



**Republic v Cabinet Secretary in Charge of Lands & 2 others; Janmohamed, the Administrator/Executor of the Late Daniel Toroitich Arap Moi & another (Interested Parties); Kapchelogol Family & 6 others (Ex parte) (Environment and Land Judicial Review Case 3 of 2023) [2025] KEELC 6283 (KLR) (16 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6283 (KLR)

**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 3 OF 2023**

**L WAITHAKA, J**

**SEPTEMBER 16, 2025**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**BY KAPCHELOGOL, KAPLOBAUK, KAPLOCHURIA, KAPKIYAI, KAPTOWERO, KAPCHANGOLE, KAPCHULIARIKOW AND KAPKABEL FAMILIES**

**FOR**

**JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AGAINST**

**THE DECISION OF THE DEPUTY COUNTY COMMISSIONER MARIGAT SUBCOUNTY, JOB ANUNDA, DATED 14TH SEPTEMBER, 2021 AND 27TH OCTOBER, 2021**

**AND**

**IN THE MATTER THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA AND THE CONSTITUTION OF KENYA, 2010 AND FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF THE DECISION OF THE DEPUTY COUNTY COMMISSIONER MARIGAT SUB COUNTY, JOB ANUNDA, DATED 14TH SEPTEMBER, 2021 AND 27TH OCTOBER, 2021 TO ORDER THAT THE LAND DISPUTE OVER LAND PARCEL NUMBER 1168 - MAJI NDEGE B CAN ONLY BE DISCUSSED WITH A VIEW TO COMPENSATION AS BETWEEN SAMUEL CHERONO AND THE ESTATE OF DANIEL T. ARAP MOI TO THE EXCLUSION OF THE EX PARTE APPLICANTS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**



THE CABINET SECRETARY IN CHARGE OF LANDS ..... 1<sup>ST</sup> RESPONDENT  
DEPUTY COUNTY COMMISSIONER, MARIGAT SUB COUNTY .... 2<sup>ND</sup>  
RESPONDENT

LAND ADJUDICATION OFFICER, BARINGO COUNTY .... 3<sup>RD</sup> RESPONDENT

AND

ZEHRABANU JANMOHAMED, THE ADMINISTRATOR/EXECUTOR OF THE  
LATE DANIEL TOROITICH ARAP MOI ..... INTERESTED PARTY

LAKE BOGORIA SPA RESORT ..... INTERESTED PARTY

AND

KAPCHELOGOL FAMILY ..... EX PARTE

KAPLOCHURIA FAMILY ..... EX PARTE

KAPKIYAI FAMILY ..... EX PARTE

KAPTOWERO FAMILY ..... EX PARTE

KAPCHANGOLE FAMILY ..... EX PARTE

KAPCHULIARIKOW FAMILY ..... EX PARTE

KAPKABEL FAMILY ..... EX PARTE

## RULING

### Introduction

1. Vide a ruling delivered on 23rd May, 2023 this court found the ex parte applicants' suit herein defective in that:-

“...the suit does not meet the legal threshold set out in Order 1 Rule 13 of the Civil Procedure Rules and the case of Phares Omondi Okech supra in that families are not legal persons capable of instituting and sustaining suits in their own names...”

2. Despite having determined that the suit is defective, for reasons given in the ruling, this court deemed the identified defects curable by seeking and obtaining leave of the court to amend the pleadings to accord with the law.
3. In exercise of the powers conferred on it by Sections 3A and 100 of the *Civil Procedure Act*, the court granted the deponent of the affidavit sworn in verification of the suit, John Kandie, leave to amend the pleadings by listing the members of the families represented in the suit in his pleadings and filing the requisite authority to file the suit.
4. On 16<sup>th</sup> September, 2024 counsel for the ex parte applicants addressed the court as follows: -

“We had sought instructions to amend the notice of motion and statements. I will be filing an application to seek leave to amend the application and statements.”



