

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT VIHIGA**  
**JUDICIAL REVIEW DIVISION**  
**ELC JR. APPLICATION NO. E002 OF 2025**

JAMES NJIMWEI OGOMBO ..... APPLICANT

VERSUS

LAND REGISTRAR, VIHIGA COUNTY .....1ST RESPONDENT

JACQUELINE ZINALE ..... 2ND RESPONDENT

MARY ANDISI EGADWA ..... 3RD RESPONDENT

NAUMI M. EGADWA ..... 4<sup>TH</sup> RESPONDENT

**RULING**

Vide the Chamber Summons dated 24<sup>th</sup> September, 2025, the Applicant herein under the provisions of article 23 of the Constitution, order 53 Rule 1(2) of the Civil Procedure Rules and Section 9 of the Law Reforms Act Cap 26 Laws of Kenya sought for orders that

- 1) The matter be certified urgent and dispensed with *ex parte* in the first instance.
- 2) Leave be granted to the Applicant to institute judicial review proceedings seeking for an order of Mandamus to compel

the Respondent to transfer land parcel number SOUTH MARAGOLI/LOGOVO/849.

- 3) Leave granted to operate as stay of any activity/occupation on SOUTH MARAGOLI/LOGOVO/849 until the instant application is heard and determined.
- 4) That cost of this application be in the cause.

The grounds upon which the application was brought as contained in the Chamber Summons are that: -

- (a) The Applicant is the legitimate owner of land parcel SOUTH MARAGOLI/LOGOVO/849.
- (b) On 19<sup>th</sup> July, 2005, the Senior Resident Magistrate in Vihiga SRM Misc. Civil Application 68 of 1999 ordered that land parcel No. SOUTH MARAGOLI/LOGOVO/849 be transferred to the Applicant by the Respondents, failure to which the Executive Officer of the Court to execute transfer documents in favour of the Applicant.
- (c) Two subsequent appeals (KAKAMEGA ELCA 47 OF 2017 & KAKAMEGA CIVIL APPEAL 52 OF 2005) were instituted over the same subject parcel of land but the first appeal was dismissed for want of prosecution and the second one was withdrawn, the consequences

being that the decision in Vihiga SRM Misc. Civil Application 68 of 1999 remained undisturbed.

- (d) The last action on the appeals relating to the land specifically in KAKAMEGA ELCA 47 of 2017 was on 7<sup>th</sup> July, 2015 when the Appeal was dismissed for want of prosecution. The enforcement period could only have started to run from 7<sup>th</sup> July, 2015 as such the limitation period and the limitation of actions cannot apply in the instant case.
- (e) On 2<sup>nd</sup> October, 2024, the Court Administrator at Vihiga Law Courts in compliance with the Court Order in Vihiga SRM Misc. Application 68 of 1999 executed transfer documents for land parcel SOUTH MARAGOLI/LOGOVO/849 in favour of the Applicant which documents were presented to the Respondent for her further action.
- (f) On 7<sup>th</sup> October, 2024, the duly transfer forms were presented to the 1<sup>st</sup> Respondent. The letter forwarding the same was received but the Land Registrar declined to acknowledge receipt and to date and has not acted on it.

(g) Despite the Respondent being presented with the duly executed transfer documents and visiting the said parcel of land in October, 2024, she has refused and/or declined to act on the said transfer.

(h) The Applicant who is 92 years old stands to be evicted from his parcel of land.

The application was also supported by the contents of the Verifying Affidavit sworn by the Applicant on 24<sup>th</sup> September, 2025 and the annexures thereto.

The application was opposed vide the Notice of Preliminary Objection dated 29<sup>th</sup> September, 2025 filed on behalf of the 2<sup>nd</sup> Respondent on the grounds that the suit is res judicata, the suit offends the mandatory provisions of Section 4(4) of the Limitation of Actions Act as the Applicant is seeking to enforce an order issued on 17<sup>th</sup> July, 2005 which is 20 years ago and that the suit offends the mandatory provisions of section 7 of the Limitation of Action Act as the Applicant is seeking to recover land after 20 years.

The 2<sup>nd</sup> Respondent sought that the current application be dismissed/struck out.

