



REPUBLIC OF KENYA



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Republic v National Land Commission; Kuria, The Liquidator of Dagoretti Nyakinywa Savings and Credit Co-Operative Society Limited (Under Liquidation) & 5 others (Interested Parties); Njoroge & 24 others (Exparte) (Environment and Land Judicial Review Case E007 of 2024) [2025] KEELC 245 (KLR) (Environment and Land) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 245 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ENVIRONMENT AND LAND

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E007 OF 2024

MC OUNDO, J

JANUARY 30, 2025

IN THE MATTER OF AN APPLICATION BY PATRIC MUIRURU NJOROGE, ISAAC KAMAU MUCHIRI, DANIEL NDEGWA MUHORO, MARGARET WAMBUI KARIUKI, PAUL MACHARIA WAMBUGU, LUCY NDUTA KINYANJUI, SAMWEL NJOROGE MUIGAI, SYMON KINYANJUI KAMAU, SAMWEL MWANGI, PAUL KAMAU KARANJA, SELINA NYANDIA NJOROGE, STEPHEN MWANGI MBAYU, CHARLES MUCHAI MUNIU AND JACKSON OМУYA OMBATI, FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF ARTICLES 10, 40, 47 AND 50(1) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTION 14(3) OF THE NATIONAL LAND COMMISSION ACT

AND

IN THE MATTER OF SECTION 4, 5, 7(2) AND 12 OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015

AND

IN THE MATTER OF THE RECOMMENDATION OF THE RESPONDENT CONTAINED IN THE GAZETTE NOTICE NO. 3835 VOL. XXX-NO. 27 OF 1ST MARCH, 2019.

AND

IN THE MATTER OF AN APPLICATION BY



BETWEEN

REPUBLIC APPLICANT

AND

THE NATIONAL LAND COMMISSION RESPONDENT

AND

HESBORN M KURIA, THE LIQUIDATOR OF DAGORETTI NYAKINYWA SAVINGS AND CREDIT CO-OPERATIVE SOCIETY LIMITED (UNDER LIQUIDATION) INTERESTED PARTY

DAGORETTI NYAKINYWA COMPANY LIMITED INTERESTED PARTY

CHIEF LAND REGISTRAR-NAIROBI INTERESTED PARTY

LAND REGISTRAR-NAKURU INTERESTED PARTY

LAND REGISTRAR-NAIVASHA INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

AND

PATRIC MUIRURI NJOROGE EXPARTE

ISAAC KAMAU MUCHIRI EXPARTE

DANIEL NDEGWA MUHORO EXPARTE

MARGARET WAMBUI KARIUKI EXPARTE

PAU MACHARIA WAMBUGU EXPARTE

LUCY NDUTA KINYANJUI EXPARTE

SAMWEL NJOROGE MUIGAI SYMON KINYANJUI KAMAU SAMUEL MWANGI PAUL KAMAU KARANJA SELINA NYANDIA NJOROGE EXPARTE

STEPHEN MWANGI MBAYU CHARLES MUCHAI MUNIU JACKSON OMUYA ONBATI (SUING AS THE OFFICIALS OF GORSHEN MAAI MAHIU SELF HELP GROUP) EXPARTE

JOYCE WAMBUI WAIREGI GRACE WAITHERA WAIREGI BEATRICE WAIRIMU WAIREGI JANE NYAMBURA WAIREGI AUGUSTINE MUCHIRI NJOROGE FLORENCE WANJIRU NJOROGE JANE NJERI KAGENYI EXPARTE