5. Pointing out that vide the ruling of this court delivered on 23<sup>rd</sup> May, 2024 the applicants were given leave to amend their pleadings and contending that the applicants were out of time yet no reason had been given for failure to amend the pleadings, counsel for 1<sup>st</sup> interested party, Mr. Kere, raised an objection to the applicants' notified intention to file an application seeking leave to amend their motion and statements.
6. Concerning the notified intention to seek leave to amend their application and statements and the objection by counsel for the 1<sup>st</sup> interested party, this court ordered/directed the ex parte applicants to file a formal application to amend the notice of motion, if they so wished. The court also directed parties to take a date at the registry once the application was filed.
7. The ex parte applicants filed the intended application on 28<sup>th</sup> February, 2025.
8. By the time the ex parte applicants filed their intended application, that is to say, on 28<sup>th</sup> February, 2025, the 1<sup>st</sup> interested party, had filed a notice of motion application, dated 4<sup>th</sup> February 2025, seeking to dismiss the suit for none compliance with the order of this court issued on 23<sup>rd</sup> May, 2023.
9. On 18<sup>th</sup> March, 2025 the court directed that the two applications be heard and determined together by way of written submissions.
10. As the application by the 1<sup>st</sup> interested party was filed first and is, if found merited, capable of rendering the application by the ex parte applicants otiose, I will deal with it first.
11. As pointed out above, the application by the 1<sup>st</sup> interested party dated 4<sup>th</sup> February, 2025 and filed on 19<sup>th</sup> February, 2025, seeks to dismiss the suit herein for none compliance with the order/directions of this court given/issued on 23<sup>rd</sup> May, 2023 on the following grounds: -
  - i. That the proceedings were instituted by the firm of Arusei & Company advocates on behalf of the ex parte applicants who have been described in the pleadings as Kapchellogol family, Kaplobauk family, Kaplpchuria family, Kapkiyai family, Kaptowero family, Kapchangole family, Kapchuliarikow family and Kapkabel family.
  - ii. That the ex parte applicants thus moved the court by way of a notice of motion application dated 24<sup>th</sup> December 2021 (filed on 1<sup>st</sup> February, 2022) seeking various orders as against the respondents. The said orders also have profound effects on the interested parties;
  - iii. That upon entering appearance, the 1<sup>st</sup> interested party filed a Preliminary Objection (P.O) dated 29<sup>th</sup> November, 2023 on the following grounds:
    - a. That the ex parte applicants are not legal persons and/or entities known in law and therefore lack capacity and/or locus standi to institute these proceedings.
    - b. That the ex parte applicants' Notice of Motion application is incompetent and bad in law as the leave of court was not sought and obtained before filing the same in contravention of Order 53 rule 1 of the Civil Procedure Rules, 2010.
    - c. That this entire suit is otherwise an abuse of this honourable court's process.
  - iv. That the 2<sup>nd</sup> interested party also filed grounds of opposition dated 13<sup>th</sup> October, 2023 advancing similar arguments concerning the capacity of the ex parte applicants to bring this suit.



- v. That upon considering the parties rival written submissions on the said P.O and grounds of opposition, this honourable court (Hon. Lady Justice Lucy N. Waithaka) delivered its ruling on 23<sup>rd</sup> May 2024 in the following terms: -
36. “ I have carefully considered the law as distilled in the cases cited by the parties and the case of Phares Omondi Okech supra, vis a vis the circumstances of this case where the ex parte applicants are indicated as families without providing particulars of who are the members of the families who have brought the suit or on whose behalf the suit is brought. Clearly, the suit does not meet the legal threshold set out in Order 1 Rule 13 of the Civil Procedure Rules and the case of Phares Omondi Okech supra in that families are not legal persons capable of instituting and sustaining suits in their own names.
36. The foregoing notwithstanding, in the special circumstances of this case, where a natural person in the name of John Kandie has sworn an affidavit claiming to be instructed by the families (while appreciating that a family cannot give any instruction, I take reference to instruction by family to be reference to instruction by the family members), I deem the suit to be defective for failure to list the members of the family represented in the suit and for failure to file written authority which defect is curable by seeking and obtaining leave of the court to amend the pleadings to accord with the law.
36. As pointed out in the ruling of this court delivered on 27<sup>th</sup> July 2022, arising from the ex parte applicant’s application for stay of execution pending hearing and determination of the suit, there are weighty questions of law that arise from the process that led to filing of the impugned suit. It is the considered view of this court that the interested parties should not be allowed to run away from those weighty issues on account that can be addressed by affording the deponent of the affidavit sworn in verification of the suit an opportunity to address the legal gaps in his suit.
36. The upshot of the foregoing is that I decline to uphold the preliminary objection and in discharge of the powers vested in this court under sections 3A and 100 of the *Civil Procedure Act*, grant the deponent of the affidavit sworn in verification of the suit John Kandie, leave to amend the pleadings by listing the members of the families represented in the suit in his pleadings and filing the requisite authority to file the suit”
- vi. That it is clear from the said ruling that this court not only identified deficiencies that impugn on the ex parte applicants standing to advance this suit but also exercised discretion to allow them amend their pleadings and provide requisite authority in order to remedy the said inadequacies.
- vii. That however, to date, the ex parte applicants have deliberately failed, refused and/or neglected to comply with the said order of 23<sup>rd</sup> May, 2024.
- viii. That it should be remembered that during proceedings of 16<sup>th</sup> September 2024, this court further granted the ex parte applicants leave to file a formal application seeking permission to extend the time within which to fully comply with the orders of 23<sup>rd</sup> May, 2024. However, no such application has been filed.
- ix. That the above actions and omissions show that the ex parte applicants have proven to be unwilling and unprepared to obey the orders and directions of this court. Their continued delay in making due compliance is not only prolonged but also inexcusable resulting in grave injustice to the respondents and the interested parties.
- x. That appreciably, this case belongs to the ex parte applicants. It is their duty and responsibility to progress this matter and ensure that the same is concluded expeditiously as contemplated in Section 1A, 1B, and 3A of the *Civil Procedure Act* and Article 159(2)(b) of *the Constitution* but



