



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kyambi v Deputy County Commissioner - Makueni & 2 others; Mutune & another (Interested Parties) (Judicial Review Miscellaneous Application E004 of 2023) [2023] KEELC 20718 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20718 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**JUDICIAL REVIEW MISCELLANEOUS APPLICATION E004 OF 2023**

**TW MURIGI, J**

**OCTOBER 11, 2023**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION AND IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

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

**AND**

**IN THE MATTER OF A DECISION OF AN APPEAL TO THE MINISTER CASE NO 192/1994 DELIVERED BY THE DEPUTY COUNTY COMMISSIONER-MAKUENI ON 5TH SEPTEMBER 2022 OVER LAND PARCEL NO. 1713**

**BETWEEN**

**ANTONY KYALO KYAMBI ..... APPLICANT**

**AND**

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

**DIRECTOR OF LAND ADJUDICATION & SETTLEMENT-  
MAKUENI ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**SAMSON MWATU MUTUNE ..... INTERESTED PARTY**

**BENJAMIN MUSINGA ..... INTERESTED PARTY**



## RULING

1. By a Chamber Summons dated 2<sup>nd</sup> March 2023, brought under Order 53 Rules 1 and 2 of the Civil Procedure Rules 2010, Sections 8 and 9 of the Law Reform Act, Section 95 and 3A of the Civil Procedure Act and all other enabling provisions of the law, the Applicant seeks the followings orders:-
  1. Spent.
  2. That leave be granted to the Applicant to apply for Judicial Review Order of Certiorari to remove to this Honourable Court and quash the decision of the 1<sup>st</sup> Respondent delivered on 5<sup>th</sup> September, 2022 over Land Parcel No. 1713 Mukuyuni Adjudication Section.
  3. That leave be granted to the Applicant to apply for Judicial Review Order of Prohibition directing the 2<sup>nd</sup> Respondent from implementing and/or effecting the decision of the 1<sup>st</sup> Respondent delivered on 5<sup>th</sup> September 202 over land parcel No. 1713 Mukuyuni Adjudication Section.
  4. That an order of Mandamus be issued compelling the Commissioner of lands through the Minister of Lands to issue the title deeds in respect of plot No. 1713 Mukuyuni Adjudication Section to the Applicant on behalf of the Estate of Ngui Mukosi.
  5. That the leave so granted do operate as stay of the decision of the 1<sup>st</sup> Respondent delivered on 5<sup>th</sup> September 2022 over land parcel No 1713 Mukuyuni Adjudication Section and implementation of the same by the 2<sup>nd</sup> Respondent.
  6. Costs of this application be in the cause.
2. The application is premised on the grounds appearing on the Statutory Statement together with the verifying affidavit of Vincent Kyalo Kyambi sworn on even date.
3. The record shows that on 7<sup>th</sup> March, 2022, the Applicant was granted leave to commence judicial review proceedings. While granting the leave sought, the Applicant was directed to file the substantive Motion within 21 days from the date thereof. The Applicant did not file the substantive Notice of Motion as ordered.
4. When this matter came up for directions on 08/05/2023, Mr Hassan Advocate for the Applicant requested for 21 days to file and serve the substantive Motion. In addition, he informed the Court that he would be seeking for leave to cease acting for the Applicant in the event that he would not have filed the motion within 21 days.
5. The procedure for filing of the substantive motion within 21 days is set out in Order 53 Rule 3 of the Civil Procedure Rules which 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.”



6. It is clear from the above provisions that once leave is granted to apply for Judicial Review orders of Certiorari, Prohibition or Mandamus, the Applicant is expected to file the substantive Motion within 21 days from the dated of such leave.
7. The Applicant is now seeking leave of court to enlarge or extend the time for filing the motion as the time originally granted has lapsed.
8. While considering whether the court has power or jurisdiction to enlarge time stipulated under Order 53 Rule 3 of the Civil Procedure Rules, the Court of Appeal in the case of *Wilson Osolo vs John Ojiambo Ochola & the Attorney General* CA No. 6 Nairobi of 1995 held that;

“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.”
9. In the same judgement, 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 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.”
10. In the case of *Republic vs General Manager Moi Int’l Airport & Another, Exparte Jared Adimo Odhiambo & Another* it was held that the court has power to enlarge the 21 days period stipulated in Order 53 Rule 3 of the Civil Procedure Rules.
11. The Applicant having defaulted to institute the substantive motion within 21 days as stipulated in Order 53 Rule 3 of the Civil Procedure Rules should not be deprived of his cause of action on account of failure to file the motion within 21 days. In the case of *Equity Bank Limited vs West Link MBO Ltd* Civil Application (Appeal) No. 78 of 2011, it was held that:

“Courts of law exist to administer justice and in doing so, they must of necessity balance between the competing rights and interests of different parties but within the confines of the law, to ensure the ends of justice are met. Inherent power is the authority possessed by a court implicitly without it being derived from the constitution or statute.”
12. It is clear from the above authorities that this court has jurisdiction to enlarge time within which an application under Order 53 Rule 3 of the Civil Procedure Rules is to be filed, upon leave of court being granted.
13. In the end, the Applicant is hereby directed to file and serve the substantive motion within 7 days from the date hereof.

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**HON. T. MURIGI**  
**JUDGE**



**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 11<sup>TH</sup> DAY OF OCTOBER, 2023.**

**IN THE PRESENCE OF:-**

Court assistant - Mr. Kwemboi.

Kioko for the Interested Party

Hassan for the Ex Parte Applicant

