARIA AND
IN THE MATTER OF: ARTICLES 40 AND 47 OF THE CONSTITUTION
OF KENYA, 2010, THE LAND ACT, 2007, LAND REGISTRATION
ACT, 2012 AND THE FAIR ADMINISTRATIVE ACTION ACT 2015**

-AND-

**IN THE MATTER OF: UNLAWFUL AND IRREGULAR
CANCELLATION OF NAIVASHA MUNICIPALITY BLOCK LR 8/164.**

BETWEEN

REPUBLIC APPLICANT

AND

NAIVASHA DISTRICT LAND REGISTRAR 1ST RESPONDENT

**DIRECTOR OF LAND ADMINISTRATION MINISTRY OF LAND AND
PHYSICAL PLANNING 2ND RESPONDENT**

**DIRECTOR OF SURVEYS MINISTRY OF LAND AND PHYSICAL
PLANNING 3RD RESPONDENT**

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

TIMOTHY NGANGA MACHARIA EXPARTE APPLICANT



JUDGMENT

1. On the 22nd September 2023, the ex parte applicant obtained leave to file an application for Judicial Review and was ordered to file the Notice of Motion within 21 days and filed the same on 16th October 2023 almost 24 days after leave had been granted as opposed to 21 days.
2. In the case of *Wilson Osolo v John Ojiambo Ochola & the Attorney General* CA No. 6 Nairobi of 1995 while considering whether the court has power or jurisdiction to enlarge time stipulated under Order 53 of the *Civil Procedure Rules*:

“ 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, the procedure cannot be availed of the extension of time limited by statute, in this case, the Law Reform Act.”

In the same judgment, the Court of Appeal stated:

“ 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 15th 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.”

3. The law requires that the Notice of Motion be filed within 21 days but the same was filed after 21 days without leave. I find that this court has no jurisdiction to entertain the Notice of Motion as it was filed out of time without the leave of the court. The application is hereby struck out.

JUDGMENT DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 2ND DAY OF FEBRUARY 2024.

A O OMBWAYO

JUDGE

