



**Ngetich v Elgeyo Marakwet County Land Adjudication Officer & 7 others (Miscellaneous Judicial Review E007 of 2025) [2026] KEELC 1346 (KLR) (4 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1346 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
MISCELLANEOUS JUDICIAL REVIEW E007 OF 2025**

**L WAITHAKA, J**

**MARCH 4, 2026**

**IN THE MATTER OF AN APPLICATION OF JOHN KIPCHOGE NGETICH FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

**= AND =**

**IN THE MATTER OF LAND ADJUDICATION ACT (CAP 284) LAWS OF KENYA**

**= AND =**

**IN THE MATTER OF LAND PARCEL EM/KAPTERIK 'B'/178 IN KAPTERIK 'B' ADJUDICATION SECTION (KEIYO NORTH SUB-COUNTY**

**BETWEEN**

**JOHN KIPCHOGE NGETIC ..... APPLICANT**

**AND**

**THE ELGEYO MARAKWET COUNTY LAND ADJUDICATION OFFICER ..... 1<sup>ST</sup> RESPONDENT**

**THE ELEGYO MARAKWET COUNTY LAND ADJUDICATION COMMITTEE ..... 2<sup>ND</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF LANDS ..... 3<sup>RD</sup> RESPONDENT**

**THE LAND REGISTRAR ELGEYO MARAKWET COUNTY ... 4<sup>TH</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**JOHN KIPROP BUNDOTICH ..... 1<sup>ST</sup> INTERESTED PARTY**

**JOSEPHAT KIPRONO ..... 2<sup>ND</sup> INTERESTED PARTY**

**STANLEY KIPROTICH KIPLAGAT ..... 3<sup>RD</sup> INTERESTED PARTY**



## RULING

### Introduction

1. Vide a chamber summons application dated 9<sup>th</sup> June 2025, the applicant herein seeks leave to apply for judicial review orders of Certiorari and Prohibition in respect of decisions of 1<sup>st</sup> respondent made on 26<sup>th</sup> April, 2010 and on 27<sup>th</sup> April 2010 concerning the parcel of land known as EM/Kapterik 'B'/178.
2. The application is expressed to be brought under Order 53 rule 1 and 2 of the Civil Procedure Rules, Section 8 and 9 of the *Law Reform Act*, and Articles 23 and 47 of *the Constitution* of Kenya, 2010.
3. The application is premised on the grounds that the 1<sup>st</sup> and the 2<sup>nd</sup> respondents issued two contradictory and mutually exclusive decisions regarding the adjudication area between two neighbouring clans; that the process leading to the impugned decisions was procedurally unfair, lacking transparency and contrary to Articles 47 and 50 of *the Constitution* and that the decisions have created tension and potential conflict within the affected community. Further, that the applicant has no other remedy available other than the intervention of this court.
4. It is the applicant's case that this court has jurisdiction to hear and determine the matter.
5. The respondents filed a notice of preliminary objection dated 23<sup>th</sup> July, 2025 in which they contend that the application is time-barred as the decisions sought to be quashed were made on 26<sup>th</sup> April, 2010 and 27<sup>th</sup> April, 2010; that the application was filed more than 14 years after the cause of action arose, contrary to the mandatory provisions of Section 9(3) of *Law Reform Act* and Order 53 rule 2 of the Civil Procedure Rules, which limit filing of applications for Certiorari to six months from the date of the challenged decision; that this honourable court lacks jurisdiction to entertain the application on account of time bar; that the application offends the doctrine of finality of administrative decisions not challenged within time and that the applicant improperly seeks both prerogative orders and injunctive reliefs within the same application contrary to the provision of Order 53 of the Civil Procedure Rules which does not provide for issuance of injunctive reliefs in judicial review proceedings.
6. Terming the application fatally defective and an abuse of the court process, the respondents pray that the ex parte applicant's application dated 9<sup>th</sup> July, 2025 be dismissed with costs to them.
7. The interested parties also filed a notice of preliminary objection dated 24<sup>th</sup> September, 2025 in which they urge the court to dismiss the ex parte applicant's application on the ground that the suit offends the provisions of Order 53 of the Civil Procedure Rules having been filed outside the six (6) months period and that the suit is frivolous and an abuse of the court process.
8. The 1<sup>st</sup> interested party also filed a replying affidavit, sworn on 22<sup>nd</sup> September 2025 in which he has deponed as follows:-

“ .....

3. The objections referred to by the ex parte applicant were heard and determined on 26<sup>th</sup> April 2010 and 27<sup>th</sup> April 2010 but the ex parte applicant never exercised his right of appeal
4. That contrary to the applicant's assertions the process of adjudication was concluded long time ago and we were issued with title deed for parcel known



as kapterik/kapterik 'B'/178 in the year 2016 (annexed herewith and marked JKB-1 is a copy of the title).

5. That I am advised by my advocates on record whose advice I believe to be true and sound that the application herein offends the laid down procedure in law having been brought after over six (6) months after the decision was made and no leave has been sought to be filed out of time.
6. That the applicant's application is full of misrepresentation of facts and falsehood and the same ought not to waste court's valuable and limited time.
7. That I am further advised by my advocates on record that the application herein has glaring defects and is misplaced and bad in law.
8. That the applicant herein will not be prejudiced in any way if the orders sought are not granted since the court cannot issue orders in vain.
9. That I depose this affidavit in opposition of the application herein.
10. That it is the interest of justice and fairness that the orders sought herein should not be granted..."

