



Republic v Director of Public Prosecutions & 2 others; Irungu (Exparte Applicant); Mwoliot (Interested Party) (Judicial Review Miscellaneous Application E018 of 2024) [2025] KEHC 5927 (KLR) (13 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5927 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E018 OF 2024**

SM MOHOCHI, J

MAY 13, 2025

**IN THE MATTER OF APPLICATION FOR EXTENTION OF TIME
TO FILE SUBSTANTIVE JUDICIAL REVIEW APPLICATION**

AND

IN THE MATTER OF 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF SECTION 350 OF THE PENAL CODE

AND

IN THE MATTER OF AN APPLICATION BY

BETWEEN

REPUBLIC APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

THE DIRECTORORATE OF CRIMINAL INVESTIGATIONS

NAKURU 3RD RESPONDENT

AND

RAPHAEL MAINA IRUNGU EXPARTE APPLICANT

AND



RULING

1. Before me are two separate Applications; the 1st Application dated 24th November 2023 being where the Ex-Parte Applicant sought extension of time to file the substantive motion as per the leave granted on the 16th August 2023 and the 2nd Application is dated 5th June 2024 where the Interested Party sought to have the ex-parte applicant's entire suit struck out for being res-judicata and an abuse of Court process.
2. As the substantive judicial review motion was not filed on time this Court shall concern itself with the question whether extension of time is permissible within judicial review proceeding. If the answer is in the affirmative, then the Court shall accordingly consider the 2nd Application as to whether the proceedings are res judicata by dint of proceedings in ELC Judicial Review No. 4 of 2022 as determined.
3. This Court has considered the extensive submissions by the Ex-partte Applicant as well as the interested party.

Analysis and Determination

4. Having considered the application, the affidavits and the rival submissions, the main issue for determination is whether the Court has power to extend time to file the substantive judicial review proceedings.
5. The law governing an application for judicial review is set out in Section 9(3) of the [Law Reform Act](#) which provides that: -

“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 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.
6. The said Section is replicated in Order 53 Rule 2 of the Civil Procedure Rules which provides that:-

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
7. The provisions are quite clear that upon the lapse of six months from the date of any judgment, order, decree, conviction or other proceeding, the Court cannot grant leave to apply for an order of Certiorari and prohibition aimed at quashing the relevant judgment, order, decree, conviction or other proceeding.



8. In the case of Wilson Osolo Vs John Ojiambo Ochola & Another [1995] eKLR the Court of Appeal held that;

“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 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”.

9. A similar view was held in the case of Ako Vs Special District Commissioner, Kisumu & Another (1989) eKLR where the Court of Appeal held that:

“it is plain that under sub-section (3) of section 9 of the Law Reform Act leave shall not be granted unless application for leave is made inside six months after the date of the judgment.”

10. It is clear from the above cases that the provisions of Section 9 (3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules, 2010 are couched in mandatory terms and must be complied with.

11. In the instant application, it is clear that no formal decision exists that the Applicant is seeking to be quashed and that a similar motion in ELC No 4 of 2022 was filed and dismissed on the 29th March 2023. The Ex-Parte Applicant subsequently on the 4th August 2023 filed a similar motion seeking leave to institute judicial review proceedings in ELC Case JR No 1 of 2023 and a 7day leave was granted to which the Applicant failed to abide thereby triggering the instant motions.

12. Its trite law flowing from precedent that the Court has no power to extend time to file judicial review proceedings.

13. In the end, the Chamber Summons dated 1st Application dated 24th November 2023 is devoid of merit and the same is dismissed with costs.

14. The 2nd Application is of merit as this ex-parte Applicant has continuously filed similar motions before thereby offending the res judicata rule.

15. The interested party is awarded costs of this Application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 13TH DAY OF MAY, 2025.

MOHOCHI SM.

JUDGE

