



**Republic v Land Registrar Naivasha; Mwangi & 2 others (Interested Parties);
Mwangi (Ex parte) (Environment and Land Judicial Review Case E002 of 2025)
[2025] KEELC 7373 (KLR) (Environment and Land) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7373 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2025**

MC OUNDO, J

OCTOBER 30, 2025

**IN THE MATTER OF CANCELLATION OF TITLE NUMBER: KIJABE/KIJABE
BLOCK 1/1728**

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR NAIVASHA RESPONDENT

AND

ZUPPORAH WANJIRU MWANGI INTERESTED PARTY

EDWARD KITHINJI M'MWENDA INTERESTED PARTY

CHINA WU YI COMPANY LIMITED INTERESTED PARTY

AND

FELISTAS WAMAITHA MWANGI EX PARTE

RULING

1. Vide a Chamber Summons dated 23rd May, 2025 brought under the provisions of Order 53 Rule 1 (1) and (2) of the Civil Procedure Rules, the ex-parte Applicant herein seeks the following orders;
 - i. Spent.
 - ii. Leave be granted for the Applicant to apply for:



- a. An order of Certiorari to issue to bring into this Honourable Court for quashing the decision of the Respondent cancelling the Title Number: Kijabe Kijabe Block 1 1728, property of the Ex-Parte Applicant.
 - b. An order of Prohibition to issue against the Respondent either by themselves, employees, servants and or agents from registering any further entries on the register in respect of the property known and registered as Title Number: Kijabe Kijabe Block 1 1728.
 - c. An order of Prohibition to issue against the 1st, 2nd and 3rd Interested party either by themselves, employees, servants and or agents from excavating, wasting, damaging, alienating, selling, transferring, leasing, subdividing and or interfering in whatsoever manner with Kijabe Kijabe Block 1 1728.
 - d. An order of Mandamus to issue against the Respondent to reverse the cancellation of the title of the ex-parte Applicant and the Respondent to reinstate the ex-parte Applicant as the registered owner of Title Number: Kijabe Kijabe Block 1 1728.
 - e. That such leave granted herein do act as stay to prevent the 1st, 2nd and 3rd interested party from excavating, wasting, damaging, alienating, selling, transferring, leasing, subdivision and or Interfering in whatsoever manner with Kijabe Kijabe Block 1 1728.
 - f. That such leave granted herein do act as stay to prevent the Respondent either by themselves, employees, servants and or agents from registering any further entries on the register in respect of the property known and registered as Title Number: Kijabe Kijabe Block 1 1728, which leave and temporary injunction if not granted, will greatly prejudice the Ex-Parte Applicant.
- iii. That the cost of this Application be provided for.
2. The said Application was predicated on the grounds contained in the Statutory Statement dated 23rd May 2025 and the Verifying Affidavit of equal date sworn by the ex-parte Applicant.
 3. In summary, the ex-parte Applicant deponed that she is the bonafide beneficiary of Title Number: Kijabe Kijabe Block 1 1728 (the suit property), pursuant to a Certificate of Confirmation of grant dated 2nd October, 2017. That, prior to the succession process, the suit property had belonged to her husband (now deceased).
 4. That through her Advocate's letter dated 5th May 2025 which letter was followed up by letters dated the 9th May, 2025, 12th May 2025 and 13th May 2025, she had requested the Respondent for a Copy of the Green Card for the suit property which letters had been ignored and her request denied despite the Green Card having been ready for issuance on 7th May 2025. That on 14th May 2025, after incessant follow ups from her Advocates, the Respondent had issued a Copy of the Green Card dated 7th May 2025, to the suit property, bearing the name of one Zupporah Wanjiru Mwangi, the 1st interested party herein as the title holder.
 5. She asserted that the cancellation of the title to the property-which was registered under her late husband's name-was illegal and ultra vires because her husband never transferred the property to the 1st Interested Party or anyone else.
 6. She argued that her constitutional rights were violated on two fronts:



- i. She was never a party to any proceedings that led to the cancellation and was never heard, which violates her right to Fair Administrative Action (Article 47).
 - ii. The illegal cancellation had violated her right to property under Article 40 of *akn ke act 2010 constitution the Constitution*.
7. Her claim was that the 2nd Interested Party, acting for the 1st Interested Party, leased the property to the 3rd Interested Party, who had severely damaged the land by converting it into a quarry and excavating deep gullies for commercial stone harvesting.
8. She sought that the court grants her leave to file an application for the orders sought, stating that without it, she will be dispossessed of the property.
9. The Respondent opposed the ex-parte Applicant's Application vide its grounds of opposition dated 9th June 2025 on the following main grounds:
 - i. The application for leave is allegedly filed outside the statutory time limit and violated Order 53 (3) of the Civil Procedure Rules, which sets a six-month limit for seeking leave for an order of Certiorari.
 - ii. That it also offended Section 9 of the *akn ke act 1956 48 Law Reform Act*, which similarly imposes a six-month limitation period for filing an application for leave from the date of the decision sought to be quashed.
 - iii. That it was an abuse of Process as it was frivolous.
 - iv. That due to the time limitation violation, the court lacked jurisdiction to hear and determine the matter.
10. In conclusion, the Respondent asks the court to dismiss the application and order the Applicant to bear the costs.
11. The 3rd Interested Party's (a construction company for a government road project) main defense rests on the principles of sanctity of title and being an innocent third party. That it had been had been awarded the construction of the James Gichuru Road Junction – Rironi Highway (A104) by the Kenya National Highway Authority (KeNHA).
12. That the company was bonafide lessee in actual possession of the land having entered into a lease agreement with the 1st Interested Party, Zupporah Wanjiru Mwangi, the registered proprietor on 23rd April 2018 and renewed it in 2020 to run up to the year 2026.
13. The company asserted that it had verified the title through official searches in 2018 and again in 2021 and 2025 which searches consistently confirmed the 1st Interested Party as the duly registered proprietor of the subject property from 28th January 1989.
14. They relied on the sanctity of title under Section 26 of the *akn ke act 2012 3 Land Registration Act* and deny any knowledge of fraud or misrepresentation.
15. That the land is located in an isolated, exclusive quarrying zone for which it was utilizing it to extract boulders for a major government road project being James Gichuru Road Junction – Rironi Highway for KeNHA.
16. That on 18th June, 2019 an Addendum Lease Agreement had been entered into by the 3rd Interested Party, the 1st Interested Party and her son Edward Kithinji M'Mwenda, the 2nd Interested Party herein,



whereby the 1st Interested Party had nominated the 2nd Interested Party to act as her representative to manage the lease and collect payments on account of her advanced age. That upon the expiry of the said lease term, the parties had agreed to renew the lease and proceeded to execute a Lease dated 31st December, 2020 between the 1st and 3rd Interested Parties, which lease was expected to run up to 30th December, 2026.

17. They deny that their quarrying activities "obliterated and annihilated" the property, stating they acted in accordance with the lease and applicable laws. The company confirms that the 2nd Interested Party acted as an agent representative for the 1st Interested Party to manage the lease and collect rent, due to the 1st Interested Party's advanced age.
18. That upon receiving a complaint from the Applicant, in March 2025 the 3rd Interested Party temporarily halted rent payments under the Lease Agreement, and sought clarification.
19. That however, instead of providing a suitable response to the clarification requests, the 1st Interested Party, through her Advocates Gatitu Muchiri & Co. Advocates had issued a Letter of Demand to the 3rd Interested Party dated 5th May, 2025 seeking payment of rent and threatening to take legal action against the 3rd Interested Party. That they and their advocates had since responded to the 1st Interested Party formally seeking clarification pre-and-post filing of the current suit but had yet to receive any response thereof.
20. The company argues that equity favors them, as they made substantial investments relying on a valid registered title. They deny any involvement in the title issuance process or the alleged succession dispute. They contend that granting the judicial review orders would cause them substantial prejudice and economic loss and asks the court to the status quo to avoid disruption of its operations.
21. That in any case, the company had not been furnished with evidence that the ex-parte Applicant held a superior legal or equitable interest in the suit property or that she was in possession or occupation at any material time. That further, the ex-parte Applicant had not demonstrated any wrongdoing or illegality on the part of the 3rd Interested Party.
22. That the Applicant had not established a case for the grant of judicial review orders against the 3rd Interested Party, who was merely an innocent party with a legitimate lease caught up in a dispute it neither initiated nor contributed to.
23. The 3rd Interested Party thus sought for orders of status quo be preserved pending the hearing and determination of the instant matter to avoid disruption of its operations and prejudice to its legal rights. That the instant Application be dismissed with costs and that the Court do issue any other orders it deemed just and expedient in the circumstances.
24. In retort, the ex-parte Applicant challenged the 3rd Interested Party's defense, arguing that their conduct demonstrated an attempt to profit from a known dispute and illegality.
25. That it was unreasonable and unconscionable for the 3rd Interested Party to justify the continued exploitation and "obliteration" of the land while simultaneously conceding that it lacked proprietary rights in the property.
26. That the 3rd Interested Party's objective was to commercially benefit from the land without yielding any compensatory consideration. That by virtue of annexures 'MG-8', 'MG-9(A)', and 'MG-9(B)' the 3rd Interested party had been making rent payments to the 2nd Interested Party, who lacked legal interest in the property.



