

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC JUDICIAL REVIEW NO. E001 OF 2024

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL
REVIEW IN THE NATURE OF CERTIORARI**

AND

**MANSON MUSYOKA KISELE.....EXPARTE
APPLICANT**

VERSUS

**THE COUNTY DIRECTOR, LAND ADJUDICATION & SETTLEMENT
(MAKUENI COUNTY).....1ST RESPONDENT
THE MINISTER OF HOUSING & LANDS THROUGH DEPUTY
COUNTY COMMISSIONER – KILUNGU..... 2ND RESPONDENT**

AND

**BENJAMIN NDOLO MAIKA..... 1ST INTERESTED
PARTY**

RULING

1. This is a ruling in respect of a preliminary objection dated 7th July, 2025 brought by the 1st Interested Party on the following grounds:

- 1) That the application is incompetent, bad in law, an abuse of the court process having been brought, outside the six (6) months statutory period as stipulated in Order 53 Rule 2 of the Civil Procedure Rules, 2010 and Section 9(3) of the Law Reform Act.
- 2) That the orders made on 18th March, 2025 granting the extension of time to file the application dated 22nd April, 2025 outside the statutory period of six (6) months as stipulated in order 53 Rule 2 of the Civil Procedure Rules, 2010 and Section 9(3) of the Law Reform Act were made through misrepresentation to the court, in error and the same ought to be set aside because the court has no jurisdiction to extend the time.
- 3) That this court lacks jurisdiction to hear and determine the application brought outside the statutory period of six (6) months

stipulated in Order 53 Rule 2 of the Civil Procedure Rules, 2010 and Section 9(3) of the Law Reform Act.

2. The Ex-parte Applicant had filed a chamber summons dated 14th September, 2024 seeking to file judicial review proceedings out of time. He was directed to effect service. When the application came up for hearing on 18th March, 2025, neither the Respondents nor the Interested Parties had filed any response to the same. The court allowed the same prompting the filing of this preliminary objection.
3. The Ex-parte Applicant contends that this court has no jurisdiction to extend time for filing judicial review proceedings and that the leave granted on 18th March, 2025 was obtained through misrepresentation as the court had no jurisdiction to do so. The Ex-parte Applicant urges the court to set aside the order of 18th March, 2025 and proceed to decline to grant leave.
4. The court directed parties to file written submissions. The 1st Interested Party filed submissions dated 8th July, 2025. The Ex-parte Applicant filed submissions dated 22nd July 2025.
5. The 1st Interested Party submitted that this court has no jurisdiction to extend time for filing judicial review proceedings. He relied on the case of **Wilson Osolo –vs- John Ojiambo Ochola & Another (1966) eKLR Republic –vs- Chairman Amogoro Land Dispute Tribunal & another Ex-parte Paul Mafwabi Wanyama (2014) eKLR and AKO –vs- Special District Commissioner Kisumu & Another (1989) eKLR**. These are all Court of Appeal decisions which held that the court does not have jurisdiction to extend time limited by statute.
6. On the issue of setting aside the orders of 18th March, 2025, the 1st Interested Party submitted that as the orders of 18th March, 2025 were made ex-parte, they can be challenged at the trial. He relied on the case of **R-vs- Principal Magistrate P. Ngare Gesora Principal Magistrate’s Court & 2 Others ex-parte Nation Media Group Ltd (2013) eKLR and P. M. N. –vs- Kenyatta National Hospital & 6 others (2015) eKLR**.

7. The Ex-parte Applicant submitted that the court has already granted extension of time and if the 1st Interested Party wanted to challenge that, then he should have appealed and not to raise a preliminary objection.
8. The Ex-parte Applicant submitted that this court has jurisdiction to extend time even where the time for doing the act has expired. He relied on Order 50 Rule 6 of the Civil Procedure Rules which provides as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed”.

9. The Ex-parte Applicant also relied on the case of **Sitenda Sebalu –vs- Sam K. Njuba** and the **Electoral Commission of Uganda (Supreme Court of Uganda Election Petition No. 26 of 2007)** where it was held as follows:

“.....the inherent powers of the court can be resorted to so as to extend time even where there is a law of limitation to an action”.

10. I have carefully considered the submissions by the parties. The only issue for determination is whether the preliminary objection should be allowed. To begin with, it is important to note that already this court has granted extension of time. Whether the court had jurisdiction to do that or not is not an issue which can be determined by this court. The only court which can address that issue is the Court of Appeal by way of appeal. This court cannot purport to sit on appeal from its own decision under the guise of setting aside its orders of 18th March, 2025.

11. Order 53 of the Civil Procedure Rules is self-sustaining. One cannot import the other provisions of the Civil Procedure Act to apply to it. The substantive motion which was filed pursuant to the leave of 18th March, 2025 is not the one being determined in this preliminary objection and therefore the

submissions by the 1st Interested Party on setting aside are misplaced and even if the said application was being considered concurrently with this preliminary objection, it will not have been addressed for the reason that the other rules of Civil Procedure cannot be imported to aid Order 53 of the Civil Procedure Rules.

12. The issue of whether the substantive motion filed was filed outside the 21 days granted was not the subject of the preliminary objection. That issue was first raised in submissions. The substantive notice filed pursuant to the leave granted is not the one being determined. I therefore find that the preliminary objection is devoid of merit. The same is dismissed with costs to the Ex-parte Applicant.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 11TH DAY OF DECEMBER, 2025.**

IN THE PRESENCE OF:

Mr. Muumbi for 1st Interested Party.

Mr. Asiyo for Mr. Nzavi for Applicant

Court assistant Steve Musyoki