



**Sopia v Cabinet Secretary Ministry of Lands & Physical Planning & 4 others (Judicial Review E007 of 2023) [2024] KEELC 281 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 281 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
JUDICIAL REVIEW E007 OF 2023  
EM WASHE, J  
JANUARY 18, 2024**

**BETWEEN**

**LEPARAKUO NAINI SOPIA ..... APPLICANT**

**AND**

**THE CABINET SECRETARY MINISTRY OF LANDS & PHYSICAL  
PLANNING ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND ADJUDICATION & SETTLEMENT OFFICER 2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JOHN MAMURA OLE KAKA ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Applicant herein filed a Chamber Summons Application dated 07.09.2023 (hereinafter referred to as “the present Application”) seeking for the following Orders; -
  - a. That this Application be certified urgent and be heard on a priority basis.
  - b. That the Honourable Court be pleased to enlarge the time for the applicant to file Judicial Review proceedings for purposes of quashing the decision of the 1<sup>st</sup> Respondent in respect of Land Parcel No. Transmara/nkararo/564 IN Nkararo Adjudication Section in Minister Appeal Case No. 75 of 2021 between Leparakuo Naini Sopia & John Mamura Ole Kaka contained in the Ruling dated 3<sup>rd</sup> June 2021 awarding to John Mamura Ole Kaka (the 5<sup>th</sup> Respondent) the whole disputed land.
  - c. That the Applicant be granted leave to apply for an order of Certiorari to bring into the High Court and quash the decision made by and/or award by the 1<sup>st</sup> Respondent in respect of



the Land Parcel No. Transmara/nkararo/564 Adjudication Section in Minister Appeal Case No. 75 of 2021 between Leparakuo Naini Sopia & John Mamura Ole Kaka contained in the Ruling dated 3<sup>rd</sup> June 2021 awarding to John Mamura Ole Kaka (the 5<sup>th</sup> Respondent) the whole disputed land.

- d. That an order of prohibition be issued prohibiting the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from issuing and or giving directions regarding to the issuance of title deed to the above-named person John Mamura Ole Kaka to conform with the decision of the 1<sup>st</sup> Respondent and or in any manner whatsoever effect the decision contained in the ruling dated 3<sup>rd</sup> June 2021.
  - e. That the grant of leave herein do operate as a stay of implementation of the impugned decision pending the hearing and determination of this application and thereafter the substantive motion.
  - f. That if the orders in paragraph 4 and 5 above have already been implemented, an order of status quo be issued to prevent the 5<sup>th</sup> Respondent who has already issued a notice to vacate to the Applicant who lives on the suit property from evicting the Applicant pending the hearing and determination of this application and thereafter the substantive motion.
  - g. That the costs of this Application be awarded to the Applicant.
2. The grounds upon which the prayers sought in the present application are premised can be found in the Statutory Statement and Verifying Affidavit both sworn on the 07.09.2023 and can be summarised as follows; -
- a. The Applicant herein has been and is still in occupation and possession of the property known as Parcel No. 564 within Nkararo Adjudication Section.
  - b. During the adjudication of the said Parcel No. 564 within Nkararo Adjudication Section, the applicant filed an Appeal to the Minister known as Appeal No. 75 of 2021 which determination was pronounced on the 03.06.2021 in favour of the 5<sup>th</sup> Respondent.
  - c. The Applicant herein is therefore desirous of instituting Judicial Review Proceedings against the said determination of the 1<sup>st</sup> Respondent and in particular a prayer of Certiorari to quash the entire determination pronounced on the 03.06.2021 in favour of the 5<sup>th</sup> Respondent.
  - d. Nevertheless, the period within which a litigant is required to seek leave to institute Judicial proceedings against an administrative decision has since lapsed and therefore this Honourable Court should extend and/or enlarge the said period to enable the Applicant seek leave as required by law.
  - e. Further to the above, the Applicant is of the view that the determination by the 1<sup>st</sup> Respondent pronounced on the 03.06.2021 is devoid of a proper and lawful proceeding including failure to give reasons as to how the determination was arrived at.
  - f. The Applicant is of the view that the 1<sup>st</sup> Respondent breached a fundamental principle of law by deciding the issue at hand with glaring errors of fact and thereby arriving at a conclusion that was unsupported by evidence hence making an ultra vires conclusion.
  - g. Finally, the Applicant seeks for a stay of the determination of the 1<sup>st</sup> Respondent pronounced on the 03.06.2021 as it would effectively remove and/or evict the applicant from the Parcel No. 564 pending the hearing and determination of the substantive motion.