27. That by the said letter issued by the 1st Interested Party (the alleged registered owner) warning the 3rd Interested party that their continued use constituted trespass, showed uncertainty regarding the true identity and physical address of the 1st Interested Party, which the Applicant deems an "oxymoron" for a claim of lawful leasehold.
28. The Applicant dismissed the 3rd interested Party's proposal to deposit rent in court, arguing that this would effectively enjoin the Court in perpetuating an uncertainty and a prima facie illegality of the cancellation of her husband's title.
29. She contended that the 1st Interested Party, whom the 3rd Interested party claims to be the registered proprietor, had failed to file any response to the application despite being served. The Applicant thus dismissed the Respondent's grounds of opposition dated 9th June 2025 as being based on a misapprehension of facts and not being in line with Article 159(2)(d) of *akn ke act 2010 constitution the Constitution* of Kenya. That equity favored her and that she should be granted the orders sought, she being a bonafide beneficiary of the property, as the cancellation of the current title was fundamentally illegal.
30. The 1st and 2nd Interested Parties did not participate in the Ex-parte Applicant's Application herein.
31. The Application dated 23rd May 2025 was disposed of by way of written submissions summarized as herein under;

Ex-Parte Applicant's Submissions.

32. The Ex-Parte Applicant summarized the factual background of the matter and then framed one (1) issue for determination to wit: Whether she should be granted the orders sought and who bears the cost.
33. In her submission in support of her application for judicial review leave and orders, the Applicant, identifying herself as the bona fide beneficiary of the property via a Certificate of Confirmation of Grant (Succession) dated 2nd October, 2017 submitted that the Respondent committed a fundamental illegality that requires immediate remedy.
34. That the Respondent unilaterally and without any legal right cancelled the title to the suit property which belonged to her deceased husband and issued a new title to the 1st Interested Party, which action was intended to fraudulently dispossess the deceased's estate of the property, thus violating their Right to Property under Article 40 of *akn ke act 2010 constitution the Constitution* and the Rules of Natural Justice Legitimate Expectation because she was never heard before the title was cancelled.
35. That she had demonstrated a prima facie and arguable case sufficient to warrant the grant of leave to commence judicial review proceedings, as was held in the *Multiline Services Limited v Nairobi City County Government* (Judicial Review Application E025 of 2023) [2023] KEHC 23794 (KLR) (Judicial Review). That there was no contestation of her factual assertions by the the 1st and 2nd Interested Parties.
36. She forcefully argues that the 3rd interested party's desire to maintain the status quo was unconscionable given the established prima facie illegality of the title cancellation. She thus accused the 3rd interested party of seeking to capitalize on misunderstandings between the 1st and 2nd interested party for its maximum benefit that came without making any compensatory consideration while commercially benefitting from the suit property, despite conceding that they lacked proprietary rights.



37. The Applicant thus submitted that failure to grant the requested Stay Orders would render her entire application nugatory by allowing the ongoing destructive acts of the Interested Parties to continue during the litigation.
38. Citing the holding in the case of *Taib A Taib v Minister For Local Government & 3 Others* [2006] eKLR, she submitted that the Stay Orders were efficacious and necessary to preserve the substratum of the suit and that she ought to be granted all orders sought, including costs.

