



**Mbogo v National Land Commission & 2 others (Environment and Land Judicial Review Miscellaneous Application E003 of 2022)  
[2024] KEELC 13227 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13227 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E003 OF 2022**

**MN GICHERU, J**

**NOVEMBER 18, 2024**

**N THE MATTER OF AN APPLICATION BY THE APPELLANT, JOSEPH MWANGI MBOGO FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY WAY OF ORDERS OF CERTIORARI AND PROHIBITION DIRECTED TO THE NATIONAL LAND COMMISSION**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, THE NATIONAL LAND COMMISSION ACT, 2012 AND FAIR ADMINISTRATIVE ACT, 2015**

**BETWEEN**

**JOSEPH MWANGI MBOGO ..... APPLICANT**

**AND**

**THE NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

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

**SAMUEL LEKISHO OROPI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is on the notice of preliminary objection dated 25/4/2023. The notice which is by the 3<sup>rd</sup> respondent is based on the following grounds.
  1. The proceedings are time barred for having been instituted outside the six months period for Judicial Review Proceedings.
  2. The order of prohibition sought against the 3<sup>rd</sup> respondent is untenable as he is a private citizen and does not exercise any administrative authority or perform any judicial or quasi-judicial function under *the Constitution* or any written law.



3. In so far as the applicant prays for damages in the notice of motion dated 24/5/2022 there was no leave granted in relation to the prayer for damages.
  4. The proceedings herein relate to a private dispute hence not amenable to Judicial Review Proceedings.
  5. This matter is an abuse of the court process in view of the fact that Miscellaneous Application No. 34 of 2019 was concluded by this court on 26/1/2022.
  6. By reason of the aforesaid provisions of the law, this application is an abuse of the court process, misconceived, incompetent and a complete nullity and
  7. Further, by reason of the aforesaid provisions of law, this court is precluded from entertaining this application which should be struck out with costs to the 3<sup>rd</sup> respondent.
2. In the motion dated 24/5/2022 the application seeks the following.
    - a. Order of certiorari to quash the decision of National Land Commission to transfer L.R. Plot No. 40/Res or A 186 (formerly Plot No. 59) Noonkopir Kajiado which belongs to the applicant herein to the 3<sup>rd</sup> respondent.
    - b. An order of prohibition against the 3<sup>rd</sup> respondent, his servants and or agents from interfering in any way with the applicant's title or use of land Parcel known as Plot No. 40/Res or A186 (formerly Plot No. 59) Noonkopir Kajiado.
    - c. That the costs of this application be borne by the respondents.
    - d. That the respondent be directed to pay general damages to the applicant for the loss he has suffered from the time the 1<sup>st</sup> respondent sent him a letter dated 6/11/2018.
    - e. That the court be pleased to grant any other orders it may deem fit to grant in the circumstances.
  3. The motion by the applicant is supported by an affidavit which has six (6) annexures. In summary, the applicant states that he purchased the suit land from Jeniffer R. Konchella on 30/9/1986 and the records held by the second respondent indicate that he is the owner and he holds a title for the same. Secondly, in the year 2016, he noticed unidentified persons trespassing on the suit land. Thirdly, a committee formed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to hear land disputes found the suit land to belong to the 3<sup>rd</sup> respondent. The decision was communicated through a letter dated 6<sup>th</sup> November 2018. Finally, the applicant had no other recourse but to file this suit for orders of certiorari and prohibition.
  4. In opposing the Judicial Review Motion, the 3<sup>rd</sup> respondent has sworn a replying affidavit dated 16<sup>th</sup> October 2023 which has seventeen (17) annexures in which he replies as follows. Firstly, the Kajiado County Dispute Resolution Committee vide a letter dated 6/11/2018 determined that the 3<sup>rd</sup> respondent was the bonafide owner of plot No. A 186(formerly No. 40 Noonkopir). The land was originally allocated to Elijah Sororonyi on 3/3/1977 who sold it to Moses Oropi Ole Semera who had it registered to the name of the 3<sup>rd</sup> respondent on 19/9/2000. Secondly, the 3<sup>rd</sup> respondent took possession of the suit land, fenced it off, constructed a site house, a timber sale yard and connected electricity. Thirdly, on 14/10/2002, the 3<sup>rd</sup> respondent was issued with a letter of allotment by the commissioner of lands. Fourthly, on 24<sup>th</sup> April 2019, the applicant filed Kajiado High Court Misc. Civil Application No. 34 of 2019 seeking leave to institute Judicial Review Proceedings against the decision contained in the letter dated 6/11/2018. The court granted the applicant leave to file a substantive notice within 21 days but he failed to do so as a result of which the orders issued on 10/3/2021 were



