



**Republic v Cabinet Secretary, Ministry of Lands and Housing & 2 others;
Musyimi (Suing as the Administrator of the Estate of Musyimi Kilonzo) (Ex parte Applicant); Muthoka & another (Sued as the Administrator of the Estate of Mwangangi Muthoka) (Interested Party) (Environment and Land Miscellaneous Application E032 of 2024) [2025] KEELC 4654 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4654 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E032 OF 2024**

AY KOROSS, J

JUNE 24, 2025

BETWEEN

REPUBLIC OF KENYA APPLICANT

AND

THE CABINET SECRETARY, MINISTRY OF LANDS AND HOUSING 1ST RESPONDENT

THE REGISTRAR OF LANDS, MINISTRY OF LANDS AND HOUSING 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

GODFREY KISWII MUSYIMI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MUSYIMI KILONZO) EX PARTE APPLICANT

AND

ANDREW MUTHAISU MUTHOKA & NDOLO MWANGANGI (SUED AS THE ADMINISTRATOR OF THE ESTATE OF MWANGANGI MUTHOKA) INTERESTED PARTY

RULING

1. In the notice of motion dated 14/08/2024 that is the subject of this ruling and has been filed by the ex parte applicant, he seeks the following reliefs from this court: -



- a. Spent.
 - b. Spent.
 - c. The ex parte applicant be granted leave to file judicial review proceedings out of time against the judgment of the deputy county commissioner, Masinga sub-county, dated the 7/06/2023, which judgment is not aligned with the findings /directions of this court delivered on the 24/04/2020 in HC(JR) 112 of 2017; Republic vs The Cabinet Secretary, Ministry of Lands and Housing ex-parte Musyimi Kilonzo.
 - d. Leave be granted to the ex parte applicant to commence judicial review proceedings for a declaration that the 1st respondent's decision contained in the judgement issued by DCC, Masinga sub-county on 7/06/2023 is flawed, illegal, unconstitutional, null and void.
 - e. Leave be granted to the ex parte applicant to commence judicial review proceedings of certiorari to quash the decision of the 1st respondent contained in a judgment issued by the DCC, Masinga sub-county on 7/06/2023 in Land Adjudication Appeal No.228 of 2007 in respect of parcels of land nos. 2XX0 & 2XX1, Kangundo/Masinga Adjudication Section and Land Adjudication Appeal No. 77 of 2007 in respect of parcel of land no. 2XX1, Masinga/Kangundo Adjudication Section.
 - f. An order of prohibition does issue to deter the 2nd respondent from registering the interested party (IP) or any other person as the lawful proprietors of land parcel nos. 2XX1, 2XX0 and 2XX1 Masinga/Kangundo Adjudication Section.
 - g. An Order of mandamus does issue to compel the 1st respondent to align its decision contained in the judgement issued on 7/06/2023 in Land Adjudication Appeal No. 228 of 2007 over land parcel nos. 2XX0 & 2XX1 and Appeal No. 77 of 2007 over land parcel no. 2XX1 Masinga/Kangonde Adjudication Section with judgement in Machakos High Court Judicial Review Case No. 112 of 2017.
 - h. THAT the leave so granted does operate as a stay of the decision of the 1st respondent contained in the judgment issued by the DCC, Masinga on 7/06/2023 in Land Adjudication Appeal No. 228 of 2007 as well as Land Adjudication Appeal No. 77 of 2007.
 - i. The costs of this motion be provided for.
2. It is observed that the court was moved by a motion instead of a chamber summons as provided for under Order 53 Rule 1 (2) of the Civil Procedure Rules (CPR). Moreover, the motion is not supported by a verifying affidavit or statutory statement as required by law, but is supported by grounds contained on its face and the supporting affidavit of Godfrey Kiswii Musyimi, sworn on 14/08/2024, and in summary, it was stated inter alia: -
- a. The 180-day mandatory period for filing judicial review lapsed before filing the proceedings.
 - b. The delay in filing the proceedings was occasioned by the failure of the DCC Masinga sub-county to notify the ex parte applicant of the availability of the judgment, and he only came to learn of it after the mandatory period had lapsed.
 - c. The ex parte applicant is apprehensive that it was orchestrated with the sole aim of denying him justice.
 - d. The ex parte applicant is aggrieved by the whole judgment rendered on 7/06/2023, delivered by the DCC Masinga sub-county, which he received at Nairobi Lands Registry on 3/05/2024.