3rd Interested Party's Submissions

39. The 3rd Interested Party in its submissions dated 23rd July 2025 summarized the factual background of the matter and framed its issues for determination as follows:
- i. Whether the prayer for an order of Certiorari in the instant Application is time-barred.
 - ii. Whether the 3rd Interested Party's leasehold interest is entitled to legal protection.
 - iii. Whether the 3rd Interested Party stands to suffer prejudice.
40. On the first issue for determination as to whether the order for certiorari in the instant judicial review application was time-barred, the 3rd Interested Party submits that the application for an Order of Certiorari is incurably time-barred and that the court consequently lacks jurisdiction.
41. That the application violated the strict six-month limitation period for seeking leave to apply for Certiorari, as stipulated by Order 53 Rule 2 of the Civil Procedure Rules, 2010 and Section 9(3) of the *akn ke act 1956 48 Law Reform Act*.
42. That the administrative acts complained of being cancellation and re-registration of title occurred years ago between 1987 and 1988, thus making the filing of the Application in May 2025 grossly out of time. That even if the court considered the year 2017 as the date of the Applicant's Certificate of Confirmation of Grant, the Applicant provided no explanation for the subsequent 8-year delay in challenging the decision. It contended that the six-month limit is jurisdictional, not merely procedural, and cannot be waived or extended by the court, citing the case of *Republic v Githunguri Land Disputes Tribunal* [2003] eKLR.
43. Reliance was also placed on the decision in the case of *Wilson Osolo vs John Ojiambo Ochola & AG* [1996] KECA 217 (KLR) to argue that the *akn ke act 1956 48 Law Reform Act* providee no mechanism for the extension of this statutory time limit. That the Applicant failed to demonstrate that she had obtained any extension.
44. On the second issue for determination, as to whether the 3rd Interested Party's Leasehold Interest Entitled to Legal Protection? Submissions were in the positive stating that its leasehold interest, as a bona fide lessee, must be protected by law. Reliance was placed on the provisions of Section 26(1) of the *akn ke act 2012 3 Land Registration Act*, to submit that protection of a title of a registered proprietor was mandatory unless it was acquired through fraud or misrepresentation. That no evidence of fraud had been presented by the Applicant to demonstrate that the 1st Interested Party, the registered proprietor, had acquired the title fraudulently or un-procedurally, or that the 3rd Interested Party was involved in any such scheme.
45. Citing the decision in the case of *Sehmi & Another vs Tarabana Company Limited & 5 others* (Petition E033 of 2023) [2025] KESC 21 (KLR), the 3rd Interested Party maintained that a registered leaseholder who acquires land in good faith, holds an indefeasible interest under Section 26(1) and Article 40 of



akn ke act 2010 constitution the Constitution. That since no evidence had been tabled to taint the hands of the 1st or 3rd Interested Parties, the application should be dismissed.

46. On the third issue for determination as to whether the 3rd Interested Party shall suffer prejudice, it submitted in the affirmative stating that it had made substantial financial investments and infrastructural commitments based on enforceable legal arrangements, the lease. That halting its quarrying operations would lead to severe disruption of its contractual obligations with KeNHA (Kenya National Highway Authority) for government infrastructure projects, exposing them to financial penalties and reputational damage.
47. That contrary to the Applicant's claims of obliteration, the suit property is located in a rocky, isolated area exclusively utilized for quarrying and mining activities, which is the appropriate designated user for the land.
48. It contended that no irreparable harm was being suffered by the Applicant since the land was being used for its appropriate purpose. That in the alternative, they were the ones who would suffer irreparable loss were its lawful operations curtailed based on an unproven claim. That the application was incurably time-barred, the court is divested of jurisdiction, and the Applicant has failed to provide evidence of fraud to justify interfering with the 1st Interested Party's legal ownership or their leasehold interest.
49. The ex-parte Applicant without leave of the court decided to file their further written submissions dated 24th July 2025 which submissions are hereby expunged from the record suo moto.

Determination.

