



**Republic v Kenya Sugar Board & another; Nzoia Sugar Company Limited & 6 others (Interested Parties); Manyuru & 5 others (Ex parte) (Miscellaneous Judicial Review E007 of 2025) [2025] KEHC 11690 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11690 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS JUDICIAL REVIEW E007 OF 2025**

**WM MUSYOKA, J  
JULY 31, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYA SUGAR BOARD ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**NZOIA SUGAR COMPANY LIMITED ..... INTERESTED PARTY**

**BUTALI SUGAR MILLS LIMITED ..... INTERESTED PARTY**

**WEST KENYA SUGAR COMPANY LIMITED ..... INTERESTED PARTY**

**MUMIAS SUGAR COMPANY LIMITED ..... INTERESTED PARTY**

**BUSIA SUGAR INDUSTRY LIMITED ..... INTERESTED PARTY**

**WEST KENYA OLEPITO UNIT ..... INTERESTED PARTY**

**WEST KENYA NAITIRI UNIT ..... INTERESTED PARTY**

**AND**

**PETER MANYURU ..... EX PARTE**

**JOHNSTONE WAMUKOYA ..... EX PARTE**

**ISAAC MUYODI ..... EX PARTE**

**DONALD BULUMU ..... EX PARTE**

**CLEOPHAS OKWARA ..... EX PARTE**

**JOHN OKWARE ..... EX PARTE**



## RULING

1. The ex parte applicants herein filed an ex parte chamber summons, dated 15<sup>th</sup> July 2025, for leave to apply for orders of certiorari, mandamus and prohibition, under Order 53 rule 1 of the Civil Procedure Rules.
2. The summons was placed before me, the same day, 25<sup>th</sup> July 2025, and I granted leave, and directed that the Motion, contemplated under Order 53 rule 3 of the Civil Procedure Rules, be filed within 5 days, to be disposed of by way of written submissions, to be filed and served within 7 days. I allocated the matter a date for mention, on 29<sup>th</sup> July 2025, for compliance, and allocation of a date for judgement.
3. A Motion, dated 23<sup>rd</sup> July 2025, was filed on even date. There is an affidavit of service, sworn on 28<sup>th</sup> July 2025, showing that the Motion was served on 24<sup>th</sup> July 2025, on all the parties.
4. The only reaction to the Motion, filed prior to 29<sup>th</sup> July 2025, is a Notice of Preliminary Objection, dated 28<sup>th</sup> July 2025, by the 2<sup>nd</sup> interested party. It raises the point that the Motion, dated 23<sup>rd</sup> July 2025, was filed outside the 5 days leave timeline, given on 15<sup>th</sup> July 2025, and, therefore, the said Motion was a nullity, which had rendered the entire Judicial Review proceedings invalid.
5. When the matter came up before me, on 29<sup>th</sup> July 2025, to confirm compliance with the orders of 15<sup>th</sup> July 2025, and to allocate a date for judgement, my attention was drawn to that Preliminary Objection, and some of the parties asked for time to file responses. However, I decided to hear the Preliminary Objection straightaway, given that the decision or action, challenged in the Judicial Review proceedings, was that made by the 1<sup>st</sup> respondent, communicated by a letter dated 8<sup>th</sup> July 2025, closing factories owned or ran by the interested parties, for 3 months, effective from 14<sup>th</sup> July 2025. So, time was of the essence.
6. Mr. Bwire, for the 2<sup>nd</sup> interested party, urged the Preliminary Objection. He submitted that the Preliminary Objection was premised on *Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors* [1969] EA 696 (Sir Charles Newbold, P, Duffus VP & Law JA), and he stood on settled facts, that leave had been granted on 15<sup>th</sup> July 2025, for 5 days, the Motion was to be filed within 5 days, which expired on 20<sup>th</sup> July 2025, the Motion was filed on 23<sup>rd</sup> July 2025, outside the 5 days limited by the court. He submitted that upon expiry of the 5-days leave period, there was no longer basis for a Motion, and that filed on 23<sup>rd</sup> July 2025 was invalid. I was urged to dismiss the said Motion, and to terminate the Judicial Review proceedings. He cited *Republic vs. Cabinet Secretary – State Department for Lands and Physical Planning & 11 others* [2025] KEELC 3575 (KLR)(Nyagaka, J) and *Republic vs. Attorney General & another* [2012] KEHC 2537 (KLR)(Githua, J).
7. He was supported by Mr. Olendo, for the 1<sup>st</sup> respondent, and Mr. Ipapu for the 5<sup>th</sup> interested party.
8. Mr. Njuguna, for the ex parte applicants, responded. He submitted that the Preliminary Objection was not on pure points of law. He explained that he had issues with the e-filing system, and that was why the Motion was filed late. He argued that the delay was not inordinate. He further argued that it was a matter of a procedural technicality, which was curable.
9. These are Judicial Review proceedings, which are sui generis, in the sense of not being proceedings by way of an ordinary suit, governed by the general procedural law laid out in the [Civil Procedure Act](#), Cap 21, Laws of Kenya, for they have their own distinct rules of procedure. The proceedings are provided for and governed by the [Law Reform Act](#), Cap 26, Laws of Kenya, and Order 53 of the Civil



