

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**JUDICIAL REVIEW APPLICATION NUMBER E006 OF 2026**

REPUBLIC.....APPLICANT

VERSUS

LAND REGISTRAR, TIGANIA EAST .....1<sup>ST</sup> RESPONDENT

ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT

ROSEMARY INOECHURU..... 3<sup>RD</sup> RESPONDENT

AND

PETER MBURUNGA AMBURUKA.....EXPARTE APPLICANT

**RULING**

1. Before me is the amended Notice of Motion dated the 30.03.2026 brought pursuant to the provisions of **Order 53 Rules 1 and 2 of the Civil Procedure Rules 2010**. The reliefs sought at the foot of the application are:

- i. The Honourable Court be pleased to hear this application on priority basis.*
- ii. The Honourable Court be pleased to grant leave to the exparte applicant to apply for an order of judicial review in form of Mandamus to compel the Respondent to mark and fix the road of access for L. R no. Tigania/Kitharene/576 which does not have a road access.*
- iii. Costs be provided for.*

2. The Application is premised on various grounds. The grounds are: The ex-parte Applicant is the registered owner of **LR No. Tigania/Kitharene/576** [the suit property]; the suit property is duly captured in the adjudication and registry index map; the suit property has no road of access; the 1<sup>st</sup> respondent has refused [declined] to proceed to the suit property and to demarcate the boundaries of the suit properties and to fix/ascertain the position of the road of access.
3. Additionally, it has been contended that because of the failure of the 1<sup>st</sup> respondent to visit the locus in quo and to fix the site of the road of access, the ex-parte applicant has been deprived of the right of access to the suit property. Moreover, it has been contended that the 1<sup>st</sup> respondent has indicated that same requires a court order to enable the same undertake the intended visitation to the suit property and to demarcate the road of access.
4. The Application is supported by the affidavit of the ex-parte Applicant sworn on the 16.03.2026; the affidavit sworn on the 30.03.2026 and the affidavits in verification of the statement of facts sworn on the 16.03.2026. In addition, the ex-parte applicant has annexed a copy of the certificate of title in respect of the suit property; and a copy of letter dated 24.08.2022 written by the **Sub County Land Adjudication and Settlement Officer – Tigania East**.
5. Suffice it to state that the contents of the various affidavits [details in terms of the preceding paragraph] reiterate the grounds contained in the body of the application. Notably, the ex-parte applicant posits that same is the registered owner of the suit property. However, it has been contended

that the suit property does not have a road of access. Furthermore, the applicant has also stated that the 1<sup>st</sup> respondent has declined/refused to visit the locus in quo and to demarcate the site of the road of access, contending that same [1<sup>st</sup> respondent] requires a court order.

6. The application came up under certificate of urgency on the 27.03.2026. However, I was not satisfied that the applicant had approached the court in the right manner. Moreover, I was concerned that the dispute/issue touched on ascertainment of the boundary position of the suit property and establishment/demarcation of the site of the road of access [if any], which essentially fall within the statutory mandate of the 1<sup>st</sup> respondent.
7. Premised on the foregoing, I directed that the application be served on the respondent and that same be heard inter-partes. Suffice it to state that the application finally came up for hearing on the 13.05.2026. The learned counsel for the exparte applicant adopted and relied on the grounds contained in the body of the application; reiterated the contents of the affidavit and reaffirmed the annexures attached to the affidavits in question.
8. Additionally, learned counsel for the exparte applicant submitted that the applicant has lodged a compliant with the land registrar [1<sup>st</sup> respondent] to proceed to the scene and to demarcate the site of the road of access. Nevertheless, it was contended that the 1<sup>st</sup> respondent has declined/refused to visit the locus in quo and to demarcate the site of the road of access.

