



Kisele v County Director of Land Adjudication & Settlement (Makueni County) & another; Kivindo & another (Interested Parties) (Environment and Land Judicial Review Case E012 of 2025) [2026] KEELC 2491 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2491 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E012 OF 2025
EO OBAGA, J
APRIL 30, 2026
IN THE MATTER OF AN APPLICATION FOR ORDERS OF
JUDICIAL REVIEW IN THE NATURE OF CERTIORARI

BETWEEN

MANSON MUSYOKA KISELE APPLICANT

AND

THE COUNTY DIRECTOR OF LAND ADJUDICATION & SETTLEMENT
(MAKUENI COUNTY) 1ST RESPONDENT

THE MINISTER HOUSING & LANDS THRO' THE DEPUTY COUNTY
COMMISSIONER, KILUNGU SUB-COUNTY 2ND RESPONDENT

AND

KENNEDY MUTETI KIVINDO INTERESTED PARTY

JACOB SILA CHARLES INTERESTED PARTY

RULING

1. The Ex-Parte Applicant filed the Chamber Summons dated 6th November, 2025 under the provisions of Order 53 Rules 1, 2 and 3 of the Civil Procedure Rules, 2010.
2. The following orders were sought: -
 1. That leave be granted to the Ex-parte Applicant herein to bring forth an application for judicial review in the nature of CERTIORARI out of time directed against the Respondents herein and quashing the said Respondents' judgment in Land Case Appeal No. 347 of 2023 in



respect of land parcels Plot Nos. 79 and 132 situated within Kyamuoso Adjudication Section of Kilungu Sub-county which judgment is dated 23rd April, 2025.

2. That the leave granted do operate as a stay of any further dealings on the said parcel of land parcels Plot Nos. 79 and 132 situated within Kyamuoso Adjudication Section of Kilungu Sub-county pending the hearing and determination of the judicial review proceedings.
3. That the costs of this application be in the cause.
3. The application was supported by both the statutory statement and affidavit of Manson Musyoka Kisele sworn on even date.
4. The deponent averred that a judgment was delivered by the 2nd Respondent on 23rd April 2025 in respect of Appeal Case No. 347 of 2023 over land parcels Plot Nos. 79 and 132. He added as the 2nd Respondent erred in law and fact by failing to uphold the findings of the objection court. The deponent contended that a copy of the judgment of the 2nd Respondent was availed to him on 28th October, 2025 which prevented him from filing the judicial review proceedings herein in good time.
5. The Ex-parte Applicant urged the court for indulgence insisting that the delay in filing judicial review proceedings earlier was not deliberate on his part. He further contended that the 2nd Respondent did not have any good reason to arrive at the decision that he came up with as it was against the weight of the evidence adduced. That the 2nd Respondent exceeded his powers which invites the eventual judgment for judicial review in the nature of certiorari. He urged the court to grant the orders sought.
6. The Respondents and the Interested Parties did not file their respective replies despite being served by the Ex-parte Applicant.
7. The Ex-parte Applicant filed written submissions dated 4th December, 2025 in canvassing the issues raised in the application. Counsel identified one issue for determination namely: -
 - a. Whether the Applicant has met the criteria for grant of the orders sought in the application.
8. Counsel submitted that the orders sought are discretionary as the Applicant requests the court to consider the explanation offered for failing to file and serve the substantive judicial review proceedings within the stipulated timelines. Counsel further submitted that the Respondents do not stand to suffer any prejudice if the orders sought are granted as they will be heard on their cases. Counsel was of the view that the delay in filing the application was not inordinate and that the Applicant had expeditiously filed the same after a copy was availed to him.
9. Counsel urged the court to allow the application which was not opposed by the Respondents by filing a proper reply pursuant to the provisions of Order 51 Rule 14 (1) of the Civil Procedure Rules.
10. Counsel attributed the failure in filing the present application within the statutory timelines on the 1st Respondent who forwarded the judgment to the Minister of Lands inordinately late. Urging the court to allow the application as prayed, Counsel cited the case of REPUBLIC V MWANGI NGUYAI & 3 OTHERS EX PARTE HARU NGUYAI [2013] eKLR to buttress his submissions.
11. The sole issue for determination is whether the Applicant is legally entitled to leave of the court to commence judicial review proceedings against the 2nd Respondent's decision dated 23rd April, 2025.



12. The instant application for leave to apply for a judicial review order of certiorari was filed on 12th November, 2025 pursuant to the provisions of Order 53 Rule 2 of the Civil Procedure Rules, 2010 which sets out 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.

13. Sections 9(2) and 9(3) of the Law Reform Act, outline 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.

14. 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 under the inherent jurisdiction of this court or under subsidiary legislation such as the provisions of the Civil Procedure Rules, 2010.

15. There is a lapse of approximately six months and twenty-one days between the date of the impugned decision of the 2nd Respondent and the date of filing of the leave application herein. The leave application is clearly caught by the statutory time limitation.

16. 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).”



17. Again, 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.”

18. In view of the express provisions of Section 9 of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules 2010, the instant application for leave to apply for judicial review orders of certiorari as filed by the Applicant is a nullity for non-compliance with mandatory statutory time limitations. This court has no jurisdiction to grant the same.

19. Accordingly, the Chamber Summons dated 6th November, 2025 is hereby dismissed with no orders as to costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF APRIL, 2026.

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HON. E. O. OBAGA

JUDGE

In The Presence Of:

Mr. Asiyo for Mr. Nzavi for Applicant.

Court assistant – Nyaaga & Musyoki

