



**Munyaka Village Community v County Government of Kirinyaga
(Formerly the County Council of Kirinyaga) & 3 others (Judicial Review
E005 of 2023) [2025] KEELC 4404 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4404 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
JUDICIAL REVIEW E005 OF 2023**

JM MUTUNGI, J

JUNE 12, 2025

**IN THE MATTER OF AN APPLICATION BY MUNYAKA VILLAGE
COMMUNITY FOR LEAVE TO ISSUE TO FILE AN APPLICATION
FOR JUDICIAL REVIEW IN THE FORM OF MANDAMUS**

AND

**IN THE MATTER OF EXECUTION OF THE RESOLUTION BY THE
COUNTY GOVERNMENT OF KIRINYAGA FORMERLY THE KIRINYAGA
COUNTY COUNCIL UNDER MINUTES NO. WTPM & H66/2005**

AND

**IN THE LAND PARCEL NUMBER KIRINYAGA/GATHIGIRIRI/663
ALLOCATED TO THE MUNYAKA VILLAGE COMMUNITY**

BETWEEN

MUNYAKA VILLAGE COMMUNITY APPLICANT

AND

**COUNTY GOVERNMENT OF KIRINYAGA (FORMERLY THE COUNTY
COUNCIL OF KIRINYAGA) 1ST RESPONDENT**

KIRINYAGA DISTRICT LAND REGISTRAR 2ND RESPONDENT

KIAMANYEKI DISPENSARY 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT



RULING

1. The Applicant Munyaka Village Community by way of an *ex parte* Chamber Summons dated 20th September 2023 brought under Sections 8 and 9 of the *Law Reform Act*, Cap 26 Laws of Kenya and Order 53 Rule 1(1) of the Civil Procedure Rules prayed for orders that:-
 1. This Honourable Court be pleased to grant the Applicant leave to file an application for Judicial Review seeking an order of Mandamus the 1st and 2nd Respondents to register all that property known as Kirinyaga/Gathigiriri/663 in favour of the Munyaka Village Community.
 2. This Honourable Court be pleased to grant the Applicant leave to file an application for Judicial Review seeking an order of Mandamus the 1st and 2nd Respondents to register all that property known as Kirinyaga/Gathigiriri/663 in favour of the Munyaka Village Community.
 3. The costs of this application be provided for.
2. The Applicant as per the statutory statement averred that land parcel Kirinyaga/Gathigiriri/663 had as far back as from 29th July 2003 been reserved for the members of Munyaka Village by the County Council of Kirinyaga. However the Applicant alleges that when they conducted a search on 17th February, 2022 they discovered the 1st Respondent, Kirinyaga County Government had reserved the land for Kiamanyeki Dispensary contrary to the minutes and approvals issued by the County Council dating back from 2003. The Applicant averred that Kiamanyeka Dispensary was to be established on land parcel Kirinyaga/Gathigiriri/659 and not on the property that was allocated to Munyaka Village Community. The Applicant stated that after making the discovery they made demand to the 1st Respondent to rectify the situation without any success and it is for that reason they seek leave to commence Judicial Review proceedings to compel the Respondents by an order of Mandamus to issue title deeds for the Village plots in land parcel Kirinyaga/Gathigiriri/663 in favour of the Applicant.
3. The Court directed that the application for leave be served for hearing *inter partes*. Upon being served the 2nd and 4th Respondents filed grounds of opposition dated 6th August, 2024. *Inter alia* the said Respondents averred that the application was premature incompetent, misplaced and abuse of the Court; that the Applicant had not demonstrated that the 2nd and 4th Respondents had a legal duty owed to the Applicants that they failed to perform so as to invite an order of Mandamus; that the application as filed was fatally incompetent and bad in law as it offended the mandatory provisions of Section 9(2) of the *Law Reform Act*, Cap 26 Laws of Kenya; and that the application was statutorily time barred having not been brought within a period of six months as prescribed under the Law.
4. The application for leave was argued by the parties by way of Written Submissions. The 2nd and 4th Respondents filed their submissions dated 30th October 2024 while the Applicant filed theirs dated 13th March 2025. I have perused and considered the pleadings and the submissions of the parties. The singular issue for determination in the instant application is whether the Applicant should be granted leave to institute Judicial Review proceedings against the Respondents as sought in the application.
5. The 2nd and 4th Respondents have challenged the competency of the Applicant's application and have contended that the application was fatally defective as it offended the mandatory provisions of Section 9(2) of the *Law Reform Act*, Cap 26 Laws of Kenya that required that such applications be made



within six months from the date the Act or omission to which the application for leave relates occurred. Section 9(2) of the Act provides as follows:-

9(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.