JORAM MWAURA NJOGU MARGARET MUGURE KIARIE PETER GITAU KIBE (SUING AS THE OFFICIALS OF SUNSHINE SELP HELP GROUP) EXPARTE

SALOME WAGO WARARI EXPARTE

SUSAN WAITHIRA WARARI EXPARTE

LAWRENCE WARARI NDUNI EXPARTE

ELIZABETH LYNN MBITHI EXPARTE



EDISON MBUGUA KAMAMATHI NGURE CIURU DAMARIS WANJITU KINGATUA (SUING AS THE OFFICIALS OF KINYOGORI 2002 MEN SELF HELP GROUP)	EXPARTE
CATHERINE K KIUGU	EXPARTE
NANCY N GITONGA	EXPARTE
ANDREW MALENYA PERPEETUA KAMANI BONIFACE MULINGE CHARLES MWANIKI (SUING AS THE OFFICIALS OF POSITIVE OUTCOMERS SELF HELP GROUP)	EXPARTE
JAMES THUKU MWANGI	EXPARTE
RICHARD NG'ANG'A KUNGU	EXPARTE
SAMSON THEURI MAINA	EXPARTE
BENARD NGANGA KISAKA	EXPARTE
BLESSED SELF HELP GROUP	EXPARTE
JOHN KIMANI JAMES MONICA MUMBI KAMAU NATHANIEL KAMAU WAMUTARO (SUING AS THE OFFICIALS OF THE PRIFAS GROUP)	EXPARTE
POLISON WAWERE MBUTHIA	EXPARTE

RULING

1. Vide a Chamber Summons dated 18th May, 2024 brought pursuant to the provisions of Order 53 Rule 1 of the Civil Procedure Rules 2010, the Subjects herein sought for leave to institute and file Judicial Review proceedings for an order of Certiorari and Prohibition to be directed at the Respondents. That thereafter, the said leave do operate as stay restraining the Respondents and the Interested Parties either by themselves, their officials, agents, servants and/or employees from evicting, re-planning, resurveying, re-allocating, assuming occupation, fencing, selling, charging, advertising for sale and/or in any way adversely dealing with the suit parcels of land to the prejudice of the subjects herein on account of and/or implementation of the recommendations of the Respondent contained in the Gazette Notice No. 3835 of VOL.CXXI-NO.27 OF 1ST March, 2019.
2. The said application was based on the grounds therein as well as the Annexed Statements of Facts and Supporting Affidavits all dated 18th May, 2024 and sworn by the Subjects herein.
3. The Application having been served upon all the parties, whereas the 1st Interested Party filed a Replying Affidavit dated 2nd August, 2024 as well as Grounds of Opposition dated 5th August, 2024, the 7th Interested Party filed Grounds of Opposition dated 19th August, 2024, while the 3rd, 4th, 5th and 6th Interested Parties' Grounds of Opposition were dated 26th September, 2024 wherein they all sought for the dismissal of the Subjects' Application dated 18th, May, 2024.
4. In response to the Interested Parties Opposition, the Subjects herein filed a another Application by way of a Notice of Motion Application dated 29th August, 2024 brought under the provisions of Order 50 Rule 5 of the Civil Procedure Rules wherein they sought for an extension of time to file their the Judicial Review Application dated 18th May, 2024, and that the said application be deemed as properly filed out of time and be heard as per the directions of the court of 23rd July 2024.



