



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JUDICIAL REVIEW NO. E013 OF 2021**

**M'AITUMITU KAMAU ..... APPLICANT**

**VERSUS**

**DISTRICT LAND ADJUDICATION &**

**SETTLEMENT OFFICER ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**PASILIUS MBOYA M'MINGANE ..... 1<sup>ST</sup> INTERESTED PARTY**

**DANIEL RWITO ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The court is tasked to determine the application dated 5<sup>th</sup> July 2021 seeking for leave to commence judicial review proceedings against the decisions made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in favour of the interested party on 31.8.2016.
2. The interested parties through a preliminary objection dated 4.10.2021 object to the application for being brought contrary to **Order 53 rule 2** of the **Civil Procedure Rules**.
3. Prior to 2010, the substantive law governing judicial review was **Sections 8 and 9** of the **Law Reform Act Cap 26 Laws of Kenya** and **Order 53. Articles 22, 23 and 47** of the **Constitution** and the **Fair Administrative Actions Act 2015** currently supplement the previous provisions of the law as held in ***Communications Commission of Kenya -vs- Royal Media Services Ltd. & 7 Others [2014] eKLR***.
4. Under **Section 13 of Fair Administrative Actions Act**, the Chief Justice is mandated to enact rules to operationalize the law. **Article 23** of the Constitution makes a proviso that notwithstanding lack of these rules, a party may not be denied a chance to present his claim and have it determined by the court.
5. The jury is still out there as to whether or not the above Constitutional framework should settle the prevailing intricacies and obscurities which hamper effective redress to and access to justice by adopting a flexible approach.
6. In ***Wilson Osolo -vs- John Ojiambo Ochola & Attorney General [1995] eKLR*** the court held:

***“As can readily be seen ----- Order 53 Rule 2 is derived from Section 9 (2) of the Law Reform Act. Whilst the time limited for doing something under 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 ***Republic -vs- Council of Legal Education & Another Exparte Subina Kasamia & Another [2018] eKLR*** the court held **Section 9 (3) of the Law Reform Act is couched in mandatory terms “shall” and imports a form of command or mandate and that Parliament prescribed a period of six months within which application of certiorari may be brought and a court has no discretion to extend time.**

7. In ***Felix Kiprono Matagei -vs- Attorney General: Law Society of Kenya (Amicus Curiae) [2021] eKLR*** it was held though **Fair Administrative Actions Act** does not allude to **Section 8 and 9 of the Law Reform Act** and **Order 53**, it by implication, supplants, them

and firmly placed judicial review under the **Fair Administrative Actions Act**. The court further held failure by parliament to repeal **Section 8 & 9** of the **Law Reform Act**, has led to continuing confusion as regards the procedure for institution of judicial review proceedings. The court nevertheless found the said sections still constitutional.

8. It is also noteworthy that Fair **Administrative Actions Act** does not make any reference to the requirements for leave before the institution of judicial review. **Section 9 (1)** thereof provides an application for judicial review shall be heard and determined without undue regard to procedural technicalities.

9. Further, **Section 14** of the **Fair Administrative Actions Act** on transitional provisions states the practice and procedure prevailing before the enactment of this **Act** shall be followed and in case of difficult or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted.

10. In the instant case, the ex parte application is made under **Section 8 & 9 of the Law Reform Act** and **Order 53 of the Civil Procedure rules**. This court lacks powers to entertain a claim for certiorari made outside the timelines provided under **Section 8 & 9 of the Law Reform Act**.

11. I find the preliminary objection meritorious. The same is upheld and the proceedings herein dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2021**

**In presence of:**

Karimi for petitioner

Kimathi for 1<sup>st</sup> and 2<sup>nd</sup> respondents

Court Clerk: Kananu

**HON. C.K. NZILI**

**ELC JUDGE**