9. Based on the foregoing, learned counsel for the ex parte applicant implored the court to grant the leave sought so as to enable the ex parte applicant to file/commence the judicial review in the nature of mandamus. Simply put, counsel implored the court to grant leave to file judicial review proceedings.
10. Learned counsel for the respondents, Ms. Miranda [Senior Litigation Counsel] intimated to the court that same would leave the issue to the court to determine on the basis of the law.
11. Having reviewed the amended Notice of Motion application; the grounds contained thereunder; the supporting affidavit; the statements of facts; the affidavit in support thereof; the annexures thereto; and upon taking into account the short submissions canvassed by learned counsel for the ex parte applicant, two [2] issues crystalize for consideration. The issues are: Whether the application for leave is properly before the court or otherwise; and Whether the application is defeated by the doctrine of exhaustion taking into account the import of **Sections 18 and 19 of the Land Registration Act, 2012.**
12. Regarding the first issue, I wish to point out that whosoever seeks to procure leave of the court to take out judicial review proceedings, the applicant herein not *excepted*, is obligated to approach the court by way of Chamber summons [Summons in Chambers] and not a Notice of motion. For good measure, the Notice of motion application [Substantive Application] can only be filed once leave has been granted/obtained.

13. The provisions of **Order 53 Rule 1 of Civil Procedure Rules, 2010**, which regulates the manner of approaching the court for leave are explicit, apt and succinct.

14. The provisions stipulate thus:

*(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.*

*(2) An application for such leave shall be made ex parte to a judge in chambers, and shall be accompanied by —*

*(a) a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and*

*(b) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application. [L.N. 22/2020, r. 25.]*

*(3) The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.*

15. To my mind, the applicant herein was obligated to approach the court by way of chamber summons and not by way of [sic] a notice of motion. To this end, the application before the court is not only misconceived but vitiated.

16. Other than the failure to approach the court in the prescribed manner, it is not lost on me that the application before the court has been brought in the name of the Republic as the Applicant, yet leave has not been procured or obtained. It is common ground that the name of the Republic can only be invoked as the Applicant once leave has been obtained. It is only then that the Republic takes over to address the complains albeit on behalf of the citizen [the subject], whose rights or interests have been infringed upon.

17. In the case of **Jotham Mulati Welamondi v Chairman, Electoral Commission of Kenya [2002] KEHC 1123 (KLR)** the Court highlighted the manner in which an application for judicial review is to be mounted. In particular, the court underscored that the name of the Republic can only be deployed after leave has been granted and not otherwise.

18. The court stated thus:

*Last, but not least, the objection that the application is made in the name of the wrong person is well merited. In FARMERS BUS SERVICE AND OTHERS V THE TRANSPORT LICENSING APPEAL TRIBUNAL (1959) E.A. 779, the East African Court of Appeal held that prerogative orders are issued in the name of the crown and applications for such orders must be correctly intitled. On Kenya's assumption of Republican status on 12<sup>th</sup> December 1964, the place of the crown in all legal proceedings was taken by the Republic. Accordingly, the orders of Certiorari, Mandamus or Prohibition now issue in the name of the Republic and applications therefor are made in the name of the Republic at the instance of the person affected by the action or omission in issue. In the premises, the proper format of the substantive motion for Mandamus would have been*

**"REPUBLIC .....**  
**APPLICANT**

**THE ELECTORAL COMMISSION  
OF KENYA.....RESPONDENT**

**EX PARTE**

**JOTHAM MULATI WELAMONDI"**

***And although the application for leave is not an issue in this preliminary objection and I should not be understood to be questioning the grant of leave, the said application ought to have been intituled as follows-***

19.The last point I wish to make on this issue is to the effect that the application for leave is to be made by the citizen/subject, namely; the applicant whose rights [interest] have been breached. Once the leave is granted, the subject becomes the exparte applicant; and the Republic takes over and becomes the Applicant. Instructively, it is the subject [the citizen] who applies for leave and not the Republic.

20.To my mind, the Republic cannot approach the court seeking leave, either in the manner indicated in the body of the application or at all. Moreover, the subject [the citizen] cannot become the Ex-parte Applicant, prior to and before leave is granted. Suffice it to state that the invocation of the name of the Republic long before the issuance of Leave, is tantamount to placing the Cart before the Horse. Such a situation/ scenario is unfathomable.

21.Despite the established position of the law as pertains to the judicial review proceedings, the Ex-parte applicant herein, has approached the court in a muddled-up manner, so much so that the court cannot overlook

the fundamental flaws. Suffice it to state that the infractions and numerous breaches apparent in the body of the application go to the root of the application and by extension, the jurisdiction of the court.

