



**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 977 (KLR) (21 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 977 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E007 OF 2023
CK NZILI, J
FEBRUARY 21, 2024**

BETWEEN

JANET KARAMBU KARIUKI EXPARTE APPLICANT

AND

**DEPUTY COUNTY COMMISSIONER BUURI EAST SUB-
COUNTY 1ST RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

AND

STEPHEN MUTUMA M'MUNORU INTERESTED PARTY

RULING

1. On 24.1.2024, this court granted leave for the commencement of judicial review proceedings for certiorari against a decision of the 1st respondent made on 5.5.2023 in Ministers Appeal No. 117 of 2020 on Parcel No. 633 Ruiru Rwarera Adjudication Section.
2. It appears that pending the ruling on leave, the interested party had filed a notice of preliminary objection dated 19.12.2023, whose basis is that the proceedings offend Sections 8 & 9 of the *Law Reform Act* and Order 53 Rule (2) of the *Civil Procedure Rules*, which he now urges the court to determine in limine.
3. The exparte applicant had to file the substantive motion by 14.2.2024.
4. The interested party relies on written submissions dated 19.12.2023 that since the decision sought to be quashed was made on 5.5.2023, the six months had lapsed by the time the court was moved on 20.11.2023.



5. Sections 8 and 9 of the [Law Reform Act](#), read together with Order 53 Rule 2 of the [Civil Procedure Rules](#), provide that a party seeking orders of certiorari must challenge the decision within six months from the date it was rendered. In [Kimanzi Ndoos vs David Mulwa Muthusi](#) C.A No. 233 of 96, as cited in [Republic vs. Makueni District Tribunal](#) (2004) eKLR, the court said no leave can be entertained unless it was sought within six months of the date of the award or order. In [Nyagah vs Republic](#) (1990) eKLR, the court said Section 9 (3) of the [Law Reform Act](#) prohibits the granting of leave after the expiration of six months after the order or decree sought to be quashed was made. The court said it had no power to enlarge time.
6. In [Wilson Osolo vs. John Ojiambo Ochola and another](#) [199]eKLR, the Court of Appeal said Order 53 Rule 2 [Civil Procedure Rules](#) was derived from Section 9 (3) of the [Law Reform Act](#), which is mandatory. Additionally, in [Republic vs Maseno University Staff Disciplinary Committee & another](#) [2009] eKLR, the court said the decision of the council was not an order of the court, a judgment or decree, or proceedings, and if the decision was found to be a nullity an order of certiorari should lie even if challenged after six months since a nullity cannot be subject to six months for it does not exist. In [Republic v Kenya National Highway Authority & other exparte, Amica Business Solutions Ltd](#) [2016] eKLR, the Court of Appeal held Order 53 Rule 2 of the [Civil Procedure Rules](#) covers both judicial and quasi-judicial proceedings where there is a hearing all affected parties were informed or were aware of the proceedings and where there was a decision capable of being disseminated and accessed by all the affected parties. The court cited [Goldenberg Affair Exparte Hon. Mwalulu & others](#) [2004] eKLR and [Republic v Commissioner of Lands exparte Lake Flowers Ltd](#) H.C Nrb Misc Approximated No. 1235 of 1998 that Orders 13 (2) & (7) of the [Civil Procedure Rules](#) apply to special or formal orders and nothing else, certainly not to contents of one private letter in response to another. See [Republic vs Kisii County Land Registrar & another exparte SBM Bank \(K\) Ltd Thomas Ogeto Kebisa & another \(interested parties\)](#) [2021] eKLR.
7. In this preliminary objection, the exparte applicant has not filed anything to oppose the preliminary objection and perhaps state whether the decision dated 5.5.2023 is a nullity ab initio. Leave, in this case, was granted on 24.1.2024. The question is whether, after granting leave, this court can recall the leave due to the preliminary objection.
8. In [Republic v CCK exparte East African Television Network Ltd](#) [2001] KLR 82 [2001] IEA 199, the court said the appropriate procedure for challenging such leave is by an application under the inherent powers of the court. Other than the preliminary objection, no application has been filed to seek setting aside the leave. In [Stephen Kibowen v Chief Magistrate's Court Nakuru & 2 others](#) [2017] eKLR, the court said there were exceptions to the six-month rule, where the decision is said to be a nullity and incapable of commencing a reckoning of time.
9. In the statutory statement before the court, one of the grounds raised is that the decision was illegal, unjust, and unfair. As indicated above, there is no application for review or setting aside of the order granting leave. The notice of motion is yet to be determined. A preliminary objection must be a pure point of law that can dispose of a matter. The interested party has not addressed the issue of computation of time. When the six months expired is not clear. If the decision has been effected is not stated. The prejudice the interested party has suffered is not indicated. The upshot is that I find the preliminary objection is not a pure point of law, for it requires evidence. I defer it for consideration at the hearing of the substantive motion.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 21ST DAY OF FEBRUARY 2024



HON. CK NZILI

JUDGE

In presence of

C.A Kananu

Interested party

Miss Riungu for exparte applicant

Mr. Muriuki for interested parties

Miss Kendi for the 1st & 2nd respondent

