



**Kariuki v Deputy County Commissioner Buuri East Sub-County & another;  
M'Munoru (Interested Party) (Environment and Land Judicial Review  
Case E007 of 2023) [2024] KEELC 73 (KLR) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 73 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E007 OF 2023**

**CK NZILI, J**

**JANUARY 17, 2024**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW  
REFORM ACT CAP 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 53 RULES 1 AND 2 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF OBJECTION NUMBER 117 OF 2020 IN BUURI  
EAST SUB-COUNTY LAND ADJUDICATION OFFICER IMENTI NORTH**

**AND**

**IN THE MATTER OF LAND PARCEL NO. RUIRI/  
RWARERA/633 –RUIRI ADJUDICATION SECTION**

**BETWEEN**

**JANET KARAMBU KARIUKI ..... EXPARTE APPLICANT**

**AND**

**DEPUTY COUNTY COMMISSIONER BUURI EAST SUB-  
COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**STEPHEN MUTUMA M'MUNORU ..... INTERESTED PARTY**



## RULING

1. The exparte applicant, by an application dated 15.11.2023, seeks leave to challenge the decision made on 5.5.2023 by the 1<sup>st</sup> respondent regarding Parcel No. Ruiru/Rwarera/633 Adjudication Section in Land Case No. 117 of 2020 by way of writs of certiorari. The grounds are set on the face of the application, the statement of facts, and the verifying affidavit sworn by Janet Karambu Kariuki on 1.11.2023.
2. Briefly, the exparte applicant avers her late husband bought 24 acres of the land in 1976, which was trespassed into by the interested party alleging he was an orphan. It is averred that by a decision dated 19.3.2019, the District Land Adjudication and Settlement Officer awarded the interested party four acres out of the land, which the Deputy County Commissioner affirmed in the appeal. The exparte applicant terms the decision as unfair and unjust.
3. The purpose of leave under the law is to sieve matters that may be frivolous, time-wasting, lacking merits, or out to stifle the implementation of an administrative action. In [\*Kenneth Ntwiga Kanga v DCIO & others\*](#) (2017) eKLR, the court cited with approval [\*Wilfred Josiah Manda and another v. Patrick Mukua Muthani & others\*](#) (2016) eKLR, that the purpose of judicial review was to address defects in decision-making bodies. Further, the court cited with approval [\*Aga Khan Education Services Ltd v Republic Exparte Ali Sif and others\*](#) (2004) eKLR, that at the leave stage, an applicant has to prove that he has an arguable case for grant of leave and that the statement of facts should reveal the basis for such leave.
4. The court said that at the leave stage, the interest would be whether there was a basis to grant permission to challenge the actions taken by the respondents by establishing a *prima facie* case for the court to entertain the substantive motion at the stage set under order 53 rule 3 [\*Civil Procedure Rules\*](#).
5. In [\*Republic v County Government of Embu Exparte Peterson Kamau Muto t/a Embu Medical & Dental Clinic & others\*](#) (2022) eKLR, the court cited with approval [\*Republic v. County Council of Kwale and another exparte Kondo and 57 others\*](#) Mombasa HCMCA 384 of 1996, that leave is meant to eliminate at an early stage any application which is either frivolous, vexatious or hopeless and prevent the time of the court from being wasted by busy bodies with misguided or trivial complaints based on administrative errors. The court further said that at the leave stage, the court need not go into the depths of the matter, and the test is whether a case is disclosed for further investigations at a full inter-parties hearing.
6. From the cited case law, granting leave is a discretionary exercise exercisable judicially. A cursory glance at the statement of facts, the verifying affidavit, and the annexures, the exparte applicant has raised issues regarding how the suit land was reduced from the initial acreage and awarded to the interested party based on an alleged inheritance right.
7. To my mind, the issues raised require further interrogation by this court. Despite service with the application, the respondent and the interested party have not objected to leave or attacked the application as frivolous, vexatious, and hopeless. The upshot is that I grant leave as requested. Regarding whether leave should operate as stay, the purpose of stay is to suspend or halt the implementation of the decision and preserve the status quo pending hearing. See [\*Taib A Taib v Minister for Local Government and others\*](#) Mombasa HC misc 158 of 2006.



8. The ex parte applicant has not explained what has happened to the suit land since the decision was made on 5.5.2023 she has not explained who is on the suit land and if the interested party has taken any adverse action to her detriment over the suit land.
9. Therefore, I find no justification to grant any stay orders. I direct the substantive application to be filed and served within 30 days from the date hereof. Parties to appear for a pre-trial conference on 24.1.2024.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 17<sup>TH</sup> DAY OF JANUARY 2024**

In presence of:-

C.A Kananu/Mukami

Interested party

Riungu for applicant

Mr. Ken Muriuki for interested party

Miss Maina for respondents

**HON. CK NZILI**

**JUDGE**

