



**Rift Valley Enterprises Limited v Nakuru District Land Disputes Tribunal & 2 others
(Civil Appeal E019 of 2021) [2026] KECA 602 (KLR) (17 March 2026) (Judgment)**

Neutral citation: [2026] KECA 602 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL E019 OF 2021
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
MARCH 17, 2026**

BETWEEN

RIFT VALLEY ENTERPRISES LIMITED APPELLANT

AND

THE NAKURU DISTRICT LAND DISPUTES TRIBUNAL 1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT AT NAKURU 2ND RESPONDENT

**ANTHONY MICHAEL HUGHES (ON HIS OWN BEHALF AND AS
ADMINISTRATOR OF THE ESTATE OF ALEXANDRA THERESA HUGHES -
DECEASED) 3RD RESPONDENT**

(An appeal from the Ruling of the Environment and Land Court of Kenya at Nakuru (D. O. Obungo, J.) delivered on 10th December 2020 in ELC Judicial Review No. 2 of 2020)

JUDGMENT

1. This appeal challenges the ruling of the Environment and Land Court at Nakuru (Ohungo, J.) delivered on 10th December 2020, by which the learned Judge dismissed the appellant's application for leave to apply for a judicial review order of certiorari, with costs awarded to the 3rd respondent.
2. The appellant, Rift Valley Enterprises, was the registered proprietor of a parcel of land East of Nakuru Municipality known as L.R. 10457.
3. In a sale agreement dated 12th May 1983 the appellant sold to Alexandra Theresa Hughes (Deceased), a portion of land measuring approximately 2 acres, to be excised from L.R. 10457, for the sum of Kshs. 150,000 comprised in title number Dundori/Mugwathi/Block 2/227.
4. The appellant contends that the 3rd respondent came to be registered over Block 2/227 as successor to the estate of Alexandra Theresa Hughes, and over Block 2/228 by virtue of shares purportedly



acquired by the deceased from one Samwel Kibowen Towett who claimed to be a former member of the company despite having no verified shareholding in the company's register and that, notwithstanding this, the 2nd respondent issued title deeds over both suit properties to the 3rd respondent without prior decision of the Tribunal; without any acquisition documents and without the authority of the appellant. The appellant maintained that the 3rd respondent had thereby conspired to defraud it of its property.

5. Consequently, the appellant commenced proceedings before the Nakuru District Land Disputes Tribunal (The Tribunal), the 1st respondent herein, as Land Disputes Tribunal Claim Number 37 of 2007. Both Alexandra Theresa Hughes and the 3rd respondent appeared as objectors/defendants to that claim. The appellant sought the eviction of both from the two parcels. On 21st October 2009, the 1st respondent determined the matter in favour of the objectors with costs. It found that the appellant had failed to prove its claim, that both objectors had acquired the parcels procedurally and had occupied and worked the land since 1979 (a period of 30 years) and unconditionally qualified for adverse possession of the land.
6. The Tribunal ordered inter alia, that the suit properties known be transferred to the objectors, within six months upon payment of the requisite fees.
7. The Tribunal's decision was subsequently adopted by the 2nd respondent, the Chief Magistrate's Court at Nakuru, as its own judgment on 25th March 2010. Separately, pursuant to an order made by the High Court in Miscellaneous Application No. 342 of 2011, the suit properties known as Dundori/Mugwathi/Block 2/227 and Dundori/Mugwathi/Block 2/228 were directed to be transferred to Alexandra Theresa Hughes and the 3rd respondent respectively, and were thereafter registered accordingly. Alexandra Theresa Hughes passed away on 27th June 2010, following which the 3rd respondent was appointed administrator of her estate.
8. Aggrieved, the appellant subsequently instituted proceedings in Nakuru ELC No. 547 against the 1st and 3rd respondents and Samwel Towett; claiming that they had conspired to defraud it of its properties. The appellant sought a declaration of ownership over the suit properties, an order directing the Land Registrar to cancel the titles issued, an order of eviction and a permanent injunction.
9. In a judgment dated 13th February 2020, Ohungo J. struck out the appellant's claim on the ground that the issue of ownership of the suit properties was res judicata, having been directly and substantially determined in Land Disputes Tribunal Claim No. 37 of 2007 and confirmed through the order made in HC Miscellaneous Application No. 342 of 2011, neither of which had been set aside.
10. Dissatisfied with this outcome, the appellant filed ELC Judicial Review Application No. 2 of 2020 at the Environment and Land Court at Nakuru, seeking leave to apply for an order of certiorari to quash the Tribunal's decision of 21st October 2009 and the consequential decree of the Chief Magistrate's Court made on 25th March 2010.
11. The appellant's case for leave mainly rested on the contention that the Tribunal had acted without jurisdiction by determining matters of title to registered land, and that its decision was therefore a nullity to which the six-month limitation period under Section 9(3) of the *Law Reform Act* and Order 53 rule 2 of the Civil Procedure Rules did not apply.
12. Upon weighing the issues, Ohungo J. found that the proceedings before the Tribunal had been brought by the appellant as a trespass claim against the 3rd respondent's family and that the Tribunal had simply found the appellant had failed to prove that claim. The tribunal did not, in its impugned decision, make any determination of title to or ownership of any registered land. It neither purported to cancel