5. Subsequently, what is before me for determination is the Chamber Summons dated 18th May, 2024 and a Notice of Motion Application dated 29th August, 2024.
6. The gist of the Applicants Applications was that at all material times relevant to the present matter, the Subjects herein are the registered and/or lawful owners of all those parcels of land otherwise known as Gilgil/Gilgil Block 1/6812, 33798, 6814, 6818, 6823, 6837, 6864, 6876, 6903, 6914, 6916, 6925, 6936, 6976, 7001, 7010, 7012, 7021, 7031, 7032, 7051, 7052, 7062, 7063, 7093, 7109, 7111, 7046, 7148, 7130, 7132, 7157, 7178, 7192, 7116, 7185, 7219 and 7235 (KEKOPEY)
7. That in or around the year 2017, the 1st Interested Party, had without the involvement/or participation of the Subjects, purportedly lodged a claim with the Respondent in NLC/HLI/112/2017 against the 2nd Interested Party seeking for revocation of all titles emanating from fraudulent transactions purported to have been undertaken by the 2nd Interested Party and that upon such cancellation, the said titles be retransferred to members of the 1st Interested Party.
8. That vide a Gazette Notice No. 3835 Vol. CXXI No. 27 of 1st March 2019, the Respondent recommended that the 2nd, 4th, 5th, 6th and 7th Respondents to facilitate and effect the recommendations contained therein and which recommendations sought to deprive the applicants their legitimate ownership of the suit parcels of land in proceeding which did not involve their participation and which were in disregard to regulations 6, 12, 14 and 19 of the National Land Commission (Investigation of Historical Land Injustices) Regulations 2017.
9. That subsequently, the 1st, 3rd, 4th and 5th Interested Parties, in utter violation of the rights of the Subjects herein under the provisions of Articles 40 and 50 of *the Constitution* and the principles of natural justice, fraudulently signed a consent in Nakuru ELC Civil Application (Miscellaneous) No. 17 of 2019 and 7 of 2020 wherein on the 26th November, 2019, the said consent had been adopted as an order of the court and it was on its strength thereof, that the 5th Interested Party herein vide a Gazette Notice No. 5386 dated 30th July, 2020, issued a thirty (30) days' notice for cancellation of Subjects title deeds to the suit properties.
10. In the Applications dated 24th August, 2020 and 21st September, 2020 respectively, the Subjects successfully challenged the said illegal and/or un-procedural move by the 1st, 3rd, 4th, 5th and 6th Interested Parties wherein vide an orders dated 15th July, 2021 the court had set aside its orders of 28th November, 2020.(sic)
11. That it had been when the Subjects herein had moved the court vide a contempt application dated 29th August, 2022 against the 4th, 5th and 6th Interested Party who had willful and/or deliberate failed to comply with court's orders of 12th August, 2021, which application had been dismissed, that they had learnt that the 7th Interested Party was the current registered proprietor of the suit properties.
12. That the Subjects being aggrieved by the decision of the Respondent contained in the Gazette Notice No. 3835 of VOL. CXXI-NO.27 of 1st March, 2019 seek leave for extension of time to commence Judicial Review proceedings for an order of Certiorari and Prohibition to be directed at the Respondents, and that the Chamber Summons dated 18th May, 2024 be deemed as properly filed as it would be counter-productive to have the subjects file a similar application upon the court extending time to have the same filed.
13. That in any case, there were occupants, residing on the suit properties who had in the past suffered a great harm and stood to suffer irreparable harm and damage were the court not step in and grant the orders sought herein. That the Respondents would not be prejudiced in any way if the application was allowed and the prayers therein granted.



14. In response and in opposition to the Subjects' application, the 1st Interested Party opposed the Subjects' Application on the grounds that the Subjects' application for leave to apply for orders of Judicial Review as well as their statement and/or affidavits in verification thereof were a fatally defective. That the Judicial review proceedings are outside the prescribed period of six (6) months, the court therefore had no jurisdiction to entertain the matter in respect of the National Land Commission's recommendations in NLC/HLI/112/2017 and/or the Kenya Gazette Notice No. 3835 of 1st March, 2019 and/or the Nakuru E 7LC 9Misc.) No. 17 of 2019 and 7 of 2020. That the Judicial Review Proceedings by the applicants/subjects contravene the provisions of Order 53 of the Civil Procedure Rules, 2010 and the provisions of Section 9 of the *Law Reform Act* which are the statutes that limit the time to make such proceedings. That finally, application had failed the requirement/principles of Judicial Review Proceedings which are concerned with the decision-making process and are not concerned with the merits of the claim that was heard and allowed by the National Land Commission or otherwise.
15. The 1st Respondent's response through a Replying Affidavit was sworn by Hesbon M.Kuria, on 2nd August 2024, the 1st Interested Party's Liquidator, was that that the 1st Interested Party, formed by women from Dagoretti Constituency had been registered on 4th October, 1974 (CS/2258) under the *Co-operative Societies Act* and had 1240 members. That its members had mobilized savings and bought two parcels of land in Gilgil measuring 500 acres and in Molo measuring 1670 acres. That its members did not settle on the land parcels because some of its management committee members had on 9th September 1981 incorporated the 2nd Interested Party with the intention to defraud the 1st Interested Party and credit Co-operative Societies Limited (under liquidation.) the said parcels of land. This led to an inquiry with the resultant recommendation that the illegal and fraudulent land transactions be nullified completely to enable the members of the 1st Interested Party resurvey their land and subdivide among themselves. That, the implementation of the said recommendation favored the members of the Company as against the 1st Interested Party's members who had lost completely and were left to pursue other avenues of justice.
16. That the 1st Interested Party's members sought relief from various government agencies to no avail wherein they filed a complaint to the Respondent herein in relation to Molo and Gilgil lands being NLC/HLI/112/2017. On 14th October, 2019 the Respondent made a determination that all titles emanating from the fraudulent transaction that had been undertaken by the 2nd Interested Party be revoked and allocated to the members of the 1st Interested Party who had been bona-fide owners.
17. That subsequently via implementation of the National Land Commission recommendations, he had been appointed as the Liquidator for the 1st Interested party wherein the process of recovery of the suit properties herein began and through orders of 20th July, 2020 from the Environment and Land Court Nakuru, the 2nd Interested Party's documents that had facilitated the issuance of the said title deeds from fraudulent subdivision and survey of Gilgil/Gilgil Kikopey (formerly LR No. 9361/5) were nullified and the director of survey ordered to facilitate the registration of amended survey plans, maps and records.
18. That on 29th July, 2020, the Land Registrar Naivasha issued a cancellation Notice cancelling all Title deeds that had been issued in Gilgil/Gilgil/Kikopey Ranch Sheet 1 and 4 partially listed to enable the liquidator distribute the land to the bonafide members of the 1st Interested Party. That the due process had been followed in land parcels in Gilgil/Gilgil Block 1, wherein the matter had been closed. That the present application was therefore faulty.