The application was heard inter partes on 6<sup>th</sup> October, 2025 pursuant to directions given by court on 25<sup>th</sup> September, 2025.

It was submitted on behalf of the Applicant that a previous matter namely; JR E001 of 2025 was struck out because it was filed out of time. That since the said matter was struck out and not dismissed, the Applicant has a chance to bring fresh proceedings. That the application is not frivolous. That under the Fair Administrative Actions Act, leave has been done away with.

That the last action taken by the Applicant on the judgement sought to be enforced was done on 7<sup>th</sup> July, 2015 hence time begun to run from 7<sup>th</sup> July, 2025.

That since the earlier matter was struck out and not dismissed, the court never dealt with the substantive issues.

Counsel relied on the case of *Enock Kirao Muhanji -vs- Hamid Abdalla Mbarak 2013 KEHC 6015 (KLR)(1)* wherein it was held *inter alia* that the words “struck out” and “dismissed” should not be used interchangeably and that in order to determine whether a suit is res judicata, the only question is whether the issues which were before the court between the Plaintiff and the Defendant were determined by the court.

Counsel also relied on the case of Njagi -vs- Muchiri & Another (Judicial Review E006 OF 2023) 2024 KEELC 1812(KLR)(12 April 2024) Ruling where it was held that the purpose of an application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for Judicial Review which are frivolous, vexatious or hopeless and secondly, to ensure that the Applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case for further consideration.

On behalf of the 2<sup>nd</sup> Respondent, it was submitted that the application was res judicata. That Judicial Review No. E001 of 2025 was struck out on merit. That under Order 53 Rule 4 of execution stay can only be granted where one is seeking certiorari and prohibition. That an order of stay or execution would mean that the Applicant does not use the land.

That the court made a conclusive finding in Judicial Review No. E001 of 2025.

Counsel urged the court to find that the application is unmerited and have it dismissed.

I have considered the application. It is common ground that a Chamber Summons application seeking leave to bring Judicial

Review proceedings, on similar grounds as the grounds in the Chamber Summons before court was filed in VIHIGA ELC Judicial Review NO. E001 OF 2025 between the same parties.

It is also common ground that the Chamber Summons was allowed and the substantive Notice of Motion filed subsequently.

It is common ground further that the substantive application was heard and a ruling in respect thereof delivered on 18<sup>th</sup> September, 2025 striking out the Notice of Motion. The record shows that this was following a Notice of Preliminary Objection filed by the 2<sup>nd</sup> Respondent who was the 1<sup>st</sup> Interested Party.

A reading of the ruling a copy of which was attached to the Chamber Summons shows that the court considered the grounds of objection contained in the Notice of Preliminary Objection and found that the *ex parte* applicant's action based on the court order dated 19<sup>th</sup> July 2005 was not sustainable. That the Applicant's action was time barred under the provisions of both section 4(4) and section 7 of the Limitation of Actions Act.

The issue of the application having been filed out of the time was not one of the grounds upon which the Preliminary Objection was raised in the previous application. It was the court that noted on its

own motion that the substantive application had been filed outside the 21 days granted.

In essence, the court rendered itself on whether or not judicial review relief of mandamus could issue to compel the execution of a court order issued 20 years ago in view of the provisions of Section 4(4) of the Limitation of Actions Act. The court also rendered itself on whether an action to recover could be sustainable after the expiry of 12 year in the light of the provisions of the section 7 of the Limitations of Action Act.

The court therefore is *functus officio* in so far as the issues raised in the earlier application are concerned.

The present application by raising the same issues already decided on by the court, invites the court to sit on appeal of its own decision. The Applicant who had filed Notice of Appeal ought to pursue the same.

The court finds that the application is *res judicata* and is improperly before court.

The application is struck out. Costs to the 2<sup>nd</sup> Respondent.

**Ruling, dated and signed at Vihiga, read virtually this 16<sup>th</sup> day of October, 2025 through Microsoft Teams Online Application.**

**E. ASATI**

**JUDGE.**

**In the presence of:**

Ajevi: Court Assistant.

Magogo h/b for Malenya for the Applicant

Kadeny for the 2<sup>nd</sup> Respondent.