any title or order that any person be registered as proprietor of any registered land. Having so found, the learned Judge held that:

“the applicant has failed to demonstrate any nullity that would take the matter outside the six months’ limitation. The applicant having filed the present application on 9th June 2020, it is over 9 years late and violates both Section 9(3) of the Law Reform Act and Order 53 rule 2 of the Civil Procedure Rules.”

13. Dissatisfied with that ruling, the appellant has filed the instant appeal setting out five grounds of appeal summarized as follows. that the learned Judge erred in finding that:-
 - a. the Tribunal did not make any determination of title to or ownership of any registered land.
 - b. the learned Judge erred in failing to appreciate that the Tribunal's decision and the judgment of the Magistrate's Court were nullities.
 - c. the learned Judge erred in his approach to the question of leave by considering extraneous matters.
14. When the matter came up before us on 4th February 2026, Learned Counsel, Mr. S. M. Omae appeared for the appellants while Learned counsel Mr. Maina appeared for the 3rd respondent. The 1st and 2nd respondents had entered no appearance and were unrepresented
15. Counsel for the appellant submitted that the learned Judge fell into error in concluding that the 1st respondent had jurisdiction to hear and determine Claim No. 37 of 2007. The appellant's contention is that the substance of that claim, properly characterised, involved questions of title to and ownership of registered land, matters which lay beyond the jurisdiction of land dispute tribunals under the Land Disputes Tribunals Act, 1990. The 1st respondent having proceeded without jurisdiction, counsel submitted, its decision was void ab initio and constituted a nullity in law. Similarly, the adoption decree of the 2nd respondent was said to be tainted by the same nullity.
16. Proceeding from that premise, counsel submitted that the learned Judge erred in applying the six months' limitation period.

The appellant relied primarily on the decision of this Court in *Stephen Kibowen v Chief Magistrate's Court Nakuru & 2 Others* [2017] eKLR, which held that where the decision sought to be challenged is not a decision properly made within jurisdiction but rather a nullity amounting to nothingness, it is incapable of triggering the statutory time bar. Counsel further submitted that in reaching that conclusion, this Court in *Kibowen* expressly endorsed the proposition advanced by the High Court in *Republic v Judicial Commission of Inquiry into the Goldenberg Affair & 3 Others ex parte Mwalulu & 8 Others* [2004] eKLR, to the effect that nullities are not covered by the six-month limitation period both on the wording of the rules and as a matter of principle, and that courts retain jurisdiction to grant relief in respect of void decisions regardless of the passage of time.
17. On his part, counsel for the 3rd respondent urged this Court to dismiss the appeal and uphold the learned Judge's ruling. On jurisdiction, it was submitted that the dispute before the 1st respondent was plainly one of trespass to land, commenced by the appellant itself. Section 3(1)(c) of the Land Disputes Tribunals Act, 1990 expressly vested in land dispute tribunals jurisdiction over cases of trespass to land. The 1st respondent therefore acted within jurisdiction and its decision cannot be characterised as a nullity. The evidence before the 1st respondent was that the claim brought by the appellant concerned alleged occupation without authority, not a dispute over registered title.



