

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC MISCELLANEOUS APPLICATION NO. EO24 OF 2025

**IN THE MATTER OF AN APPLICATION BY PETER MUNENI NDULU
AND DAVID MUTUNGA NDULU FOR LEAVE TO COMMENCE
PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW;**

-AND-

**IN THE MATTER OF SECTIONS 4(1), 4(3), 4(4) OF THE FAIR
ADMINISTRATIVE ACTION ACT NO. 4 OF 2015;**

-AND-

**IN THE MATTER OF ARTICLES 10(1), 10(2) (b), 47(1) OF THE
CONSTITUTION OF KENYA;**

-AND-

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT CAP 303A
LAWS OF KENYA AND MAKUENI LAND DISPUTE TRIBUNAL**

-BETWEEN-

PETER MUNENI NDULU1ST APPLICANT
DAVID MUTUNGA NDULU2ND APPLICANT

-VERSUS-

MAKUENI LAND DISPUTE TRIBUNAL1ST RESPONDENT
THE HON. ATTORNEY GENERAL2ND RESPONDENT
TITUS M. MUMO3RD RESPONDENT

RULING

1. The Applicants filed the Chamber Summons dated 31st July, 2025 under the provisions of Section 8(2), Part III of the Fair Administrative Action Act No. 4 of 2015 in addition to Order 53 Rule 1 of the Civil Procedure Rules, 2010.

2. The following orders were sought: -

1) **[SPENT]**

2) **Pending the inter partes hearing of this judicial review application, the judgment of Makueni Lands Dispute Tribunal given on 4th June, 2008 be stayed ex-parte.**

3) **The Applicant be granted leave to commence judicial review proceedings for an order of certiorari to quash the decision of the Respondent of ordering of eviction of the deceased Samuel Ndulu Ngolania and ordering the transfer of the subject land parcel No. MAKUENI/UNOA/301 to Titus M. Mumo.**

4) **The Applicant be granted leave to apply for an order of certiorari to quash the decision of the Respondent of ordering of eviction of the deceased Samuel Ndulu Ngolania and ordering the transfer of the subject land Parcel No. MAKUENI/UNOA/301 to Titus M. Mumo.**

5) **The leave granted do operate as stay of enforcement of the decision(s) of the Respondent of ordering of eviction of the deceased Samuel Ndulu Ngolania and ordering the transfer of the subject land Parcel No. MAKUENI/UNOA/301 to Titus M. Mumo.**

6) **The costs of this application be provided for.**

3. The application was supported by the statutory statement dated 31st July, 2025 and the verifying affidavit of Peter Muneni Ndulu sworn on even date.

4. He averred that together with his Co-applicant, they are the administrators and beneficiaries of the estate of the late Samuel Ndulu Ngolania (Deceased). He added that they had just found out that their late father was involved in Case No. 8 of 2008 which was filed by one Titus M. Mumo and the Makueni Land Dispute Tribunal subsequently delivered the decision dated 4th June, 2008.

5. It is the Applicants' case that they are aggrieved by the said decision because the 1st Respondent acted beyond its mandate as provided under Section 3 (1) (a), (b)

and (c) of the Land Disputes Tribunals Act Cap 303A laws of Kenya (Repealed) in dealing with a dispute involving registered land which concerned an issue of ownership. The Applicant averred that the 1st Respondent's decision may render the estate of the late Samuel Ngolania to suffer irreparably. He added that it is lawful, just and fair that the orders sought herein be granted.

6. The Respondents did not file any replies to the application despite evidence of service upon them.

7. The sole issue for determination is as follows: -

i) Whether the Applicants are entitled by law to leave to apply for judicial review orders of certiorari against the decision dated 4th June, 2008.

8. The present application for leave to apply for a judicial review order of certiorari was filed on 31st July, 2025 pursuant to the provisions of the Law Reform Act and Order 53 of the Civil Procedure Rules, 2010. Sections 9(2) and 9(3) of the Law Reform Act provide as follows:-

(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.

(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.

9. Similarly, Order 53 Rule 2 of the Civil Procedure Rules, 2010 outlines as follows:-

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.

10. The above provisions outline a mandatory statutory period of six (6) months within which an application for leave to apply for a judicial review order of certiorari can be made under the regime of the Law Reform Act. A statutory time limitation cannot be enlarged by this court under subsidiary legislation such as the provisions of the Civil Procedure Rules, 2010.

11. The decision which the Applicants have sought to challenge is dated 4th June, 2008 albeit the same was made by the Magistrate's Court presumably at the tail end of earlier proceedings before the Makueni District Land Disputes Tribunal. This is in accordance with Section 7 (1) and (2) of the Land Disputes Tribunal Act Cap 303A (Repealed) which provides as follows: -

(1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The court shall enter judgement in accordance with the decision of the Tribunal and upon judgement being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.

13. There is a lapse of approximately seventeen (17) years between the date of the impugned decision and the date of the leave application. The leave application is clearly caught by the statutory time limitation.

14. In **Odinga and others v Nairobi City Council [1990–1994] 1 EA 482**, the court aptly held as follows: -

“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. The plaintiffs’ application was made after a lapse of 14 months since the ground for the application arose and was therefore time barred.

The Rules of Court made under an Act cannot defeat or override the clear provisions of the Act. An Act of Parliament cannot be amended by subsidiary legislation. Thus the part of Order LIII, rule 2 as amended by Legal Notice number 164 of 1992 which read “unless the High Court considers that there is good reason for extending the period within which the application shall be made” was ultra vires section 9(2) of the Law Reform Act (Chapter 26).”

15. A similar position was taken by the court in **Republic v Council of Legal Education & another Ex parte Sabiha Kassamia & another [2018] eKLR**, where Mativo J. (as he then was) observed as follows:-

“The ex parte applicants invoked sections 8 and 9 of the Law Reform Act in their application, and the provisions of the Civil Procedure Rules. They cannot now turn around and claim that the same provisions they

seek to invoke are not applicable in the circumstances of their case. Further, the application before me is governed by the same provisions of the law. It is not a matter of discretion. Discretion does not apply where the statute is clear. In any event, even if the law had granted a discretion in the matter before me, the applicants have not demonstrated any basis for the Court to exercise its discretion in their favour. Delay, no matter how short must be accounted for.

*It is also important to point out that the provisions of order 50 Rule 6 of the Civil Procedure Rules, 2010 which grant the Court power to enlarge time cannot override the express provisions the Statute, namely, section 9 (3) of the Law Reform Act. In this regard, I find useful guidance in the authorities cited by Mr. Oduor, namely, *Re an application by Gideon Waweru Githunguri [1962] 1 EA 520* whereby the colonial Supreme Court held that the said section imposes an absolute period of limitation...*

In view of my conclusions herein above, and my finding that section 9 (3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules, 2010 are couched in mandatory terms, I find and hold that the preliminary objection succeeds.”

16. In view of the express provisions of Section 9 of the Law Reform Act, it is clear that the present application for leave to apply for judicial review orders of certiorari as filed by the Applicants is a nullity for non-compliance with mandatory statutory time limitations.

17. Accordingly, the Chamber Summons dated 31st July, 2025 is dismissed with no orders as to costs.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS
THIS 18TH DAY OF DECEMBER, 2025.**

In the absence of the Applicant's counsel who was duly served with ruling notice.

Court Assistant - Steve Musyoki

ORIGINAL