



**Republic v District Land Adjudication Officer Meru Central & Buuri & 2 others;  
Kiira (Exparte Applicant); Kinyua & another (Interested Parties) (Judicial Review  
Application E002 of 2023) [2024] KEELC 1776 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1776 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**JUDICIAL REVIEW APPLICATION E002 OF 2023**  
**CK NZILI, J**  
**MARCH 20, 2024**  
**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**JUDICIAL REVIEW APPLICATION NO. E002 OF 2023**  
**IN**  
**THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**  
**ORDER OF CERTIORARI, MANDAMUS & PROHIBITION**  
**AND**  
**IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT**  
**AND**  
**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES**  
**AND**  
**IN THE MATTER OF SECTION 19, 20 & 26 OF THE LAND**  
**ADJUDICATION ACT**  
**AND**  
**IN THE MATTER OF ARTICLES 23, 40 & 47 OF THE CONSTITUTION**  
**OF KENYA 2010**  
**AND**  
**AND IN THE MATTER OF LAND PARCEL NO. 945 URINGU 1**  
**ADJUDICATION SECTION**  
**BETWEEN**



**REPUBLIC ..... APPLICANT**

**AND**

**DISTRICT LAND ADJUDICATION OFFICER MERU CENTRAL &  
BUURI ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER BUURI SUB COUNTY ... 2<sup>ND</sup>  
RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**CORNELIUS MUTHAMIA KIAIRA ..... EXPARTE APPLICANT**

**AND**

**STANLEY KINYUA ..... INTERESTED PARTY**

**ISAAK KITHIA M'IKIAIRA ..... INTERESTED PARTY**

### **RULING**

1. The court is asked to review, set aside, vary and or discharge the orders issued on 28.11.2023, dismissing the proceedings. The grounds are set out on the face of the application and in a supporting affidavit by Cornelius Muthamia Kiara sworn on 4.12.2023. The applicant avers leave to commence judicial review proceedings was issued on 23.10.2023 and complied by filing and serving the notice of motion. It is averred that prior to the issuance of directions, the applicant had made a payment for the substantive notice of motion on 2.10.2023, and when the fresh directives were issued, he complied with the same by filing a notice of motion on 23.10.2023. However, he says the document was court stamped for a date 2.10.2023 for accounts reconciliation purposes, given that payments for the document had previously been made and receipted on 2.10.2023 as per annexure marked CMK "1" & "2" respectively.
2. The applicant avers that upon filing on 23.10.2023, he duly served the interested party and the respondents with the same between 23.10.2023 and 24.10.2023 who filed their respective responses and or answers to the notice of motion as annexed as CKM "3" and "4," respectively.
3. The applicant therefore avers that there was an error apparent on the face of the record as the notice of motion was filed on 23.10.2023 but bore the stamp of 2.10.2023, given it was not possible to pay twice for the same documents.
4. The applicant avers that the court should not have vacated the leave, which orders are extremely prejudicial, does not accord with the tenets of natural justice and mistakes of counsel should not be visited upon him. The applicant avers he has filed the application without unreasonable delay and there will be no prejudice to the respondents and the interested parties.
5. The application is opposed through an affidavit sworn by Isaac Kithia Kiara the 1<sup>st</sup> interested party. It is averred paragraphs 4 & 5 of the supporting affidavit cannot hold any water since three days were running from 23.10.2023 which the applicant did not adhere to but chose his way of prosecuting his case instead of obeying the court directives. The 1<sup>st</sup> interested party avers there was no error apparent on the face of the record except disobedience on the part of the exparte applicant which is admitted in paragraph 16 of the supporting affidavit.



6. This court on 18.7.2023 granted leave to the ex parte applicant to file a notice of motion to quash the decision made on 27.1.2023 by the 1<sup>st</sup> respondent on parcel No's. 9125 and 5332 Ruiru/Rwarera Adjudication Section. Leave was not to act as stay. The ex parte applicant was directed to file and serve the substantive motion within 21 days and the issue of stay be reserved for hearing on 28.9.2023.
7. When the matter came up on 28.9.2023, Mr. Maranya Advocate for the ex parte applicant told the court he was not aware of the directives on 18.7.2023 and therefore no notice of motion had been filed. Mr. Mohammed for the 1<sup>st</sup> – 3<sup>rd</sup> respondents sought for the file to be closed.
8. The court issued a notice to show cause to the ex parte applicant for 23.10.2023 why the proceedings should not be marked as closed.
9. Mr. Maranya advocate told the court that he was misled by the court clerk that the court had directed him to serve the application, and was not aware of the grant of the leave and directions to file and serve the substantive motion within 21 days.
10. Learned counsel sought for an extension of time to file the notice of motion as soon as possible he regretted the inadvertent mistake on his part and the office which he owned up. Miss Maina learned state counsel for the respondents objected to the request since no orders issued on 18.7.2023 were served upon them and the documents thereto contrary to Order 53 of the Civil Procedure Rules. Counsel prayed for the file to be closed. The court extended leave to file and serve the notice of motion within 3 days from the said date and for mention on 28.11.2023 to confirm compliance.
11. When the matter came up on 28.11.2023 Miss Mbaikyatta learned counsel appeared for the respondents, Mr. Kava counsel for Mr. Maranya for the ex parte applicant while the interested parties appeared in person.
12. Learned counsel for the respondents raised the issue of non-filing or service with the notice of motion as directed on 23.10.2023, Mr. Kava advocate in response told the court that service was effected by email on 23.10.2023. He could however not avail any filed or served a copy of the notice of motion to the court.
13. In the absence of any explanation, the court vacated the leave and time extended on 23.10.2023 set aside and marked the file as closed with costs to the respondents and interested parties. From the court record, it is apparent that on 24.7.2023, an order was extracted and signed by the Deputy Registrar and collected by one Timothy for Maranya advocate on 25.7.2023, who appended his signature on the acknowledgment form.
14. Later on, Joel Maitethia M'Rukunga process server swore an affidavit filed on 30.8.2023 that on 25.7.2023 he received a court order issued on 24.7.2023, a certificate of urgency and an application dated 17.7.2023 from the firm of MD Maranya & Co. Advocates coming for hearing on 28.9.2023 to effect service.
15. The ex parte applicant says that he filed and served the notice of motion within 3 days and on 22.10.2023 but the document court-stamped for 2.10.2023 since he had made payments on 2.10.2023. The question is why the applicant would pay Kshs.2,250/= filing fees for a certificate of urgency when no certificate of urgency was envisaged or directed to be paid for that day. The court on 28.9.2023 marked the proceedings as closed. The ruling extending time was made on 23.10.2023 ruling arose out of an oral application. There was nothing from the court file on the eve of 2.10.2023 triggering the applicant to file any certificate on 2.10.2023. If any payment was made on 2.10.2023 for a certificate of urgency then it could not have been the notice of motion which as per the registry manual attracts a higher filing fee for every relief.



