



**Republic v Cabinet Secretary for Lands, Housing & Physical Planning & 5 others;
Mbae (Exparte Applicant); Muia & another (Interested Parties) (Judicial Review
Application E007 of 2023) [2023] KEELC 20716 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20716 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
JUDICIAL REVIEW APPLICATION E007 OF 2023**

TW MURIGI, J

OCTOBER 11, 2023

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS BY KITEVU MUIA MBAE**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLES 40, 47 & 48

AND

**IN THE MATTER IOF THE LAND ADJUDICATION ACT CAP 284 LAWS OF
KENYA AND IN THE MATTER OF DECISION OF APPEAL TO THE MINISTER
DATED 2ND FEBRUARY 2022 AND IN THE MATTER OF APPEAL CASE NO. 377
OF 2017 OVER PLOTS NOS. 3503, 3504 & 1242 AT KISEKINI ADJUDICATION
SECTION (KILUNGU, MAKUENI) BETWEEN KITEVU MUIA MBAE VERSUS
MICHEAL MUYA MUIA AND IN THE MATTER OF ARTICLE 25 (C), 47 AND 50
OF THE CONSTITUTION AND IN THE MATTER OF THE LAND ACT 2012 AND
IN THE MATTER IF THE LAND REGISTRATION ACT CAP 300 LAWS OF KENYA**

BETWEEN

REPUBLIC APPLICANT

AND

**CABINET SECRETARY FOR LANDS, HOUSING & PHYSICAL
PLANNING 1ST RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 2ND
RESPONDENT**

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE LAND REGISTRAR MAKUENI 4TH RESPONDENT



**THE DEPUTY COUNTY COMMISSIONER, KILUNGU SUB COUNTY,
MAKUENI COUNTY 5TH RESPONDENT
LAND ADJUDICATION OFFICER, KISEKINI SECTION 6TH RESPONDENT**

AND

KITEVU MUIA MBAE EXPARTE APPLICANT

AND

MICHEAL MUYA MUIA INTERESTED PARTY

EZEKIEL MULUMBA INTERESTED PARTY

RULING

1. By a chamber summons dated March 14, 2023, brought under the provisions of order 53 rules 1(1), 2 and 4 of the *Civil Procedure Rules*, the Ex-Parte applicant seeks the following orders:-
 1. Spent.
 2. That this Honourable Court be pleased to grant leave to the Applicant to apply for orders of Certiorari to remove into this court and quash the decision of the Deputy County Commissioner Kilungu Sub County Makueni County delivered on February 3, 2022.
 3. That this Honourable Court be pleased to grant leave to the Applicant to apply for orders of prohibition to prohibit the Respondents from implementing the decision of the Deputy County Commissioner Kilungu Sub County Makueni County delivered on 3rd February, 2022.
 4. That this Honourable Court be pleased to grant leave to the Applicant to apply for an order of Mandamus to be issued to the Land Registrar Makueni not to issue title deeds in respect to parcels of lands known as Makueni/Kisekini/3503 and 3504 until the determination of the Judicial Review.
 5. That the leave if granted do operate as stay of implementation of the decision of the 3rd Respondent dated February 2022.
 6. That the cost of this application be borne by the Respondents.
2. The application is based on the grounds appearing in the Statement of facts together with the affidavit of Kitevu Muia Mbae sworn on even date.
3. The record shows that on 15/03/2023, the Applicant was granted leave to commence judicial review proceedings. While granting the leave sought, the Applicant was directed to file the substantive Notice of Motion within 21 days from 15th March, 2023.
4. The matter was then scheduled for mention on 04/05/2023 to confirm compliance and for further directions. When this matter came up for mention on 04/05/2023, Mr Mwenda was present for the Applicant. The Applicant had not filed the substantive motion as ordered.



5. Counsel informed the court that the Advocate who was in conduct of the matter had not filed the substantive motion on behalf of the Applicant. He informed the Court that he could not trace the Advocate and thus requested for a further 21 days to file the substantive motion.
6. 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.”
7. 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 Notice of Motion within 21 days from the dated of such leave. The Applicant is now seeking leave of court to enlarge or extend the time to file the substantive Notice of Motion.
8. The Ex-parte Applicant is now seeking for leave of the Court to enlarge or extend time for filing the motion as the time originally granted has lapsed.
9. There is no settled position as to whether the period of 21 days stipulated in Order 53 rule 3 of the *Civil Procedure Rules* can be enlarged. It is up to the court’s discretion to either enlarge time or decline to do so. In the case of *Wilson Osolo vs John Ojiambo Ochola & Another* CA 6 of 1995, the Court of Appeal held that:-

“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 of 15th February 1982, 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. There was no such application save the one dated 28th April 1994. That came too late in the day in any event and the learned judge erred in even considering the extension of time some 12 years after the event.
10. Substantive justice requires that a litigant should have his complaint heard on merit unless it can be established that such a litigant is indolent. I find that it will be in the interest of justice to extend the period to file the substantive motion within a reasonable period.
11. The Applicant is hereby directed to file and serve the substantive motion within 7 days from the date of this ruling.

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HON. T. MURIGI
JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 11TH DAY OF OCTOBER, 2023.

IN THE PRESENCE OF:-

Court assistant - Mr. Kwemboi.

