



**Yanga v Secretary to the IEBC & another (Judicial Review Application E038 of 2026)
[2026] KEHC 1938 (KLR) (Judicial Review) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1938 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E038 OF 2026
RE ABURILI, J
FEBRUARY 19, 2026**

BETWEEN

ZELIANG YANGA APPLICANT

AND

THE SECRETARY TO THE IEBC 1ST RESPONDENT

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 2ND
RESPONDENT**

RULING

1. The application by way of chamber summons dated 26th February 2026 is accompanied by the statutory statement and verifying affidavit. Both documents are dated and or sworn on 26/2/2026. The application was filed on 17/2/2026.
2. I have heard the applicant through Counsel Ms. Mugasia who acknowledges that the application cannot stand for two reasons. One, is that even assuming that there is an inadvertent error in the dating of the chamber summons and the statutory statement, by dating them in the future, which may be curable by an oral application to amend, an affidavit is not a pleading capable of being amended because the person swears on the correctness of its contents and verifying the facts as stipulated in Order 53 Rule 1 of the Civil Procedure Rules.
3. An affidavit sworn in the future, not before or on the date of filing of suit simply does not make any sense at all in terms of verifying the factual position of the matters deposed and annexing evidence which is in support of the suit. It is fatally defective, not curable under Order 19 of the Civil Procedure Rules or Article 159 of *the Constitution*.
4. Order 19 Rules 7 and 8 of the Civil Procedure Rules provides that:



7. Irregularity in form of affidavit [Order 19, rule 7]
The court may receive any affidavit sworn for the purpose of being used in any suit notwithstanding any defect by misdescription of the parties or otherwise in the title or other irregularity in the form thereof or on any technicality.
8. Affidavit sworn before suit filed [Order 19, rule 8]
Unless otherwise directed by the court an affidavit shall not be rejected solely because it was sworn before the filing of the suit concerned
5. The Order acknowledges that there could be irregularities in form or misdescription and that an affidavit may be sworn before filing of the suit and that in itself does not render the affidavit defective. However, the affidavit and all pleadings in the present case are dated in the future which is 26/2/2026.
6. The second most important thing to appreciate is that a verifying affidavit under Order 53 Rule 1 of the Civil Procedure Rules is an important document that must be filed and therefore about a competently sworn affidavit, there can be no competent chamber summons.
7. The second reason that renders the application dated 26/2/2026 not arguable is that under Order 53 Rule 4 of the Civil Procedure Rules, upon leave to apply being granted, a party proceeds to file a notice of motion and the court will rely on the statutory statement, documents and verifying affidavit filed with the chamber summons for leave.
8. No other documents can be filed at that stage. It follows that all evidence which an applicant for leave wishes to rely on must be filed at the leave stage, to support the prayers for leave so as to enable the court appreciate the necessity to grant leave to apply.
9. The evidence filed at the leave stage is what persuades the court to find that the applicant has an arguable case and that therefore the intended substantive motion is not frivolous, incompetent or hopeless.
10. In this case, Counsel for the applicant admits that no documents were filed to support the application for leave to apply. Once a party elects to approach the Court under Order 53 of the Civil procedure Rules, leave to apply is not automatic. The Court must determine in limine whether it has jurisdiction, whether the cause of action is statute barred, and whether it is prima facie arguable.
11. Mandamus issues to compel a public authority or statutory body to perform a public duty. There must be evidence of why mandamus has to be sought, to be issued. In matters settlement of decrees, especially decrees against public entitles, there are preconditions to be fulfilled by a party before seeking leave to apply.
12. In this case, there is absolutely no material to support the chamber summons for leave. In the circumstances, I am unable to find that the chambers summons for leave to apply for mandamus, dated 26/2/2026 is prima facie arguable.
13. I decline to grant leave sought and proceed to dismiss the said application dated 26/2/2026 with no orders as to costs. The applicant is at liberty to file a fresh competent application in a different file for consideration on merit, but is forewarned that with such incompetent applications being dismissed from time to time as this is not the first time that the applicant's application is being dismissed for being incompetent, limitation period might catch up to bar recovery or enforcement of the decree sought to enforced. Other applications dismissed are JR E067/2022, E294/2025 & 318/2025 on the same cause of action.
14. This file is closed.



DATED, SIGNED & DELIVERED AT NAIROBI THIS 19TH DAY OF FEBRUARY, 2026

R.E. ABURILI

JUDGE