also Section 8 of the Fair Administrative Actions Act which mandates that an application for review of administrative action must be determined within ninety (90) days from the date of its filing. Rule 24(3) of the Fair Administrative Action Rules also mandates the ex parte applicants to set down their judicial review application for hearing within forty-five (45) days from the date they filed their application failure of which the same can be dismissed unless they show cause to the satisfaction of the court.

- xi. That failure by the ex parte applicants to comply with the orders of 23<sup>rd</sup> May, 2024 in order to progress this matter no doubt, is a violation of their above-mentioned obligation, prejudices the respondents and interested parties as justice delayed is justice denied but also hinders this court's adherence to the dictates of Section 1A, 1B and 3A of the *Civil Procedure Act*, Article 159(2)(b) of *the Constitution* and Section 8 of the Fair Administrative Actions Act.
- xii. That in the end, the ex parte applicants have adopted a laissez-faire approach to the prosecution of their suit and even failed to make use of the lifeline graciously given to them by this court on 23<sup>rd</sup> May 2024 without any justifiable reason, this suit ought to be dismissed with costs to the respondents and the interested parties.
12. The application is supported by the affidavit of Zehrabanu Janmohamed (SC), the executrix of the Estate of the late H.E Daniel Toroitich Arap Moi, the 1<sup>st</sup> interested party, sworn on 4<sup>th</sup> February 2025, in which the grounds on the face of the application are reiterated. Attached to the affidavit is a copy of the ruling of the court, marked ZJ-1.
13. In opposing the application, the ex parte applicants filed grounds of opposition, dated 26<sup>th</sup> February 2025, in which they contend that it is legally untenable and a complete travesty of justice for the 1<sup>st</sup> interested party to invoke the jurisdiction of both this court and the Court of Appeal simultaneously over the order issued on 23<sup>rd</sup> May 2024; that the 1<sup>st</sup> interested party enjoys no such luxury to surreptitiously using the order issued on 23<sup>rd</sup> May, 2024 to apply to dismiss the suit while invoking two different jurisdictions and using the two court processes at the same time by having one leg at the Court of Appeal and another leg at the Environment and Land Court in a sense to "approve and reprobate" at the same time; that this is not allowed in law therefore the application herein is fatally defective, is a nullity and no amount of arguments will render it correct; that the 1<sup>st</sup> interested party herein had failed to disclose a material fact that they had filed the Notice of Appeal and an Appeal at the Court of Appeal at Eldoret Civil Appeal No.E088 of 2024; that the interested party having been aggrieved by the orders of the Environment and Land Court of the 23<sup>rd</sup> May 2024 and having appealed to the Court of Appeal against the same, cannot come back to the Environment and Land Court and seek a positive order (to dismiss Judicial Review suit) and seek to benefit from the same order in which they were aggrieved and had appealed against; that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by a judicial process where the parties place on the table of justice their different positions, clearly, plainly and without tricks; that all in all, the application dated the 4<sup>th</sup> February 2025 was misconceived, incompetent, an abuse of the court process and should be dismissed with costs.