19. He deponed that the Court's ruling of 15th July, 2021 and extracted on 12th August 2021 had referred to consent dated 15th October 2020 and 28th November, 2020 being set aside which was different from the above orders of 15th July, 2021 and extracted on 12th August, 2021. That the Kenya Gazette Notices No. 5385 of 30th July, 2020 and 3756 dated 29th May, 2020 which had been cancelled had no effect on the Gilgil land. That indeed, the Gazette Notice No. 5386 of 30th July 2020 which had cancelled the fraudulent Gilgil titles had not been set aside on 15th July, 2022 and/or was under no challenge in the instant judicial review matter.
20. That the Subjects' Chamber Summons Application herein was governed by the provisions of Order 53 of the Civil Procedure Rules and Section 9 of the Law Reform Act which set the time limit thus the court had no power to grant the present application for leave to apply for orders of Judicial Review Proceedings as there were no provisions for leave to be granted out of time. That indeed, article 159 (2) of the Constitution could not cure or assist the present application for leave to apply for orders of judicial review. He thus deponed that the Subjects' Application had failed to meet the requirement for the grant of Judicial Review Orders.
21. The 3rd, 4th, 5th and 6th Interested Party in opposition to the Subject's Application filed their Grounds of Opposition dated 26th September, 2024 opposing the said Application on the grounds that it was bad in law, misconceived, incompetent, a nullity and an outright abuse of the Court process as it had offended the provisions of Order 53 Rule 3 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act. That there had been no explanation as to why the application had been made after such an inordinate delay, which delay defeated equity. That the Application was full of glaring conjectures and unsubstantiated allegations against the 3rd, 4th, 5th and 6th Interested Parties wherein the Applicants had failed to demonstrate to the required degree of precision that the 3rd to 6th Interested Parties had failed and or refused to act as per their legal mandate.
22. That the reliefs as sought by the Applicants were not available under Judicial Review as against the 3rd, 4th, 5th and 6th Respondents, the Judicial Review Application was mis-advised as the underlying dispute herein concerned ownership of land which could not be addressed by way of judicial Review. They thus sought that both the Application dated 29th August, 2024 and 18th May, 2024 be dismissed with costs.
23. The 7th Interested Party's Grounds of Opposition dated 19th August, 2024 was similar to the grounds of opposition by the 3rd, 4th, 5th and 6th Interested Party with an addition that the judicial circumstances had changed from the period the impugned decision/recommendations were made to the filing of the instant application but the effect that were the judicial review orders of certiorari granted; third parties would be adversely affected by such orders thus unnecessarily enlarging the scope of the dispute, thus the orders of certiorari would not be an effective relief for the Applicants.
24. Secondly that the Applicants took part in the earlier proceedings in ELC Misc. App. No. E007 of 2020 where the 1st Interested Party sought to implement the National Land Commission's recommendation, which signified that they had sufficient knowledge of the impugned decision wherein they failed to institute judicial review proceedings at the opportune time. That the present Application had therefore been an afterthought.
25. The 2nd Interested and the Respondent did not participate in the Application.
26. Both applications were canvassed by way of written submissions wherein the Applicants/Subjects' in their submissions dated 11th October, 2024 first summarized the factual background of the matter and then framed two issues for determination as follows:



- i. Whether the orders sought are merited.
 - ii. Who bears the costs of the Application?
27. On the first issue for determination as to whether the orders sought were merited, they hinged their reliance on the provisions of Articles 23 and 47 of *the Constitution*, Section 9(1) of the Fair Administrative Actions Act and the decided case of Kenya Human Rights Commission v Non-Governmental Organizations Coordination Board [2016] eKLR to submit in the affirmative.
28. As to whether the prayer for grant of leave to institute Judicial Review Proceedings was merited, they also submitted in the affirmative while placing reliance in a combination of decisions in the case of *Road Hauliers Association of Kenya (Local Transporters) v County Government of Mombasa & 2 others (Judicial Review Application E010 of 2024)* [2024] KEHC 6257 (KLR) (30 May 2024) (Ruling) to urged the court to be guided by the holdings therein. They reiterated the contents of their statements of facts and Supporting Affidavits with regards to their ownership of the suit properties and the Respondent's conduct of making impugned orders without according them an opportunity to be heard to submit that they had attained the legal threshold for granting of leave to file Judicial Review Application, that their case was fit for further consideration and as such they ought to be granted leave to institute and file judicial review proceedings for an order of certiorari and prohibition directed at the Respondent.
29. On whether the leave so granted should operate as stay they placed reliance in a combination of decisions in the case of *Taib A. Taib v Minister of Local Government & 3 Others* [2006] eKLR and *Beatrice Kwamboka v Leader of Majority Party of the Nairobi County Assembly* [2016] eKLR to submit in the affirmative. That the Subjects in the instant matter had not only remained in physical occupation of the suit properties to date but had also remained in possession of their original title deeds. That they had practiced farming therein and were still depending on the same for their survival. That subsequently, failure to stay any adverse conduct under the guise of implementing the impugned Gazette Notice against the Applicants herein would occasion them great prejudice. That indeed, the 1st to 7th Interested Parties as well as other people claiming to be their officials, agents, servants and/or employees had been relentlessly threatening the Subjects and dealing adversely with the suit properties to the prejudice of the Subjects on account of implementation of the recommendations of the Respondent contained in the Gazette Notice No. 3835 of Vol. CXXI-No. 27 of 1st March, 2019.
30. Regarding the costs, they placed reliance on the provisions of Section 27 (1) of the *Civil Procedure Act* to the effect that the same follows event, to pray that the Respondents be condemned to bear the costs of the suit.
31. In response, the 1st Interested party summarized the factual background of the matter as well as its affidavit evidence in detail before framing its issues for determination as follows:
 - i. Whether the orders sought are merited.
 - ii. Who bears the costs of the Application?
32. On the first issue for determination as to whether the orders sought were merited, it submitted in the negative to the effect that the Subjects were not entitled to the orders sought since Judicial Review applications had a limitation period. That both the Application dated 18th May, 2024 and 29th August 2024 had been made outside time in contravention of the law since the same sought to challenge the Respondent's decision that had been made on 1st March, 2019. Reliance was placed on the provisions of Section 9(3) of the *Law Reform Act* and Order 53 Rule 2 of the Civil Procedure Rules and the case of *Wilson Osolo v John Ojiambo Ochola & Another* [1996] eKLR to submit that the court could not