6. The 2nd and 4th Respondents in support of their submission that the Applicant's application was statutory barred on account of limitation of time cited the Case of Wilson Osolo –vs- John Ojiambo Ochola & Attorney General (1996) eKLR where the Court of Appeal held there was no provision under which the time for bringing an application for prerogative orders envisaged under Section 9(2) and (3) of the Law Reform Act and Order 53(2) of the Civil Procedure Rules could be extended after the expiry of the mandatory six months. The Court inter alia held thus:-

It can readily be seen that Order 53 Rule 2 (as it stood) is derived verbatim from S.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 the extension of time Limited by statute in this case, the Law Reform Act".

Section 9(3) of the Law Reform Act, Cap 26 Laws of Kenya provides as follows:-

9(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.

7. It is clear that as a matter of public policy the law emphasizes the Institution of Judicial Review proceedings in a timely and expeditious manner in recognition that Judicial Review proceedings ordinarily involve public bodies and there is need for their decisions to have finality and certainty as it would otherwise create uncertainty if their decisions are indefinite and liable to be challenged at anytime notwithstanding the duration.
8. The Court in the Case of Raila Odinga & 6 Others –vs- Nairobi City Council Nairobi HCCC No. 899 of 1993 (1990-1994) EA 482 considered the application for Order 53 of the Civil Procedure Rules and Section 9(2) of the Law Reform Act. The Court inter alia held:-

“-----The rules of Court made under the Act cannot defeat or override the clear provisions of S. 9(2) of the Act. An Act of Parliament cannot be amended by subsidiary legislation. The Parliament in its wisdom has imposed this absolute of six months and it is Parliament alone, which can amend it. The Court's duty is to give effect to law as it exists. Thus that part of Order 53 rule 7 as amended by Legal Notice No. 164 of 1997 which reads “unless the High Court considers that there is good reason for extending the period within which the application shall be made”, is ultra vires Section 9(2) of the Act. Thus an application for Judicial Review may it be for an order of Mandamus, prohibition or Certiorari should



be made promptly and in any event within a maximum period of six months from the date when the ground for the application arose ---”.

9. In the Case of Rosaline Tubei & 3 Others –vs- Patrick K. Cheruiyot & Others (2014) KEELC 413 the Applicants had applied for leave to institute Judicial Review proceedings to challenge the decision of the Land Disputes Tribunal out of the mandatory period of six months. Munyao, J in declining to grant leave and/or extend time stated thus:-
 16. It follows that a Court cannot grant leave to a party seeking to file an application for Judicial Review out of time, and if such leave is granted, it can be challenged at the substantive hearing of the motion.
 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 open the door is not available, for it was thrown into the proverbial sea by effluxion of time.
 18. I do not see how this application can succeed. I decline to extend time for commencement of Judicial Review and further decline to grant leave to commence Judicial Review to quash the subject decision of the tribunal and subsequent decree from the Magistrate's Court. This application is hereby dismissed but I make no orders as to costs.
10. The Applicant in the present matter state they were allocated the subject land for resettlement of its member's way back in 2003 but had not been issued with title to the land. The Applicant claim that when they carried out a search of the land parcel Kirinyaga/Gathigiriri/663 on 17th February 2022 the search revealed the land had been reserved for Kiamanyeki Dispensary and that their consequent demands for amends were ignored by the Respondents.
11. Though the Applicants have exhibited various extracts of minutes issued in 2006 indicating there was approval given for various persons with regard to “Munyaka Village” the extracts of the Minutes do not show the approval related to the suit property. The Applicants nonetheless discovered the suit property was reserved in favour of the 3rd Respondent in February 2022. If they were aggrieved with such reservation, they never challenged the decision within the prescribed time frame of six months. There is equally no clear indication that the 1st Respondent had in fact committed itself to process title in favour of the Applicant and/or its members.
12. While I am not persuaded that the Applicant has laid any basis to initiate Judicial Review against the Respondents, I must emphasize that the Applicant having elected to base their application for leave under the *Law Reform Act* Cap 26 Laws of Kenya and Order 53 of the Civil Procedure Rules the application, the application was bound to fail as it was not brought within the prescribed period. The provisions of the *Fair Administrative Action Act*, 2015 where leave is not a pre requisite were not invoked by the Applicant and thereof have no application in the present matter.
13. As the suit property is still registered in the 1st Respondent's name the Applicant perhaps have other avenues through which to ventilate their grievance. The avenue of Judicial Review proceedings is not available. For the reasons advanced herein before, I decline to grant leave to commence Judicial Review proceedings, the application having been made out of time and further on the basis that the Applicants have not demonstrated that they had a legal right that had been infringed by the Respondents and in respect of which Judicial proceedings would have been the appropriate remedy.
14. I dismiss the Chamber Summons application dated 28th September, 2023 but make no order for costs. Parties will bear their own costs.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12TH DAY
JUNE 2025**

J. M. MUTUNGI

ELC -JUDGE