16. The four key reliefs in the notice of motion would have attracted a higher filing fee. There has been no written explanation or confirmation from the Deputy Registrar of this court or the executive officer to confirm that indeed the document was received on 23.10.2023 and backdated for accounts reconciliation.
17. Backdating of court documents is a grave error and borders on criminality. The order by this court was forward-looking and was not to act retrospectively. Assuming the document was received on 23.10.2023, but backdated for 2.10.2023, the same would bear an assessment of the filing fees payable and a corresponding entry of the receipt number on top.
18. If the document was served upon the respondents on the same date of 23.10.2023 it would also have a receipt stamp from the office of the Attorney General. The court granted leave to the ex parte applicant on 23.10.2023 to file and serve the notice of motion within 3 days.
19. The notice of motion purported to have been filed on 23.10.2023 but back stamped on 2.10.2023 is dated 29.9.2023.
20. Assuming it was pursuant to the leave and extension granted on 23.10.2023 why would the ex parte applicant date it almost a month before the date of leave? Why would it be dated even before the court a notice to show cause was heard and determined?
21. Counsel for the ex parte applicant was in court on 28.9.2023 when a notice to show cause was issued for 23.10.2023. Why would he be in a hurry to file something three days after and on for the notice of motion long before even leave was granted?
22. The court did not have in its file the notice of motion dated 29.9.2023 or filed after leave was issued on 23.10.2023. The court is being told there was an error apparent on the face of the record.
23. An error apparent on the face of the record is one which shows a court on its face and does not require a long inquiry to be established. See *Nyamogo & Nyamogo vs Kogo* (2001) EA 174, *National Bank of Kenya vs Ndugu Njau* Civil Appeal No. 211 of 1996.
24. In my considered view the ex parte applicant has from the onset of this proceedings committed mistakes. The court on 23.10.2023 gave the ex parte applicant a new lease of life to be exercised within 3 days, Kshs.2,250/= was too important to be saved than to comply with the court directives. Filing fees paid were not less than what is required of a notice of motion notice of motion was to a certificate of urgency.
25. Once the court made the order on 28.11.2023 the proceedings in this file were marked closed. The court did not dismiss any suit, it vacated the leave and marked the file closed.
26. In this application the ex parte applicant has not sought to revive the leave, extend the time to comply and or deem the notice of motion stamped on 2.10.2023 as duly filed in compliance with the leave. It is trite law that the filing of documents is a legal procedural and statutory process. The date of filing is the date the document is received at the registry and paid for. The ex parte applicant did not find it necessary to call for an affidavit from the accounts section and or the court registry for substantiation of his assertions that it was regular, normal and legal, to back-date court documents.
27. The person who directed the ex parte applicant and or back stamped the documents has not been mentioned. The clerk who presented the documents and was duly advised to back date them contrary to the court directives has not sworn the affidavit. The court would be sanctioning an irregularity and an illegality if it was to accede to the request by the ex parte applicant to find that he had complied with its directives but was advised otherwise at the court registry and the accounts section.



28. The prejudice to be suffered by the respondents and the interested parties outweighs the one the ex parte applicant is likely to suffer, more so when he is the author of his own mistakes, which have nothing to do with the respondents and the interested parties.
29. Justice is justice for both the ex parte applicant and the interested parties. There mistakes herein have not been owned up by the ex parte applicant's counsel at all. The six-month rule has also caught up with the ex parte applicant's claims hence the court shall be acting in vain.
30. The upshot is I find no error apparent on the face of the record calling for a review, variation, setting aside and or discharge of the order made on 28.11.2023. The application is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 20<sup>th</sup> DAY OF MARCH, 2024.**

In presence of

C.A Kananu

Mr. Kava for Maranya for applicant

Interested party

**HON. C K NZILI**

**JUDGE**

