



**Republic v Chief Officer, Finance, County Government of Kisumu & 3 others;
Masinde (Suing as Guardian and Next Friend to Eileen Ondече Malango) (Exparte)
(Judicial Review 23 of 2022) [2024] KEHC 225 (KLR) (22 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW 23 OF 2022
RE ABURILI, J
JANUARY 22, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF OFFICER, FINANCE, COUNTY GOVERNMENT OF
KISUMU 1ST RESPONDENT**

**CHIEF OFFICER, MEDICAL SERVICES, COUNTY GOVERNMENT OF
KISUMU 2ND RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT KISUMU 3RD
RESPONDENT**

**HEALTH ADMINISTRATIVE OFFICER, JARAMOGI OGINGA ODINGA
TEACHING AND REFERRAL HOSPITAL 4TH RESPONDENT**

AND

**LIVINGSTONE MALANGO MASINDE (SUING AS GUARDIAN AND NEXT
FRIEND TO EILEEN ONDECHE MALANGO) EXPARTE**

JUDGMENT

1. On the 9th Day of November, 2022, this Court, Kamau J, Judge, granted the exparte applicant herein leave to institute Judicial Review proceedings in the nature of Mandamus to compel the respondents herein to settle decree in the sum of Kshs one million Kenya shillings which remains due and owing to the exparte applicant vide judgment delivered on 26th August, 2019, in Kisumu CMCC No 217 of 2017. The aforesaid leave was granted vide HC JR Application No 20 of 2022.
2. The substantive Notice of Motion which is dated 21st November, 2022 was filed on 9th February, 2023.



3. The applicant's notice of motion seeks for the following Judicial Review order and other orders:
 1. An Order of Mandamus is hereby issued to the respondents to pay the exparte applicant the sum of Kshs 1,000,000 being decretal amount in Kisumu CMCC No 217 of 2017.
 2. That costs of this application be provided for.
4. The application which is expressly brought under the provisions of Order 53 Rules 3 and 4 of the *Civil Procedure Rules* and all other enabling provisions of the law and gives grounds upon which the application was predicated, commencing with an assertion that leave to apply was sought and granted by the court vide JR Application No E020 of 2022.
5. Before delving into the merits of the Judicial Review application, that is, if I have to, my attention has been attracted to the fact that albeit the application was not opposed at all as argued orally, despite evidence of service of the application upon the respondents, the question that I must answer is whether this application is competently before this court for determination on merit.
6. I say so because the order for leave was granted on 9th November, 2022 yet the substantive motion was filed on 9th February, 2023, which was exactly sixty (60) days from the date when leave was granted.
7. Examining the order issued on 9th November, 2022 for leave to apply, it does not specify the timelines within which the substantive motion ought to have been filed. However, as the application was specifically brought under Order 53 of the *Civil Procedure Rules*, that provision stipulate the timelines within which the applicant who is granted leave to apply for judicial review orders should file the substantive motion. Order 53 Rule 3 (1) of the *Civil Procedure Rules, 2010* 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 to the high court, and there shall, unless the judge granting leave otherwise directed, be at least eight clear days between service of the notice of motion and the day named therein for the hearing.” [emphasis added]
8. The provisions of the law as cited above give timelines within which the substantive motion should be filed and therefore the court granting leave need not specify the period which is already specified, unless the court is giving a different timeline which is less than the 21 days stipulated in the provision.
9. This court has on various occasions and in various decisions all over Kenyalaw.org pronounced itself on such matters that where leave is granted and the application is filed outside the period stated by the court or as stipulated by the provisions of Order 53 of the *Civil Procedure Rules*, the court may, on application, enlarge such timelines. See *Republic v Public Procurement Administrative Review Board Ex-parte Syner- Chemie Limited* [2016] eKLR; *Republic v Speaker of Nairobi City County Assembly & another Exparte Evans Kidero* [2017] eKLR; *Republic v Public Procurement Administrative Review Board & another; Mer Security & Communications System Ltd/Megason Electronics & Control 1978 (IV) & another (Interested Parties); Exparte Magal Security Systems Ltd/Firefox Kenya Limited (IV)* [2019] eKLR.
10. In the latter case, the court stayed, quite clearly that where the timelines have expired and no leave was sought and obtained to enlarge the time, the application was incompetent and amenable for striking out.
11. This is exactly what I am faced with here. The applicant after obtaining leave to apply for judicial review orders of mandamus on 9th November, 2022, he went to slumber until 9th February, 90 days later is



when he filed the substantive notice of motion. This must have been under the assumption that leave that was granted to apply did not have a time limit or expiry term. He was obviously wrong. I will of course say nothing to do with reasons for the delay because what is before me is not an application for enlargement of time.

12. In the end, I find the application dated 21st November, 2022 filed on 9th February, 2023 pursuant to the order for leave granted on 9th November, 2022 fatally incompetent. I proceed and strike it out with no orders as to costs. This file is closed and no further proceedings shall be filed herein. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22ND DAY OF JANUARY, 2024

R.E. ABURILI

JUDGE