22. In the case of **Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA (KLR)**, the Court of Appeal highlighted the importance of the rules of procedures and more particularly, those rules which are fundamental and impact on the jurisdiction of the court. In addition, the court also frowned upon violations or disregard of peremptory rules of procedure.

23. The court stated thus:

*42.....In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:*

24. Flowing from the foregoing, it is my finding and holding that the amended notice of motion application, which is contrary to the mandatory provisions of **Order 53 Rule 1 of the Civil Procedure Rules, 2010**, is irredeemably bad. The application cannot be salvaged by way of amendments or at all. [See the Dictum of the Court of Appeal in the Case of **Deposit Protection Fund (in liquidation of Euro Bank Limited) versus Rosaline Njeri Macharia [2016] eKLR**]

25. Next is the issue as to whether the application is defeated by the doctrine of exhaustion. To start with, the doctrine of exhaustion stipulates that where there exists an established statutory mechanism for addressing a particular issue, then it behooves the applicant to approach the established forum before resulting to a court of law. Instructively, the Doctrine postpone[s] the assumption of Jurisdiction by the Court; and allows the Statutory forum to appropriate its mandate. The doctrine of exhaustion has been highlighted and illuminated by various superior court including the supreme court and court of appeal.

26. In the case **Muthinja & another v Henry & 1756 others [2015] KECA 304 (KLR)**, the Court of Appeal stated thus:

*38..... It is imperative that, where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a*

*party is, first of all, diligent in the protection of their own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the Constitution, which commands Courts to encourage alternative means of dispute resolution.*

27. It suffices to state that the doctrine of exhaustion applies to and in respect of Judicial review proceedings. This position was underscored by the Court of appeal in the case of **Republic versus National Environment Management Authority [NEMA] Exparte Sound Equipments Limited [2011] eKLR.**

28. Back to the instant matter. The complaint by the claimant is to the effect that same is the registered owner of the suit property. In addition, the claimant contends that the suit property has no road of access and his efforts to have the land registrar [First Respondent] visit the land and demarcate the road of access has borne no fruits. Nevertheless, the said averments are however not supported by any evidence.

29. I wish to state that the land registrar has a statutory mandate to determine the boundaries of parcels of lands registered under the Land Registration Act, 2012, and to discern/demarcate the site of roads of access [if any]. In this case, it behooves the applicant to prove that same has since approached the Land Registrar in an endeavor to attend to his complaint. Such attempts [if any] can only be demonstrated by way of correspondence addressed to the Land Registrar.

30. Sadly, the claimant herein has neither annexed nor availed any documents/evidence to show that the Land Registrar has been approached

to perform his statutory mandate and that same has declined or refused. In the absence of any evidence to that effect, I am afraid that the jurisdiction of the court has been approached prematurely. In this regard, and in the absence of sufficient basis/ explanation on the part of the Applicant, I am not prepared to assumed Jurisdiction in respect of the instant matter.

31. In view of the foregoing, and taking into account the import of the doctrine of exhaustion, which is revered in our jurisdiction, I come to the conclusion that this court is divested of jurisdiction to entertain and engage with the current application.

**Conclusion.**

32. Flowing from the foregoing, it must have become apparent that the application beforehand, is not only misconceived but premature and legally untenable. Instructively, the applicant is obligated to appropriate the window provided for *vide* **Section 18 and 19 of the Land Registration Act 2012.**

**Final Orders:**

33. The final orders that commend themselves to me are:

- i. The amended Notice of Motion Application dated the 30.03.2026 be and is hereby struck out.*
- ii. No orders as to costs.*

34.It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU LAW COURT  
THIS 13<sup>TH</sup> MAY, 2026.**

**OGUTTU MBOYA FCIArb; CPM [MTI-EA].**

**JUDGE**

**In the presence of :**

Court Assistant: Zakayo

Mr. Kimathi Kiara for the Exparte Applicant

Ms. Miranda [ Senior Litigation Counsel] for the Respondents.

N/A for the Interested Party