3. Upon receipt of the present Application, the Honourable Court directed the same to be served on the Respondents for their consideration and participation.
4. The 5<sup>th</sup> Respondent indeed filed a Replying Affidavit in opposition to the present Application dated 23.10.2023 based on the following grounds; -
  - a. First and foremost, the 5<sup>th</sup> Respondent termed the present Application to be time barred as it offends the provisions of Section 9 (2) of the Law Reform Act, Cap 26 and Order 53 Rule 2 of the Civil Procedure Rules, 2010.
  - b. Under the Provisions of Order 53 rule 2 of the Civil Procedure Rules, 2010, this Honourable Court does not have jurisdiction to extend the statutory period of 6 months as sought by the Applicant herein.
  - c. The present Application for leave to institute Judicial Review proceedings is premised on grounds that deal with the facts, evidence and merit of the determination pronounced on the 03.06.2021 and not any issues of procedure as envisaged in Judicial Review Proceedings.
  - d. In any event, the 5<sup>th</sup> Respondent was of the view that the determination by the 1<sup>st</sup> Respondent on the 03.06.2021 has since been fully implemented by issuance of a title deed known as LR No.Transmara/nkararo/564 and therefore, there is no decision and/or determination that is capable of being quashed as sought.
  - e. The 5<sup>th</sup> Respondent concluded his Replying Affidavit by stating that upon registration and issuance of the title to the property known as LR No.Transmara/nkararo/564, the said property is now private property whose ownership is protected by the provisions of the Land Registration Act, No. 3 of 2012.
5. The 1<sup>st</sup> to 4<sup>th</sup> Respondents also filed Grounds of Opposition on the 11<sup>th</sup> of December 2023 and also opposed the present Application on the following grounds; -
  - a. The 1<sup>st</sup> to 4<sup>th</sup> Respondents pleaded that the present Application was incompetent, bad in law and offended the provisions of Section 29 (1)(b) of the Land Adjudication Act, Cap 284 since the decision of the 1<sup>st</sup> Respondent was final in nature.
  - b. Secondly, the 1<sup>st</sup> to 4<sup>th</sup> Respondents also pointed out that the present Application offends the provisions of Order 53(3)(1) and Section 9(3) of the Law Reform Act which provides for a period of 6 months.
  - c. The Applicant did not have any proprietary rights over the property known as LR No.Transmara/nkararo/564 since the said property belongs to the 5<sup>th</sup> Respondent.
  - d. Lastly, the 1<sup>st</sup> to 4<sup>th</sup> Respondent were of the view that the Applicant was granted all the prescribed rights under Articles 50 and 47 of the Kenyan Constitution, 2010 before the pronouncement of the determination dated 03.06.2021 and therefore there is no procedural impropriety in the said determination as alleged by the Applicant.
6. The parties herein filed their submissions in support of their positions.



7. The Honourable Court has indeed perused the present Application, Replying Affidavit by the 5<sup>th</sup> Respondent and the Grounds of Opposition by the 1<sup>st</sup> to 4<sup>th</sup> Respondents as well as the submissions therein and identified the following issues for determination; -

Issue No. 1- Is the applicant entitled to a prayer for enlargement of time within which to file for leave to institute judicial review proceedings?

Issue No. 2- If positive, is the applicant entitled to leave to institute judicial review proceedings against the determination of the 1<sup>st</sup> respondent pronounced on 03.06.2021?

Issue No. 3- If positive, should the leave to institute judicial review proceedings operate as a stay of the decision by the 1<sup>st</sup> respondent pronounced on the 03.06.2021?

Issue No. 4- Who bears the costs of the present application?

8. The issues for determination having been duly outlined hereinabove, the same will now be discussed hereinbelow.

**Issue No. 1 - Is the applicant entitled to a prayer for enlargement of time within which to file for leave to institute judicial review proceedings?**

9. The first issue for determination is the ability of this Honourable Court to enlarge the time within which the Applicant can file an Application for leave to institute Judicial Review proceedings.
10. It is not contested that the 1<sup>st</sup> Respondent pronounced a determination on the 03.06.2021 relating to Parcel No.564 within Nkararo Adjudication Section based on a Minister's Appeal Case No. 75 of 2021.
11. The Applicant is now seeking to challenge the said determination of the 1<sup>st</sup> Respondent through Judicial Review proceedings and in particular through an order of Certiorari.
12. The 1<sup>st</sup> to 5<sup>th</sup> Respondents have challenged this attempt by referring to the provisions of Order 53 of the *Civil Procedure Rules*, 2010 and Section 9(3) of the *Law Reform Act*, Cap 26 Laws of Kenya.
13. The provisions of Order 53 Rule 2 of the *Civil Procedure Rules*, 2010 state as follows; -
- “Leave shall not be granted to apply for an order of certiorari to remove any judgement, 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 an 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 lapsed”
14. The provisions of Order 53 Rule 2 of the *Civil Procedure Rules*, 2010 have also be echoed in Section 9(3) of the *Law Reform Act*, Cap 26 Laws of Kenya.
15. Clearly therefore, the intention of both statutes is that remedies provided under Judicial Review proceedings should be invoked within a specified time period which is 6 months from the pronouncement of the determination.
16. The issue for determination for the Honourable court is whether the time of 6 months prescribed by statute can actually be extended.