- e. The ex parte applicant is apprehensive that the 2nd respondent intends to register the suit properties in favour of the interested party (IP) herein to the ex parte applicant's detriment, yet he has always been in occupation thereof since childhood.
 - f. That unless this court intervenes, there is an eminent danger that the 2nd respondent will proceed and register the said suit properties in favor of the IP, thus denying him an opportunity to enjoy the right to property which is enshrined in *the Constitution* of Kenya 2010, in which event the ex parte applicant is poised to suffer irreparable loss, harm and damage.
 - g. In the premises, an order for enlargement of time and stay is necessary to forestall threats to subversion of justice, and losses which may not be recouped on successful judicial review.
3. The motion was opposed on the grounds of opposition filed by the respondents dated 15/10/2024, which briefly raised the following grounds: -
- a. The ex parte applicant's motion is fatally defective, incompetent, malapropism and untenable both in substance and form and contrary to the provisions of Order 53 of the CPR.
 - b. The motion is devoid of merit as it fails to demonstrate that the purported actions of the respondents were laced with abuse of process, were against the rules of natural justice and ultra vires.
 - c. That the motion is a non-starter, and as the ex-parte applicant has moved this court through the wrong forum, as they are more concerned with a claim of land ownership rather than the procedure used in the allocation process.
4. By a replying affidavit, Mathew Muthaisu Muthoka opposed the motion on 23/10/2024 and he stated that, (a) it is not true that the judgment in Land Adjudication Appeal Nos. 228 of 2007 and 77 of 2007 were delivered on 7/6/2023 as the ex-parte applicant alleges, b) the two appeals were heard on 7/6/2023 and 8/6/2023 and the judgment was later read and delivered in the presence of all the parties on 31/8/2023, and therefore, the ex-parte applicant's allegation that he was not notified of the judgment and that he waited for the same in vain is false and misleading; and
5. C)The ex-parte applicant has not annexed any letter to show that he requested to get a copy of the DCC's judgment before 3/5/2024, and as such, he is not being truthful in stating that he made several visits to various offices inquiring about the same d) the ex-parte applicant is not in occupation and has never been in occupation of the suit properties, lastly, e) the impugned judgment is neither illegal nor is it contrary to the directions given in Machakos High Court Judicial Review Case No. 112 of 2017.
6. As directed by the court, the motion is canvassed by way of written submissions that this court received from the law firm of M/s. Mutwa & Obado Advocates for the ex parte applicant, and Mr. Kuria, Senior State Counsel, for the respondents.
7. Thus, upon carefully considering the pleadings and rival submissions, including the well-cited provisions of law and authorities, the issues that befall this court for determination and shall be handled simultaneously are: -
- a. Whether the judicial review proceedings are statutorily barred.
 - b. Whether the application is merited.



a. Whether the judicial review proceedings are statutorily barred.

8. The relevant provision of law on this issue of time is found in Section 9(2) and (3) of the Law Reform Act, which stipulates thus: -

(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.

(3) 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 that 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.”

9. These provisions of law are replicated within the provisions of Order 53 Rule (2) of the Civil Procedure Rules, which provides as follows:

“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.”

10. In this case, counsels took a contrarian position as to the interpretation of these provisions of the law, with the ex parte applicant relying on the persuasive decision of Kurui & another v County Adjudication Officer, Elgeyo Marakwet County & another; Kisang (Interested Party) [2024] KEELC 1610 (KLR) which held that all law must conform to the constitutional edifice and that the provisions of Sections 8 and 9 of the Law Reform Act and Order 53 of the CPR must be read conform to the Constitution or be construed with such adaptations, alterations, modifications. This decision concluded that the court can extend the time for filing judicial review proceedings.

11. However, this decision is persuasive. It is observed that the Court of Appeal decision of Republic v Kenya National Highways Authority & 2 others ex-parte Amica Business Solutions Limited [2016] eKLR, which is binding on this court was rendered post 2010 Constitution, and it affirmed its earlier pre 2010 position and maintained that Order 53 Rule 2 of the CPR is couched in mandatory terms; leave shall not be granted unless an application for leave is made not later than 6 months after the date of the decision. In this decision, the court stated: -

“We are persuaded in this respect by the High Court decision in The Goldenberg Affair Ex-parte Hon. Mwalulu and Others, HCMA No. 1279 of 2004 [2004] eKLR, and Republic vs The Commissioner of Lands Ex-parte Lake Flowers Limited Nairobi, H.C. Misc. Application No. 1235 of 1998 where the courts held that the six (6) months limitation period set out in order 53 Rules 2 and 7 only applied to specific formal orders mentioned in



Order 53 Rules 2 and 7 and to nothing else, certainly not to contents of one private letter in response to another.”

12. In another decision of the Court of Appeal of *Wilson Osolo v John Ojiambo Ochola & Another* 1995 eKLR, the court held thus;

“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 of for 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 of the Laws of Kenya which gives some limited right for extension of time to the suits after expiry of a limitation period. But this Act also has no relevance here.”

13. As can be seen, the provisions of Section 9(2) and (3) of the *Law Reform Act* and Order 53 Rule (2) of the Civil Procedure Rules have been interpreted by the courts of a higher hierarchy than this court and suffice it to say, the doctrine of stare decisis comes to the fore. It is quite clear that upon the lapse of 6 months from the date of delivery of a judgment, order, decree, conviction or other proceeding, the court is constrained from granting leave to entertain judicial review proceedings over the said judgment, order, decree, conviction or other proceeding.

14. Given the foregoing, and in agreement with the respondents' counsel, this court finds that the motion is time-barred and this court is constrained from entertaining it. It is therefore unnecessary to address the 2nd issue. Consequently, it is this court's ultimate finding that the motion dated 14/08/2024 is not merited. It is thus dismissed with costs to the respondents and the interested party. This file is hereby effectively marked as closed.

Orders accordingly

DELIVERED AND DATED AT MACHAKOS THIS 24TH DAY OF JUNE, 2025.

HON. A. Y. KOROSS

JUDGE

06.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Obado holding brief for Mr. Mutwa for applicant.

Miss Mwau for Interested Party.

Mr. Kuria for Respondent.

Ms Kanja- Court Assistant.