Procedure Rules. Under Order 53 rule 1, before the Judicial Review proceedings commence, leave must be obtained, through a summons in chambers. Upon leave being granted, a Motion, which is contemplated in Order 53 rule 3, to initiate the actual process, should be filed, within 21 days. The leave is for the purpose of filing the Motion, and the life of the leave is 21 days, subject to the court shortening or extending it.

10. So, what happened here? Leave was granted, on 15<sup>th</sup> July 2025. Due to the circumstances of the case, in view of the letter of 8<sup>th</sup> July 2025, and the 3-months closure of the factories, the leave was limited or shortened to 5 days. The ex parte applicants had 5 days to initiate the substantive process, by the Motion contemplated in Order 53 rule 3. The 5-day period expired on 20<sup>th</sup> July 2025. The ex parte applicants did not file their Motion within the 5 days allowed, for they filed it on 23<sup>rd</sup> July 2025 instead, after the period had expired. A valid Motion could only be filed within the leave period, and once that period expired, any filing would be invalid. That was the point made in *Republic vs. Attorney General & another* [2012] KEHC 2537 (KLR)(Githua, J) and *Republic vs. Cabinet Secretary – State Department for Lands and Physical Planning & 11 others* [2025] KEELC 3575 (KLR)(Nyagaka, J). See also *Wilson Osolo vs. John Ojiambo Ochola & another* [1996] eKLR (Akiwumi, Tunoi & Shah, JJA). The fact that the Motion was filed after leave had lapsed meant that it was incompetent and invalid.
11. Is lapse of leave to file the Motion within the timeline given curable? The *Law Reform Act* and Order 53 of the Civil Procedure Rules are silent on that. There is, however, caselaw to the effect that it is curable by extension, which must be sought from court. See *Wilson Osolo vs. John Ojiambo Ochola & another* [1996] eKLR (Akiwumi, Tunoi & Shah, JJA), *Republic vs. Speaker of Nairobi City County Assembly & another Ex parte Evans Kidero* [2017] KEHC 6101 (KLR)(Aburili, J), *Mwangi vs. Attorney General & another* [2023] KEHC (KLR)(Chigiti, J) and *Republic vs. Cabinet Secretary – State Department for Lands and Physical Planning & 11 others* [2025] KEELC 3575 (KLR)(Nyagaka, J). The ex parte applicants did not ask me to extend that period, before they filed their Motion, neither did Mr. Njuguna advert to that when he addressed me on 29<sup>th</sup> July 2025, for he merely said that the lapse was curable, but did not pray for extension. In any event, there was no pending application for extension of the leave, or the deeming of the Motion as properly filed.
12. 5 days were adequate for the ex parte applicants to file the contemplated Motion. The Motion, under Order 53 rule 3, should be a document of not more than 1 or 2 pages, carrying only the prayers. No affidavit ought to be filed with it. The grounds, upon which it should be predicated, ought not be detailed on the face of the Motion. The case for an ex parte applicant is not supposed to be in the Motion, but in the Statutory Statement, and the affidavit verifying it, as contemplated by Order 53 rule 1(2). The Motion is not the pleading, for the purpose of the Judicial Review proceedings, for the pleading is the Statutory Statement. The Judicial Review proceedings process is founded on the Statutory Statement and the verifying affidavit. The Statutory Statement carries the relief or prayers sought, and the grounds, while the verifying affidavit verifies the facts upon which the Statutory Statement is founded. That is why Order 53 rule 4(1) requires service of the Motion together or simultaneously with the Statutory Statement and the verifying affidavit.
13. The Judicial Review cause or suit is practically commenced when the Statutory Statement and the verifying affidavit are filed. The chamber summons is an interlocutory application, limited to seeking leave or permission for conduct of the case set out in the Statutory Statement and the verifying affidavit. The chamber summons enables the ex parte applicant to approach the Judge for permission to prosecute the case in the Statutory Statement and the verifying affidavit. The Motion is also interlocutory. It rides on the Statutory Statement and the verifying affidavit. It enables or facilitates the