50. I have considered the Applicants' Application dated the 23rd May, 2025, the arguments therein, the submissions, the authorities cited and the applicable law.
51. The Applicant brings her application seeking an order of Certiorari to quash the Respondent's decision that cancelled her title to land parcel No. Kijabe Kijabe Block 1 1728, an order of Prohibition, to stop the Respondent from registering any further entries on the property's title, and to stop the 1st, 2nd and 3rd Interested Parties from excavating, wasting, damaging, alienating, selling, or interfering with the property as well an order of mandamus to compel the Respondent to reverse the cancellation and reinstate the Ex-parte Applicant as the registered owner. That the leave so sought to file the substantive application immediately act as a stay of temporary injunction to preserve the property.
52. The application was premised on the Applicant's argument that the title to land parcel No. Kijabe Kijabe Block 1 1728 was cancelled and re-issued to the 1st Interested Party without the Applicant being heard, thus violating the provisions of Article 47 of *akn ke act 2010 constitution the Constitution* on Fair Administrative Action and Natural Justice. That the illegal cancellation constituted a fraudulent attempt to dispossess the deceased's estate, thus violating Article 40 on the Right to Property. That the 3rd Interested Party was actively obliterating the land through quarrying, which must be immediately stopped to preserve the substratum of the suit. That in the meantime, there be prohibition and stay orders against all Interested Parties from interfering with the land because the 3rd interested party continues to unconscionably profit from the dispute.
53. The application was opposed by the Respondent for reason that the application for Certiorari was filed outside the six-month statutory limitation period set by Order 53 Rule 2 Civil Procedure Rules and Section 9(3) of the *akn ke act 1956 48 Law Reform Act*. That the court therefore lacked jurisdiction to consider the substantive illegality of the title cancellation.



54. That the impugned administrative act occurred in 1987 1988, and even considering the 2017 Grant of Confirmation, the Applicant failed to explain the 8-year delay in filing. That the application was incurably time-barred and must be dismissed.
55. The 3rd interested Party also opposed the application arguing that it was an innocent third party caught in a family administrative dispute and must have its leasehold interest protected. That it was a bona fide lessee who had verified the title and relied on its sanctity under Section 26(1) of the *akn ke act 2012 3 Land Registration Act*. That the Applicant had presented no evidence of fraud involving them or the 1st Interested Party and therefore halting its operations would cause grave prejudice and financial loss in the form of contractual breaches with KeNHA, which far outweighed any harm caused to the Applicant, especially since the land was already in a quarrying zone. That equity favors it (3rd Interested Party) who had made substantial investments based on a registered title. That it was willing to deposit rent in court pending the dispute resolution. That the Applicant's claims were unproven and speculative.
56. Having given the background of the matter, I find the issue therein arising for determination as follows;
- i. Whether the application is incurably time-barred.
57. Order 53 Rule 2 of the Civil Procedure Rules, is the applicable law on leave to commence Judicial Review proceedings. The said proviso provides as follows:
- “No 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.”
58. On the other hand, Section 9 (3) of the *akn ke act 1956 48 Law Reform Act* provides as follows:
- “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 proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings 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.”
59. As seen from the above, an application for leave to apply for an order of certiorari to quash a judgment, order, decree, conviction, or other proceeding cannot be made later than six months after the date of the proceeding or such shorter period as may be prescribed by any law.
60. In *Wilson Osolo v John Ojiambo Ochola & Another* [1996] eKLR, the court of Appeal observed as follows;
- “It can readily be seen that order 53 rule 2 (as it then stood) is derived verbatim from Section 9(3) of the *akn ke act 1956 48 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 *akn ke act 1956 48 Law Reform Act*.” There is no provision for extension of time to apply for such leave in the *akn ke act 1968 21 Limitation of Actions Act* (Cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a limitation period. But this Act has no relevance here.”

61. In the present matter, it has been argued that the impugned administrative acts complained of, of cancellation and re-registration of title to land parcel No. Kijabe Kijabe Block 1 1728 occurred on the 28th January 1989 (see Green Card annexed as “FWM4”) thus making the filing of the Application in May 2025 for leave to apply for orders of certiorari grossly out of time prescribed by law as it violated the six-month limit under the *akn ke act 1956 48 Law Reform Act* and Civil Procedure Rules.
62. The Court of Appeal in *Kihoro v Commissioner of Lands & 3 others* [2022] KECA 958 (KLR) had held as follows;

“Consequently, we hold and find that leave to institute Judicial Review proceedings having been sought on 17th January 2013, eleven years from the date of the impugned decision i.e. on 23rd January 2002, the 4th respondent’s Judicial Review application before the High Court was incompetent and time barred and could subsequently not stand. Accordingly, we find this ground of appeal to be merited and we hereby allow the same.”

63. Consequently, this Application seeking leave to institute Judicial Review proceedings having been made more than thirty-six years from the date of the impugned decision on the 28th January 1989 cannot stand. The court is herein divested of jurisdiction by operation of statute and the Applicant’s application is herein struck out with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 30TH DAY OF OCTOBER 2025

M.C. OUNDO

ENVIRONMENT & LAND COURT – JUDGE