- entertain both the Subjects' Applications dated 18th May, 2024 and 29th August, 2024 under the [Law Reform Act](#) and Order 53 of the Civil Procedure Rules.
33. That further pursuant to the decided case of Republic v Chairman Amagoro Land Dispute Tribunal & Another ex-parte Paul Mafwabi Wanyama [2014] eKLR, the court had no jurisdiction to grant the Application dated 29th August, 2024 for extension of time and/or the application dated 18th May, 2024 since there was no provision for enlargement of time for the Subjects' to make Application for Review outside the 6 months' limitation period which was not only in the rules but a statutory provision pursuant to section 9(3) of the [LAW Reform Act](#).
 34. That it was trite that rules made under a statute could not override a statutory provision set out in the [Law Reform Act](#). That even Article 159 (2) (d) could not be a cure for the provisions of limitation of time which could not fall under the domain of technical rule of procedure.
 35. Reliance was also placed in the decisions in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR and Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR to maintain that the court had no jurisdiction to hear and determine the Subjects' Applications since the substratum of the Subjects' had been overtaken by events as the Respondent's decision of 1st March, 2019 had been implemented by the Respondent and the 1st to 6th Interested Parties in the present matter.
 36. Reliance was also placed on the provisions of Section 76 of the [Co-operative Societies Act](#) to submit that the Subjects had no locus standi in the claim and proceedings of 2017 and the recommendations of 1st March, 2019 and/or in the instant Judicial Review Proceedings since the Subjects were/are not members of the 1st Interested Party and if they were, then the procedure for redress of their grievances was under section 76 of the [Co-operative Societies Act](#). That it was trite that where there was an alternative dispute resolution mechanism provided for in law, the said mechanism must be strictly followed as held in the case in East Africa Pentecostal Churches Registered Trustees & 1754 others v Samwel Muguna Henry & 4 others [2015] eKLR.
 37. In conclusion, the 1st Interested Party prayed that the Applications dated 18th May, 2024 and 29th August 2024 should fail with costs to the 1st Interested Party.
 38. The 3rd, 4th, 5th and 6th Interested Parties in regard to the Application dated 29th August, 2024, framed one issue for determination, to wit they too joined issues with the 1st Interested party to submit in the negative while placing reliance on the provisions of Order 53 Rule 2 of the Civil Procedure Rules and Section 9(2) of the [Law Reform Act](#) which provisions had been coached in mandatory terms. That the act and/or omission by the Respondent/Interested Parties herein, giving rise to the intended Application dated 18th May, 2024 seeking for Judicial Review Orders of Certiorari and prohibition against the said interested parties/Respondents herein had arisen in the year 2019 wherein the instant application had been filed approximately 5 years later, which period was inordinately long in view of the strict limitation period of 6 months. That further, the Subjects' explanation for the delay were implausible and incapable of disturbing the fate of their Application in the affirmative.
 39. Reliance was placed on the decisions in the case of Laban Macharia v Commissioner of Insurance & another [2005] eKLR and Republic v Attorney General, Cabinet Secretary Ministry of Agriculture & Another [2018] eKLR to submit that it was trite that delay defeats Equity and that Equity aids the vigilant and not the indolent hence the Subjects' Application for Judicial Review failed even in the lenses of the twin maxim. That indeed, even Article 159 of [the Constitution](#) could not come to the aid of the Subjects since the issue of time limitation in judicial review was not a procedural technicality but went to the root of the matter of jurisdiction of the court as provided by the statute.