vacated on 26/1/2022. Fifthly, the applicant's plot is Noonkopir/72 formerly Plot No. 59/Residential Re-numbered No. 40/Residential. Finally, under Order 53 rule 2 Civil procedure Rules an application for judicial review must be filed within six (6) months of decision being challenged in the Judicial Review Proceedings.

5. Counsel for the parties filed written submissions dated 10/4/2024 and 24/6/2024 respectively and identified the following issues.
  - a. Whether these proceedings are statutorily time barred under Section 9 (3) of the *Law Reform Act* and Order 53 rule 2 of the Civil Procedure Rules.
  - b. Whether or not the proceedings herein relate to a private dispute hence not amenable to judicial review proceedings.
  - c. Whether or not the suit is an abuse of the court process, misconceived, incompetent, a complete nullity.
  - d. Whether leave was granted in relation to the prayer for general damages.

6. I have carefully considered the preliminary objection, the entire record, the written submissions by both sides, the issues raised therein as well as the law cited therein. I find as follows on the issues raised by the learned counsel for the parties.

On the first issue, I find the suit is time barred because the decision sought to be quashed was made on 6/11/2018 and leave was granted on 4/5/2022 which is almost four (4) years later, yet by dint of Section 9(3) of the *Law Reform Act*, such leave must be granted not later than six months after the date of the decision being challenged. Order 53 rule 2 of the Civil Procedure Rules removes any doubt as to the time of filing Judicial Review proceedings where an order of certiorari is sought. It repeats that leave must be before the expiry of six (6) months from the date of the decision under challenge.

Article 159 (2) (d) talks of procedural technicalities. The time of filing Judicial Review Proceedings is determined by the law in *Law Reform Act* and Order 53 rule 2 Civil Procedure Rules. There is no room for filing a judicial review application almost four (4) years after the decision under challenge and then plead procedural technicality.

7. On the second issue, I find that a judicial review claim challenges a decision, an act or failure to act by a body exercising a public function. However, Article 47 of *the Constitution* as effected by the *Fair Administrative Action Act*, 2015 extended the scope of judicial review to private bodies. See the case of Communications Commission of Kenya and 5 others –versus- Royal Medial Services Limited and 5 others Supreme Court Petition Nos. 14, 14A, 14B and 14C of 2014.

8. On the third issue, I find that the leave granted was limited to two (2) areas.
  - i. Order of certiorari to quash the decision of the National Land Commission to transfer L.R. No. 40/Res/ of A186 (formerly Plot No. 59) Noonkopir Kajiado belonging to the applicant to the 3<sup>rd</sup> defendant.
  - ii. An order of prohibition do issue against the 3<sup>rd</sup> respondent to prohibit him from interfering in any way with the applicant's title to the same plot.

No leave was granted in respect to general damages or any other relief.

9. On the final issues, I find that the application is incompetent for having been filed outside the six months prescribed by the *Law Reform Act* and the Civil Procedure Rules.



For the above stated reasons, I find no merit in the entire suit and uphold the preliminary objection dated 25/4/2023 thereby striking it out with costs.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 18<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M.N. GICHERU**

**JUDGE**