18. On limitation, it was submitted that the six months' period prescribed by Section 9(3) of the [Law Reform Act](#) and Order 53 Rule 2 is a mandatory statutory requirement admitting of no exception founded on a mere assertion of jurisdictional defect. Counsel distinguished the authorities relied upon by the appellant on the basis that those cases concerned bodies acting entirely outside any conferment of jurisdiction, whereas in the present case the 1st respondent's subject-matter jurisdiction was clear on the face of the statute and the nature of the claim as framed by the appellant. In support of the strict operation of the limitation period. Reliance was placed on Polycarp Wathuta Kanyugo & 2 Others v The County Government of Kirinyaga [2014] eKLR and Republic v Kenya Revenue Authority, Commissioner Ex parte Keycorp Real Advisory Limited (2019) eKLR. An application filed over nine years out of time was said to disclose no basis for equitable indulgence, and to permit such challenges would undermine the finality of decisions made by statutory tribunals.
19. From the foregoing submissions, the following issue arises for our determination: Whether the 1st respondent's decision of 21st October 2009 was made without jurisdiction and therefore constituted a nullity incapable of triggering the six-month limitation period under Section 9(3) of the [Law Reform Act](#) and Order 53 Rule 2 of the Civil Procedure Rules.
20. Counsel for the appellant candidly conceded at the hearing before us that the application for leave was filed out of time. That concession was properly made. The 1st respondent's decision was delivered on 21st October 2009. The application for leave was not filed until 9th June 2020, some ten years after the event and obviously many years beyond the six-month window prescribed by law.
21. The requirement for filing an application for leave within six months from the date of the decision sought to be reviewed is a requirement of Section 9(3) of the [Law Reform Act](#) and Order 53 Rule 2 of the Civil Procedure Rules. Order 53 Rule 2 provides in material part that:-
- “leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purposes of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding.”
- The appellant anchored its application for leave under Order 53 Rule 1(1) and (2) and the substantive Notice of Motion under Order 53 Rule 3(1). It was therefore bound to comply with Order 53 Rule 2 and file the application for leave within the six-month period.
22. The word “shall” is unequivocal. This Court settled the matter in *Ako v Special District Commissioner Kisumu & Another*, Civil Appeal No. 27 of 1989, where it stated:
- “The prohibition is statutory and is not therefore challengeable under procedural provisions of the Civil Procedure Rules... We have no doubt that the prohibition is absolute and any other interpretation or view of the particular provision would be doing violence to the very clear provision of subsection (3) of section 9 of the [Law Reform Act](#).”
23. That statement of principle has stood for over three decades, undisturbed by the Supreme Court and unamended by Parliament.
24. It is instructive to reflect on why the law imposes a fixed outer limit of this kind. The courts of England, from whose practice the six-month period derives, have consistently explained the rationale in terms of three overlapping principles. The first is the need for finality in public law decisions. As the House of Lords recognised in *R v Dairy Produce Quotas Tribunal ex parte Caswell* [1990] 2 AC 738, public



authorities must be able to act on their decisions without indefinite threat of judicial undoing, and good administration requires a cut-off point. The second is protection of third-party reliance. In *R v Secretary of State for Health ex parte Furneaux* [1994] 2 All ER 652, the Court of Appeal elaborated that the question is not whether the delay caused the prejudice but whether granting the remedy now would cause harm, a materially different and more demanding inquiry for the applicant. The third principle is inherent in the nature of the remedy itself: certiorari is an extraordinary discretionary writ, not a right, and coming late to court is itself a reason to withhold it. These principles apply with full force in the Kenyan context and inform why Section 9(3) is framed in mandatory rather than permissive terms.

25. These considerations have particular force in the present case.

The 1st respondent's decision was made in October 2009. The Magistrate's Court adopted it as a judgment in 2011. The suit properties have since been registered in the names of the 3rd respondent and of the estate of Alexandra Theresa Hughes. Over fifteen years have passed. The 3rd respondent has administered that estate and held those registered titles throughout. This is precisely the situation the six-month rule is designed to protect against not as a procedural technicality, but as a principled recognition that the law cannot be kept permanently in suspense at the instance of a party who chose not to invoke the remedies available to it within the time the law prescribed.

26. Against this settled position, the appellant advances the proposition that where a decision is a nullity for want of jurisdiction, the limitation period cannot run because a void decision has no legal existence and effluxion of time cannot cure what never had effect. The authorities confirm that such an exception exists in principle. This Court recognised it in *Stephen Kibowen v Chief Magistrate's Court Nakuru & 2 Others* [2017] eKLR, where it stated:

“Ordinarily, such a conclusion would be unimpeachable but, in the matter before the learned Judge, what was being challenged was not a decision properly made within jurisdiction against which time could run. Rather it was a nullity which amounted to nothingness. It was therefore incapable of commencing a reckoning of time and was definitely incapable of triggering a statutory bar, being in every respect barren and of no effect.”

27. We accept that principle. The question whether the 1st respondent's decision was made without jurisdiction and therefore carried the character of a nullity is not one we need to resolve, for the appeal fails even on the assumption most favourable to the appellant. Even if we were to assume that the 1st respondent acted without jurisdiction and that its decision of 21st October 2009 was void, that assumption does not carry the appellant to the relief it seeks. The appeal fails on a ground that is complete and independent in itself.