## Submissions

### 1<sup>st</sup> interested party's submissions

14. In her submissions filed on 6<sup>th</sup> May, 2025 the 1<sup>st</sup> interested party framed three issues for the court's determination. These are: -
  - a. Whether there is merit in the ex parte applicants' application dated 26<sup>th</sup> February 2025;



- b. Whether this suit should be dismissed for non-compliance with the order of 23<sup>rd</sup> May, 2024;
  - c. What orders ought to be made as to costs.
15. On whether this suit should be dismissed for non-compliance with the order of 23<sup>rd</sup> May 2024, the 1<sup>st</sup> interested party submitted as follows: -
- “...Litigation is not a game of convenience where parties move at their own pace. The ex parte applicants have exhibited a negligent and indifferent approach to their own case, repeatedly failing to comply with this court’s directives despite having ample time to do so. They cannot now seek this honourable court’s indulgence to aid their own inaction. The ex parte applicants have been hoisted by their own petard and the chicken have now come home to roost!”
16. The Court of Appeal in the case of Tana Teachers’ Cooperative Credit Society Limited v. Andriano Muchiri (2018) KECA 192 (KLR) pronounced itself on the issue of disobedience and indolence by parties.
17. The 1st interested party submitted that this court possesses the inherent authority to prevent any abuse of its processes; that the ex parte applicants have exhibited a blatant and unacceptable disregard for the court’s directive of 23<sup>rd</sup> May, 2025 and refused to take the necessary corrective action to resuscitate this otherwise incompetent suit, even when this court gave them enough time to do so.
18. They emphasized that compliance with court orders is not optional; it is a fundamental obligation that cannot be ignored or treated as a matter of convenience by any party and that the rule of law mandates that once the court issues directives, all parties must adhere to them without exception in order to uphold the integrity of the judicial system.
19. They further submitted that it is clear that the ex parte applicants have willfully disobeyed the order issued on 23<sup>rd</sup> May 2025 and had provided no justifiable reason for non-compliance; that for over nine months after issuance of the order of 23<sup>rd</sup> May 2025 and including before the filing of the 1st interested party’s dismissal application, the applicants unjustly delayed the hearing and resolution of this matter, causing significant prejudice to the respondents and interested parties. They urged the court to dismiss the suit in its entirety with costs in accordance with Section 8 of the Fair Administrative Action Act and Rule 24(3) of the Fair Administrative Action Rules.

### **Exparte applicant’s submissions**

20. In their submissions filed on 17th March 2025, the ex parte applicants have reiterated the grounds taken up in opposition to the application and based on the principles espoused in the case of D.T Dobie & Company (K) Ltd v. Joseph Muchina Muchina & Another, Civil Appeal No.37 of 1998 and Kivanga Estates Ltd v. National Bank of Kenya Ltd (2017) e KLR regarding striking out of suits, urges this court to dismiss the 1<sup>st</sup> interested party’s application.
21. According to the ex parte applicants, the 1<sup>st</sup> interested party’s application is merely meant to drive them away from the seat of justice.

### **Analysis and determination**

22. I have considered the circumstances leading to filing the application dated 4<sup>th</sup> February, 2025 by the 1<sup>st</sup> interested party. I have also read and considered the grounds advanced by the parties in support and opposition to the application.



23. Concerning the orders issued by the court, on 23<sup>rd</sup> May, 2024, it is noteworthy that the order did not have specific timelines within which the ex parte applicants were required to amend the pleadings and file the requisite authority. Similarly, the order of 16<sup>th</sup> September, 2024 did not have specific timelines within which the ex parte applicants were to file the intended application for extension of time to file the amended pleadings.
24. Be that as it may, the suit before court being a Judicial Review application, which applications are time bound, the ex parte applicants were expected to file their amended pleadings without unreasonable delay.
25. In law, what amounts to unreasonable delay is a question of fact to be determined upon considering the circumstances of the case and the nature of the case among other considerations.
26. In the circumstances of this case, the dispute presented before court is not an ordinary suit but a Judicial review proceeding which proceedings are time bound. For instance, under the Law Reform Act, proceedings for Judicial Review, for leave to apply for an order of certiorari, must be instituted within six months from the time the decision sought to be quashed was made.
27. Under Order 53 Rule 3(1) of the Civil Procedure Rules, once leave is granted by the court to institute judicial review proceedings, the ex parte applicant is under a legal duty to file the main motion instituting the suit, within 21 days from the date leave was granted. Failure to institute the main motion within the 21 days is fatal. In that regard, see the case of Republic v Public Procurement Administrative Board & Another; Mer Security & Communications System Ltd/Megason Electronic & Control 1978 (JV) & Another (Interested Parties); Ex-parte Magal Security Systems Ltd/Firefox Kenya Limited (JV) (2019) eKLR where Mativo J (as he then was) held as follows:

“In view of my conclusions herein above, and my finding that Section 9 (3) of the Law Reform Act [50] and Order 53 Rule 3(1) of the Civil Procedure Rules, 2010 are couched in mandatory terms, and, also, my finding that Article 159 (2) (d) of the Constitution cannot be of help to the ex parte applicant under the circumstances of this suit, I find and hold that the preliminary objection succeeds.”
28. The Fair Administrative Action Act, 2015 and the rules enacted thereunder, contain provisions similar to those found in the Law Reform Act and Order 53 rule 3(1) of the Civil Procedure Rules. The prescribed timelines show that time is of essence.
29. Arising from the foregoing exposition of the circumstances of this case, where the orders issued by the court had no timelines within which the ex parte applicant ought to do what the court ordered them to do, I take the contention by the 1<sup>st</sup> interested party that the ex parte applicants failed to comply with the orders issued by the court to mean that they failed to take the actions they were required to take within reasonable time thereby delaying hearing and determination presented before the court. That fact or position is inferable both from the grounds taken up by the 1st interested parties and their submissions in support of application.
30. I note that in both their responses and submissions, the ex parte applicants have not addressed the issue of delay in complying with orders of the court but have contended that the orders sought cannot be granted because the 1st interested party filed an appeal against the decision of this court delivered on 23<sup>rd</sup> May, 2024 inter alia allowing them to amend their pleadings to cure the defects identified therein.
31. Having considered the reasons offered by the ex parte applicants for opposing the application, I find them to be ill advised as the ex parte applicants did not demonstrate that any orders were issued by



- the Court of Appeal staying the proceedings before this Court. In the absence of any order staying the proceedings before this court, nothing stopped the 1<sup>st</sup> interested party or any other party from bringing the application like the one the 1<sup>st</sup> interested party brought for consideration by this court.
32. From the statutory timelines I have flagged out herein above, there cannot be any doubt that there was inordinate delay by the ex parte applicants to comply with the order/direction of the court given by the court on 23<sup>rd</sup> May, 2025. The ex parte applicants counsel seems to have been aware of that fact because on 16<sup>th</sup> September, 2025 he informed the court that he desired to make an application for leave to amend his pleadings, yet that leave had been granted by the court, earlier on.
  33. Despite being afforded time to do so, the ex parte applicants, yet again failed to file the intended application for leave to amend their pleadings until after the 1<sup>st</sup> interested party filed the application dated 4<sup>th</sup> February 2024.
  34. In the special circumstances of this case, where the nature of the dispute is highly regulated by law with strict timelines prescribed, I agree with the 1<sup>st</sup> interested party that the conduct of the ex parte applicants disentitled them any equitable remedy. This is a clear case where the ex parte applicants ought to be reminded that equity aids the vigilant and not the indolent. The ex parte applicants were indolent in taking advantage of the window opened by the court to cure the defect in their pleadings.
  35. Lest I am accused of having failed to consider the explanation offered in the ex parte applicants' application for extension of time, I wish to state that I have equally read, considered it and found it to be incapable of forming the basis of the delay of more than nine months from the time the ex parte applicants were granted leave to amend their pleadings. I have also considered the draft amended notice of motion attached to the ex parte applicants' application for enlargement of time and noted that the ex parte applicants have not cured the defect they were ordered to cure. The parties in the draft amended notice of motion remain the families instead of naming specific individual(s) as the representative(s) of the family.
  36. The upshot of the foregoing is that I find the 1<sup>st</sup> interested party's application dated 4<sup>th</sup> February, 2025 to be merited and allow it as prayed.
  37. Regarding the ex parte applicants' application dated 26<sup>th</sup> February, 2025, I find it to be lacking in merit and dismiss it with costs to the parties who defended it.
  38. Orders accordingly.

**RULING READ, SIGNED, DATED AND DELIVERED VIRTUALLY AT KABARNET THIS 16<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**L. N. WAITHAKA**

**JUDGE**

Ruling delivered virtually in the presence of;-

Ms. Kiget h/b for Mr. Arusei the Ex parte Applicants

N/A for the 1-3rd Respondents

Ms. Alusa for the 4th interested party

Mr. Kere for 1st Interested Party

Ms. Wangare for the 2nd Interested party

Christine; Court Assistant