ex parte applicant to secure the audience of the Judge, once leave is granted, to argue or prosecute the case in the Statutory Statement and the verifying affidavit.

14. Leave is a grant of permission to present or prosecute the Judicial Review proceedings, in the Statutory Statement and the verifying affidavit, after the Judge assesses it to be viable. The Motion gets its legitimacy from the leave, and, without the leave, it would be incompetent. Once leave is spent, before the Motion is filed, to enable the ex parte applicant to appear before the Judge to argue his case, there would be no permission to prosecute the case, for that permission would have been lost or expired. Without that leave or permission, there would be no basis for filing the Motion to gain audience before the Judge, to argue the Judicial Review proceedings application, for there would be no permission to argue the case. A Motion, filed outside the leave period, would be a useless piece of paper, which would not entitle the ex parte applicant audience before the Judge, in the absence of leave or permission to argue the case. A case, that cannot be argued, for lack of leave, is useless.
15. The Motion does not bring into being a fresh case, for, by the time it is filed, the case would already be in existence, having been filed simultaneously with the chamber summons for leave. The Motion is a mere vehicle to enable the placing of the case before the Judge for argument. It is the vehicle for moving the Judge. Leave validates the Judicial Review proceedings, by allowing the ex parte applicant to proceed and prosecute it, by moving the Judge, by the Motion, to hear the Judicial Review proceedings. Leave is for a limited time, and the Judge ought to be moved within the time given or limited in the leave order. Once the leave period expires or lapses, before the Judge is moved, the permission to move the Judge would be lost. Leave is not merely procedural; it is also a substantive matter. It goes to the merit, for it is granted on the basis that the case, disclosed in the Statutory Statement and the verifying affidavit is, prima facie, arguable. There is a preliminary evaluation of the case, in the Statutory Statement and verifying affidavit, on its merits, before leave is granted.
16. I am persuaded, for the reasons given above, that the Motion, dated 23<sup>rd</sup> July 2025, is incompetent and invalid, for it was filed after leave had lapsed, and that rendered the Judicial Review proceedings herein untenable. There is no valid application before the court for determination. It is a nullity. I hereby uphold the Preliminary Objection, dated 28<sup>th</sup> July 2025. The Judicial Review proceedings application herein is dismissed, with costs to the parties who supported it, so long as they had formally filed appearances or appointments. That takes away with it the orders made on 15<sup>th</sup> July 2025. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Njuguna, instructed by Wangui Kuria & Company, Advocates for the ex parte applicant.

Mr. Bwire, instructed by Echessa & Bwire Advocates LLP, Advocates for the 2<sup>nd</sup> interested party.

Ms. Ipapu, instructed by Ipapu P. Jackah & Company, Advocates for the 5<sup>th</sup> interested party.

