



**Republic v Chief Magistrate Migori Chief Magistrates’ Court & another; Obara & 6 others (Interested Parties); Nyakado (Exparte) (Environment and Land Case Judicial Review Application E002 of 2024) [2025] KEELC 2 (KLR) (7 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 2 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E002 OF 2024**

**M SILA, J**

**JANUARY 7, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHIEF MAGISTRATE MIGORI CHIEF MAGISTRATES’  
COURT ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY LAND REGISTRAR MIGORI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DAVID OBARA ..... INTERESTED PARTY**

**EDWIN OBARA ..... INTERESTED PARTY**

**JOHN TERESI OBARA ..... INTERESTED PARTY**

**JUDITH OBARA ..... INTERESTED PARTY**

**PHENEAH OBARA ..... INTERESTED PARTY**

**EVE OBARA ..... INTERESTED PARTY**

**BENEDICT OWUOR NYAMWAYA ..... INTERESTED PARTY**

**AND**

**THOMAS NYAKADO ..... EXPARTE**

**RULING**

1. Before me is an application dated 18 December 2024. It seeks the following orders (slightly paraphrased for brevity) :



1. That the application be heard ex parte in the first instance.
  2. That the applicant be granted leave to apply for an order of certiorari to quash the judgment and decree dated 9 April 2024 in the suit Migori CMCC ELC No. E26A of 2024 in respect to the land parcel Suna East/Wasweta/14449.
  3. That the court be pleased to issue an order of prohibition to prohibit the execution of the judgment dated 9 April 2024 in the suit Migori CMCC ELC No. E26A of 2024 pending the hearing of this application.
  4. That the court be pleased to issue an order of prohibition prohibiting the execution of the judgment dated 9 April 2024 in the suit Migori CMCC ELC No. E26A of 2024 pending the hearing and determination of this judicial review proceeding.
  5. That costs of the application be provided for.
2. The application is supported by a statement and affidavit of the ex parte applicant. From it, I see that the ex parte applicant avers that he was not a party in the suit Migori CMCC ELC No. E26A of 2024 but the effect of the judgment was to nullify his title to the land parcel Suna East/Wasweta/14449 (the suit land). He avers that he made an application dated 26 April 2024 seeking orders to be joined into the suit and have the judgment set aside but through a ruling delivered on 5 December 2024, his application was dismissed. He avers that he was condemned unheard thus the suit herein seeking to quash the impugned judgment through an order of certiorari.
3. I have gone through the application. Section 9 (3) of The Law Reform Act, Cap 26, Laws of Kenya, provides as follows :
- (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.
4. From the foregoing, it will be seen that where one seeks to quash a judgment through an order of certiorari, as it is indeed sought in this case, the application for leave needs to be made within six months of the date of the judgment. In our case, the judgment sought to be quashed was delivered on 5 April 2024. Six months of that date would bring us to 5 October 2024. It follows that if the ex parte applicant was to be availed of the remedy of certiorari, for purposes of quashing the impugned judgment, he needed to have made the application on or before 5 October 2024.
5. It is thus apparent that the application herein is out of time and cannot be granted.
6. Even assuming that the application was made within time, and it has not, I still would not have granted it. This is because the ex parte applicant already applied to set aside the judgment through his application dated 26 April 2024. That application was dismissed in the ruling delivered on 5 December 2024. It appears to me that what aggrieves the ex parte applicant is the dismissal of his application for he would have no reason to come to court if the application was allowed. Nothing bars the ex parte applicant from appealing that ruling. Given that there is avenue to appeal the ruling, I am not persuaded that judicial review is the most efficacious remedy in the circumstances herein. On that basis I would not be persuaded to grant leave for purposes of filing a suit for certiorari.



7. For the above reasons, it is clear that I see no merit in the application and it is hereby dismissed.
8. This being an ex parte motion, there will be no orders as to costs.
9. Orders accordingly.

**DATED AND DELIVERED THIS 7 DAY OF JANUARY 2025**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT**

**AT MIGORI**

