

supporting affidavit sworn on 10th December, 2014.

2. The Exparte Applicant named Symphrose Okalo Madegwa, County Land Registrar, Busia and The Attorney General as the 1st to 3rd Respondent respectively. The court notes that there is no evidence of service of the application on any of the three respondents but the 1st Respondent must have been served as she filed a replying affidavit sworn on 3rd February, 2015 in opposition. When the application came up for hearing on 15th June, 2015, Mr. Okutta and Mr. Wamalwa advocates for the Exparte Applicant and 1st Respondent respectively presented their rival submissions.
3. The following are the main issues for the court's determination in this matter;
 - a. Whether leave to apply for the judicial review orders was obtained within six months of the date of the decision sought to be quashed.
 - b. Whether judicial review orders can issue under Order 51 of the Civil Procedure Rules.
 - c. Whether the Exparte Applicant is entitled to the prayers sought.
4. The court has considered the grounds on the application, submissions by both counsel, the supporting and replying affidavits and find as follows;

(a) That the application dated 10th December, 2014 was filed with the Applicant's affidavit sworn on the same date, to which he annexed documents particularized hereinbelow;

- I. Mutation form for North Teso/Kocholia/2107 consisting of four pages,
- II. Sketch map,
- III. Copy of a ruling in Busia ELC. No. 143 of 2013. (formerly H.C.C. No. 21 of 2007),
- IV. Copy of an order issued in Busia ELC. Misc. Civil App. No. 95 of 2015 granting Exparte Applicant leave to file the substantive application and stay orders in Busia ELC. No. 143 of 2013,
- V. Copy of the order issued in Busia H.C.C.C. No. 21 of 2007.

The court notes that, though the Applicant had in paragraphs 2 of the affidavit indicated that a copy of the title deed for North Teso/Kocholia/1223 marked SEE 1 had been annexed, none was traced in the court record.

b) That applications for judicial review are guided by Order 53 and not Order 51 Rules 1, 2 and 3 of the Civil Procedure Rules that was cited by the Exparte Applicant. Order 51 of the Civil Procedure Rules makes provisions for applications other than those of judicial review. The application is therefore defective.

c) That before filing an application for judicial review orders, a litigant is required under Order 53 Rule 1 of the Civil Procedure Rules to apply for leave [*see Lady Justice Joyce Kahminwa -v- Judicial Service Commission & Another [2014] eKLR*]. Under sub rule (2), the application for leave is required to be accompanied by a statement of facts. "**setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought and by affidavits verifying the facts relied on.**"

Though the applicant has annexed a copy of the order dated 25th November, 2014 issued at Bungoma in *Busia ELC. Misc. App. No. 95 of 2014*, granting leave and directing that the leave do operate as stay in Busia ELC. No. 143 of 2013, the copies of the statement of facts and affidavits verifying the facts, if any, were not annexed. This court is therefore unable to confirm whether the Exparte Applicant complied with Order 53 Rule 1 (2) of the Civil Procedure Rules at the stage of filing the application for leave.

1. That in absence of the statement of facts and verifying affidavits, the court is unable to confirm whether the orders, and or decisions the Exparte Applicant seeks to have called into this court and

quashed were issued within six months of the date the application for leave was made. The provision of Order 53 Rule 2 of the Civil Procedure Rules do not allow leave to file for orders of certiorari to be granted if not applied for before the expiry of six months from the date of the order or decision complained of. This court has no jurisdiction to extend the statutory period as confirmed in the following decisions from the superior courts: **Republic -v- Chairman Amagoro Land Disputes Tribunal & Another, Exparte Applicant, Paul Mafwabi Wanyama Kisumu, CACA No. 41 of 2013, James Githinji Kiara -vs- William Wachira Mwaniki [2005] eKLR, Kimanzi Mboo -vs- David Mulwa CACA No. 233 of 1996 and Wilson Osolo -vs- John Onjiambo & Another [1991]eKLR.**

E) That the Exparte Applicant has not challenged the 1st Respondent affidavit evidence sworn on 3rd February, 2013 that the subdivisions and transfers that he seeks to have quashed were transacted between 1994 and 1997. This court is of the considered view that had the court dealing with the application for leave been aware of these facts, the court would not have granted the leave application. The court would have noted that the Exparte Applicant had been indolent and the proceedings he intended to commence would be frivolous, vexatious, statute barred and an abuse of the process of the court. The route for judicial review is therefore not available to the Exparte Applicant .(see **Rosaline Tubei & 8 others -vs- Patrick K. Cheruiyot & 3 others** [2014] eKLR, where the Honourable judge cited the case of **Republic -v- Mwangi Ngugi & 3 others, Exparte Haru Nguyai** and **Republic -v- The Minister for Lands and Settlement & others** Mombasa HCMCA. No.1091 of 2006 and made the following finding which this court agrees with;

“ 17. It is upon the Ex- parte applicants to find other avenues to push their grievances, for the door to access the remedy of judicial review is now firmly shut and the key to the door is not available for it was thrown into the proverbial sea by effluxion of time.”

5. That having found as above, the court finds that the application dated 10th December, 2014 must fail and the following orders are issued;

- a. The application dated 10th December, 2014 is hereby dismissed with costs.
- b. That the order staying proceedings and or decree in **Busia ELC. No. 143 of 2013** (formerly Busia H.C.C.C. No. 21 of 2007), issued at Bungoma on 25th November, 2014 in Busia Misc. App. No. 95 of 2014 be and is hereby vacated.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON.....8th ..DAY OFJuly,.....2015.

IN THE PRESENCE OF;

EXPORTE APPLICANT.....absent.....

1ST RESPONDENT..... Present.....

2ND RESPONDENT.....Absent.....

3RD RESPONDENT..... Absent

COUNSEL.....Mr. Okutta for Applicant and Mr. Fwaya for Situma for 1st Respondent.

JUDGE.