28. That ground lies in the distinction between the 1st respondent's decision and the judgment by which it was adopted. The relief sought below was an order of certiorari directed at both, but those are not two manifestations of the same act, they are two distinct legal instruments. Under Section 7 of the Land Disputes Tribunals Act, 1990, upon transmission of a tribunal's award to the magistrate's court, that court was obliged to adopt the award as its own judgment. Upon adoption, the award ceased to exist as an independent instrument. It was subsumed into and became the judgment of the court. In *Florence Nyaboke Machani v Mogere Amosi Ombui & 2 Others* [2014] KECA 384 (KLR), this Court upheld the finding of the High Court that:

“It is trite law that a valid judgment of a court unless overturned by an appellate court remains a judgment of court and is enforceable, the issue of jurisdiction notwithstanding. The plaintiff had all avenues to impugn the award as well as the judgment. He did nothing.



As sarcastically put by counsel for the defendants in his submissions, the plaintiff chose to sleep on his rights like the Alaskan fox which went into hibernation and forgot that winter was over. In the meantime, the 1st defendant's rights to the suit premises crystallized. Equity assists the vigilant and not the indolent. The plaintiff has come to court too late in the day and accordingly, the declaratory relief must fail. I doubt that even the remedy of the declaration is available to the plaintiff to impugna a valid court judgment and decree..”

29. In *Catherine C Kittony v Jonathan Muindi Dome & 2 Others* [2019] KECA 84 (KLR), this Court affirmed that a party who fails to challenge the court judgment through the mechanisms provided under statute forecloses any further avenue of challenge, regardless of the jurisdictional complaints directed at the underlying award. The court held:

“The Land Dispute Tribunal had mechanisms to deal with outcomes such as the one rendered by the 2nd respondent. The award by the 2nd respondent ceased to exist upon adoption by the court as its judgment and a decree. The award cannot be challenged by filing a fresh suit as it is trite law that where a statute establishes a dispute resolution mechanism that mechanism must be followed and exhausted, where a party fails to do so he cannot be heard to say that his rights were denied.”

30. The consequence, applied to this case, is decisive. Even if the 1st respondent's decision was a nullity void from the outset and incapable of producing legal effect that nullity cannot travel forward and infect the judgment of the Chief Magistrate's Court. The Magistrate's Court did not adjudicate the merits of the dispute; its role under Section 7 of the Land Disputes Tribunals Act, 1990, was ministerial. That judgment, once entered, stood as a valid exercise of the court's own jurisdiction and has never been appealed, reviewed, varied or set aside. It remains the operative instrument on which the registered titles of the 3rd respondent are founded. Certiorari directed at the antecedent Tribunal award cannot reach it.

31. As this Court observed in *Mathenge v Gatua & Another* [2024] KECA 341 (KLR):

“We are cognizant of the fact that jurisdiction cannot be granted to the court or the tribunal by an agreement between the parties, if no jurisdiction is granted by law. We are not therefore to be understood to be saying that the tribunal had jurisdiction or lacked jurisdiction. The position is that a judgment had been entered, and the same has not been challenged through any process known in law.

By invalidating the decision of the tribunal whilst the judgment of the magistrates' court remains in place, the learned Judge has created a situation in which the judgment has been set aside by implication yet the said judgment had been entered properly. We find ourselves unable to uphold the consequential anarchy brought about by the decision in issue herein.

32. The present case presents that very difficult. An order of certiorari directed at the 1st respondent's award would, if granted, dissolve the foundation on which the Magistrate's Court judgment was built without disturbing the judgment itself; which is precisely the structural impossibility that the Mathenge case declined to countenance. A challenge to the Tribunal's decision by a parallel process leaves a valid and unchallenged court judgment on foot, a state of affairs the law cannot countenance. The relief sought is incapable of affording the appellant what it actually requires, and a court does not grant remedies that cannot afford the relief sought. This finding is dispositive of the appeal. This finding is dispositive of the appeal.

33. Lastly, the contention that the learned Judge impermissibly conducted a merits inquiry at the leave stage does not arise for determination. A court is bound to take a point apparent on the face of the



record at the leave stage, and the matters that dispose of this appeal were all apparent on the face of the record. This ground requires no further consideration.

34. For all the foregoing reasons, this appeal has no merit and is dismissed with costs to the 3rd respondent.

DATED AND DELIVERED AT NAKURU THIS 17TH DAY OF MARCH, 2026.

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA, C.Arb, FCIArb

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

