



Republic v Chief Finance Officer County Government of Bungoma & 2 others; Mayfair Holdings Limited (Ex parte Applicant) (Judicial Review Application E016 of 2024) [2025] KEHC 10894 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 10894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E016 OF 2024**

JM OMIDO, J

JUNE 26, 2025

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF FINANCE OFFICER COUNTY GOVERNMENT OF
BUNGOMA 1ST RESPONDENT**

**EXECUTIVE MEMBER FOR FINANCE COUNTY GOVERNMENT OF
BUNGOMA 2ND RESPONDENT**

COUNTY GOVERNMENT OF BUNGOMA 3RD RESPONDENT

AND

MAYFAIR HOLDINGS LIMITED EX PARTE APPLICANT

RULING

1. The instant Judicial Review proceedings were commenced vide the Chamber Summons application dated 5th July, 2024, through which the ex parte Applicant sought for leave to file an application seeking for the Judicial Review order of mandamus against the Respondents. The application was presented under a certificate of urgency.
2. On 30th July, 2024, this court (Hon. Lady Justice Kamau) granted the requisite leave to the ex parte Applicant to file a substantive Motion seeking for an order in the nature of mandamus against the Respondents.
3. Although the court did not specify the time for the filing of the substantive Motion, the law under Order 53 rule 3(1) of the *Civil Procedure Rules* provides that the same must be filed within 21 days from the date that leave is granted. Let us read the said provision:



53 (3). Application to be by notice of motion

1. When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.
4. Considering the above, the last day for the Applicant to file the Motion under the rule was on 20th August, 2024, a Tuesday, taking into account Order 50 rule 8 of the Civil Procedure Rules, which states as follows:
 50. Computation of days
 8. In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.
5. Although not raised by the Respondents, I cannot help noticing that the ex parte Applicant filed the substantive Motion dated 20th August, 2024 on 22nd August, 2024, which was without a doubt, out of time.
6. What fate then befalls the application?
7. Order 53 rule 3 is couched in mandatory terms that the Notice of Motion shall be filed within 21 days. That, in my understanding, means that a substantive Motion that is filed outside the 21 days that the rule provides is incompetent. An incompetent application cannot sustain the prayers that it seeks.
8. That indeed was the finding of the Court of Appeal in the case of Wilson Osolo v John Ojiambo Ochola & the Attorney General CA No. 6 Nairobi of 1995 where it was held as follows:

“It was a mandatory requirement of Order 53 Rule 3(1) of the Civil Procedure Rules then (and it is now again so) that the notice of motion must be filed within 21 days of grant of such leave. No such notice of motion having been apparently filed within 21 days on 15th February 1985, there was no proper application before the Superior court. This period of 21 days could have been extended by a reasonable period had there been an application under Order 49 of the Civil Procedure Rules.”
9. Noting that the ex parte Applicant did not move the court to extend the period within which to bring the substantive Motion, the one before me dated 20th August, 2024 is incompetent, fatally. I will therefore proceed to strike it out, which I hereby do.
10. As to the issue of costs, although the same should ordinarily follow the event, the reason upon which the Motion has been struck out is one that this court raised sua sponte, I make no order as to costs.
11. This file is hereby closed.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 26TH JUNE, 2025.

JOE M. OMIDO.

JUDGE

For Ex Parte Applicant: Ms. Anyango for Mr. Ojuro.

For Respondents: No appearance.



Court Assistants: Mr. Ngoge & Mr. Juma.