17. In the case of *Rosaline Tubei & 8 Others-versus- Patrick K.cheruiyot & 3 Others* (2014) eKLR, the Honourable Court made the following observations:-

“It is discernible from the above, that one needs to file an application seeking leave to apply for orders of certiorari, within a period of 6 months of the decision. The decision of the tribunal which is sought to be quashed was made in the year 2010 and the decision of the Magistrate’s court, sought to be quashed, was made on 1 March 2011. This application was filed on 31 March 2014, about 3 years after the adoption of the award by the Magistrate’s Court. The application is therefore clearly out of time.

There is nevertheless a prayer within this application, for time to be extended, so that the ex-parte applicants can proceed to apply for the order of certiorari, out of time. No law nor authority was cited by counsel for the applicant to support this prayer.

I am aware that by dint of the provisions of Order 50 Rule 5 of the *Civil Procedure Rules*, 2010, the court has power to enlarge time, where there is limited time provided for doing any act or taking any proceedings under the Rules. Following this provision, it may be arguable that time may be enlarged to make an application for judicial review outside the 6-month limitation period. However, the challenge here, is that the limitation period is not just in the rules, but is also a statutory provision set out in Section 9(3) of the *Law Reform Act* (above), and it is trite law that Rules made under statute, cannot override a statutory provision. The *Law Reform Act*, itself, has no provision for extension of time. I have therefore seen no law, which can entitle me to enlarge time for the filing of an application for certiorari, outside the 6-month limitation period.”

18. In another case of the *Republic v Mwangi Nguyai & 3 Others Ex-parte Haru Nguyai*, High Court At Nairobi, Constitutional & Judicial Review Division, Miscellaneous Application No. 89 Of 2008, the Court stated as follows; -

Judicial review proceedings ought as a matter of public policy to be instituted, heard and determined within the shortest time possible hence the stringent limitation provided for instituting such proceedings. It is recognised that judicial review jurisdiction is a special jurisdiction. The decisions of parastatals and public bodies involve million and sometimes billions of shillings and public policy demands that the validity of those decisions should not be held in suspense indefinitely. It is important that citizens know where they stand and how they can order their affairs in the light of such administrative decisions. The financial public in particular requires decisiveness and finality in such decisions. People should not be left to fear that their investments or expenditure will be wasted by reason of belated challenge to the validity of such decisions. The economy with the current volatile financial markets cannot afford to have such uncertainty. As such judicial review remedies being exceptional in nature should not be made available to indolents who sleep on their rights. When such people wake up they should be advised to invoke other jurisdictions and not judicial review. Public law litigation cannot and should not be conducted at the leisurely pace too often accepted in private law disputes. See *Republic v. The Minister for Lands & Settlement & Others* Mombasa HCMCA No. 1091 of 2006.

19. Based on the express provisions of Order 53 of the *Civil Procedure Rules*, 2010, Section 9 of the *Law Reform Act*, Cap 26 Laws of Kenya and the authorities cited hereinabove amongst others, this Honourable Court is of the considered opinion that there is no express statutory provision that grants the discretion for extension of time within which to seek leave to institute judicial review proceedings.



20. In other words, once the period provided under Order 53 of the *Civil procedure Rules*, 2010 and Section 9 of the *Law Reform Act*, Cap 26 Laws of Kenya has lapsed, then such a litigant is advised to seek alternative legal procedures to advance their cause and not through Judicial Review proceedings.
21. To this end, the Applicant's prayer for enlargement of time within which to seek leave to institute Judicial Review proceedings is declined and consequently thereof, the application for leave to institute Judicial Review proceedings is bad in law and incompetent.
22. In light of the negative outcome of Issue No.1, this Honourable Court does not have jurisdiction to entertain and/or deliberate on the remaining issues which would only come into play if there was a proper and lawful application for leave to institute judicial review proceedings.

**Conclusion.**

23. In conclusion therefore, the Honourable Court hereby makes the following Orders in determination of the Chamber Summons dated 07.09.2023; -
  - a. The ex-parte chamber summons dated 7th of September 2023 be and is hereby dismissed forthwith.
  - b. the applicant shall bear the costs of the said application.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 18<sup>TH</sup> JANUARY 2024.**

**EMMANUEL.M.WASHE**

**JUDGE**

In the presence of:

Court Assistant: Mr. Ngeno

Advocates for the Applicant: Ms. Pion

Advocates for the Respondents: Mr. Shira for 5<sup>th</sup> Respondent

Mr. Ranah for 1<sup>st</sup> – 4<sup>th</sup> Respondent

