



**Republic v Clerk Nyandarua County Assembly; Ndegwa (Exparte Applicant) (Judicial Review E002 of 2024) [2025] KEHC 3831 (KLR) (Judicial Review) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3831 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
JUDICIAL REVIEW  
JUDICIAL REVIEW E002 OF 2024  
KW KIARIE, J  
MARCH 27, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CLERK NYANDARUA COUNTY ASSEMBLY ..... RESPONDENT**

**AND**

**HON. JAMES WAHOME NDEGWA ..... EXPARTE APPLICANT**

**RULING**

1. The respondent opposed the Application dated 14th October 2024 on the following grounds:
  - a. That the application is statute-barred as leave to file the motion was sought more than six (6) months after the costs were assessed and a certificate of costs was issued contrary to provisions of Section 9(2) of the *Law Reform Act*.
  - b. The applicant herein has failed and/or neglected to explain why there was an inordinate delay in bringing the instant application for an order of mandamus.
  - c. That the application is fatally bad and/ or incurably defective and grossly incompetent and should not be entertained by this honourable court. The same ought to be struck out forthwith.
  - d. That the application is incompetent, bad in law and devoid of any merits, null and void ab initio.
2. The ex parte applicant opposed the contention on the following grounds:



- a. The opposition is intended to delay the application.
  - b. An order of mandamus is not subject to a time limitation.
3. Courts have spoken on the time limitation regarding the order for mandamus severally. In *Zedka Services Limited v County Secretary, Uasin Gishu County & another* (Judicial Review 7 of 2023) [2024] KEHC 5908 (KLR) Wanada J, addressing a similar issue, said:

17. I have clearly looked at the said Order 53 of the CPA, and there is nowhere in that Rule is it stated that an application for the order of mandamus must be made within six months of the date of the act complained of. It is only in Order 53 Rule 2 that a specific timeline is given for the application for the order of certiorari

The judge went on to say:

I agree and associate fully with the above logic, reasoning and holding as eschewing the correct position of the law. I do not believe that the 6 months statutory limit could have been intended place a bar on a decree-holder's entitlement to pursue a lawful Court Judgment passed in his favour. to frustrate or bar a decree-holder from pursuing payment of a lawful decree. Such argument, if accepted, will only lead to an absurdity and an unacceptable state of affairs where decree-holders are automatically shut out from pursuing payment of their judgments upon lapse of 6 months unless they have commenced mandamus proceedings. This could not have been the intention of the drafters.

Earlier in *Joseph Muriithi Nyaga v Embu County Government* [2021], eKLR L. Njuguna J. had observed the following:

It is my view, therefore, that the respondent herein misconstrued the law in raising the preliminary objection. It is clear that section 9(2) does not limit the time for filing an application for mandamus to six months but provides that rules made to provide for the procedure of the courts may limit such time. The procedural rules (CPR 2010), which are the only applicable rules, do not provide for such a limitation on time in relation to an application for orders of mandamus but only when seeking orders of certiorari.

4. I agree with the honourable judges that this represents the correct legal position. The opposition is therefore dismissed with costs.

**DELIVERED AND SIGNED AT NYANDARUA THIS 27<sup>TH</sup> DAY OF MARCH 2025**

**KIARIE WAWERU KIARIE**

**JUDGE.**