9. Pursuant to directions given on 2<sup>nd</sup> October 2025, the preliminary objections filed by the respondents and the 1<sup>st</sup> interested party, both dated 23<sup>rd</sup> July 2025, were disposed of by way of written submissions.

## **Submissions**

### **1<sup>st</sup> Interested Party's written submissions**

10. In his submissions filed on 17<sup>th</sup> November 2025, the 1<sup>st</sup> interested party has made reference to the threshold of a preliminary objection set out in the case of Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors (1969) EA 696 and based on the provisions of Order 53 of the Civil Procedure Rules, Section 9(3) of the [Law Reform Act](#) submitted as follows:-

"In the current case the preliminary point does not raise issues which the court has to make an inquiry by conducting full hearing, it therefore meets the parameters and conditions set above."

11. On whether the instant application was brought out of time, the 1<sup>st</sup> interested party submits as follows:-

"The preliminary point is that this application herein offends the provisions of Order 53 of the Civil Procedure Rules having been filed outside the six (6) months period. The current application for leave to institute judicial review application for an order of certiorari to bring into this court and quash the decisions made by the 1<sup>st</sup> respondent on 26.4.2010 and 27.4.2010 in respect to EM/Kapterik "B"/178.

The order being sought is the one of certiorari which falls squarely within the time limits provided in the statute and rules already expounded being the [Law Reform Act](#) and Order 53 of the Civil Procedure Rules. The application has been brought 15 years after the impugned decision when already title deed for parcel had been issued which copy has been attached to the replying affidavit of the Interested Parties."



12. The 1<sup>st</sup> interested party has placed reliance on the decision in the case of Wilson Osolo vs John Ojiambo Ochola & another (1996) e KLR where the Court of Appeal stated/held:-

“It can readily be seen that Order 53 rule 2 (as it then stood) is derived verbatim from Section 9(3) of the 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 Law Reform Act”. There is no provision for extension of time to apply for such leave in the 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”.

### **Applicant’s submissions**

13. In his submissions filed on 22<sup>nd</sup> November 2025, the applicant submits/contends that the respondents’ preliminary objection does not raise a pure point of law as it invites the court to investigate facts which can only be ascertained upon full hearing; that the issues of ownership, possession and procedural fairness raised in the application are clearly factual and cannot be disposed of summarily at preliminary stage; that the applicant’s proprietary rights, the sequence of administrative action and fairness of the proceedings are factual questions for trial and that issues of ownership, possession and compliance with procedural safeguards demand evidence not mere assertion.
14. The applicant further contends that the respondents’ preliminary objection is misconceived, lacking in merit and an abuse of court process hence should be dismissed with costs.
15. Claiming that his application is premised on Articles 22, 23, 40, 47 and 50 of the Constitution, which safeguards the right to fair administrative action, protection of property and access to justice; the applicant submits that this court’s jurisdiction is properly invoked under Article 162 (2)(b) of the Constitution of Kenya and Sections 3 and 13 of the Environment and Land Court Act.
16. The applicant further submits that he has demonstrated that the actions of the respondents were unlawful, procedurally unfair and in clear violation of the right to property, fair administrative action and fair hearing guaranteed under the Constitution.

### **Analysis and determination**

17. I have read and considered the application, the preliminary objections, submissions by the applicant and the interested parties and I find the sole issue for determination to be whether the preliminary objections taken up by the respondents and the interested parties, particularly as relates to the contention that the application offends the provisions of Order 53 Rule 1 as read with the provisions of Section 9(3) of the Law Reform Act, is time barred.
18. Regarding that issue, I note that the applicant has not expressly addressed it in his submissions but sought to depart from his pleaded case, which is expressed to be brought under Order 53 rule 1 and 2 of the Civil Procedure Rules, Section 8 and 9 of the Law Reform Act and Articles 23 and 47 of the Constitution of Kenya.
19. The issue of time bar arises from the pleadings filed by the parties. In his own pleadings, the applicant has clearly indicated that the cause of action arose in 2010. By operation of law, particularly Order 53 Rule 1 and 2 as read with the provisions of Sections 8 and 9 of the Law Reform Act, the applicant was under a legal obligation to bring the application for leave to institute judicial review proceedings within 6 months from the date the decision sought to be quashed was made.



20. In the instant application, the applicant did not seek leave to apply for judicial review order of Certiorari within the time prescribed by law. Instead, he has brought the application way after the time prescribed in law for applying for judicial review order of Certiorari lapsed. No explanation for the inordinate delay has been offered by the applicant.
21. Even assuming that the application is made under *the Constitution* of Kenya 2010, which is not the case, the application for leave having been made long after the cause of action accrued in favour of the applicant, and there being no explanation for the inordinate delay, this court would have no basis for granting the orders sought.
22. The upshot of the foregoing is that the preliminary objections taken up by the respondents and the interested parties, particularly as it relates to the contention that the application dated 9<sup>th</sup> July 2025 is time barred, are found to be merited and are upheld. Consequently, I dismiss the application dated 9<sup>th</sup> July 2025 with costs to the respondents and the interested parties.
23. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT BUSIA THIS 4<sup>TH</sup> DAY OF MARCH, 2026  
IN THE ABSENCE OF THE PARTIES.**

**L. N. WAITHAKA**

**JUDGE**

Court Assistant; Tracy