40. On the Application dated 18th May, 2024, they framed one issue for determination, to wit; whether the Application could be allowed wherein they proceeded to submit that the same was unfounded for want of limitation as provided for by the provisions of Section 9(2) of the [Law Reform Act](#) and Order 53 Rule 2 of the Civil Procedure Rules. That the reasons advanced by the Subjects for their delay was not only incurable but also baseless. They sought for the dismissal of the said Application with costs.
41. The 7th Interested Party equally vide its written submissions dated 28th October, 2024 associated itself with the 1st Interested Party's Submissions adding that the provisions of Section 24 and 25 of the [Land Registration Act](#) guarantees protection of the rights of a proprietor of land but that such title was not absolute since it could be impeached under circumstances contemplated under the provisions of Section 26(1) of the [Land Registration Act](#).
42. That the acquisition of the suit properties had been fraudulent wherein the Respondent had made the impugned recommendation which the Subjects had challenged. That subsequently, the Subjects became aware of the Respondent's decision but failed to give justifiable reasons as to why they had not challenged the same. That they had been indolent.
43. That the subjects inordinate delay had resulted to an irreversible situation in that the rights of third parties who had acted on the decision of the Respondent and purchased the suit properties from the rightful owners being the 1st Interested Party's members, might be highly prejudiced in the circumstance and possibly expand the scope of the dispute. Reliance was placed in a combination of decisions in the case of *Wainaina v Kiguru & another* (Environment & Land Case E023 of 2021) [2022] KEELC 3261 (KLR) (28 July 2022) (Judgment) where the court had cited the case of *Herbert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR, *Munyu Maina v Hiram Gathiha Maina*, Civil Appeal No. 239 of 2009 and *Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others* [2015] eKLR. They disagreed with the Subjects contention that they had sufficiently accounted for the delay in filing the present application and submitted that the alleged frustrations had no evidential basis.
44. As to whether the Application dated 29th August, 2024 could cure the defective application of 18th May, 2024, it submitted in the negative and reiterated that the Application dated 18th May, 2024 was defective in both substance and form and that such defect was not curable by filing a subsequent application ostensibly to sanitize the initial defect, the delay to file the application having been inordinate, the court lacked jurisdiction to enlarge and/or extend time as per the provisions of relevant law. Its reliance was placed in a combination of decisions in the case of *Chabari v District Land and Adjudication Officer Meru South Maara District & 3 others; Karimi (Interested Party)* (Environment and Land Judicial Review Case E001 of 2023) [2024] KEELC 1128 (KLR) (29 February 2024) (Ruling.)
45. That in any case, the cases which the Subjects allege to have successfully challenged had been miscellaneous applications, which did not hinder them from filing appropriate proceedings of a judicial review nature to go hand in hand with the said challenge. It was thus its submission that the two applications ought to fail hence they should be dismissed with costs.

Determination.

46. I have considered the two Applications filed before me by the Subjects herein wherein one was dated the 18th May, 2024 in which the Subjects sought for leave to institute and file Judicial Review proceedings for an order of Certiorari and Prohibition to be directed at the Respondents. Pursuant to the objections



- filed in response, the Subjects then filed a Notice of Motion Application dated 29th August, 2024 seeking an extension of time to file their previous Judicial Review Application dated 18th May, 2024.
47. I have also considered the grounds of opposition filed by the 1st Interested Party, the 7th Interested Party as well as the 3rd, 4th, 5th and 6th Interested all of who sought for the dismissal of the Subjects' Application on the premise that the Applications had offended the provisions of Order 53 Rule 3 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act. I have also considered the parties submissions and well researched authorities herein.
48. The gist of the Subjects' applications is that at all material times, they were the registered owners of all those parcels of land otherwise known as Gilgil/Gilgil Block 1/6812, 33798, 6814, 6818, 6823, 6837, 6864, 6876, 6903, 6914, 6916, 6925, 6936, 6976, 7001, 7010, 7012, 7021, 7031, 7032, 7051, 7052, 7062, 7063, 7093, 7109, 7111, 7046, 7148, 7130, 7132, 7157, 7178, 7192, 7116, 7185, 7219 and 7235 (KEKOPEY)
49. That in or around the year 2017, the 1st Interested Party, had without their involvement/or participation lodged a claim with the Respondent in NLC/HLI/112/2017 against the 2nd Interested Party seeking for revocation of all titles emanating from the fraudulent transactions and that upon such cancellation, the said titles be retransferred to members of the 1st Interested Party.
50. That vide a Gazette Notice No. 3835 Vol. CXXI No. 27 of 1st March 2019, the Respondent recommended that the 2nd, 4th, 5th, 6th and 7th Respondents to facilitate and effect the recommendations contained therein which said recommendations sought to deprive the Applicants their legitimate ownership of the suit parcels of land in disregard to regulations 6, 12, 14 and 19 of the National Land Commission (Investigation of Historical Land Injustices) Regulations 2017.
51. That being aggrieved by the decision of the Respondent contained in the said Gazette Notice No. 3835 of VOL. CXXI-NO.27 of 1st March, 2019, they now sought leave for extension of time to commence Judicial Review proceedings for an order of Certiorari and Prohibition to be directed at the Respondents and that the Chamber Summons dated 18th May, 2024 filed before obtaining the leave so sought be deemed as being properly filed.
52. The purpose of Judicial Review as set out in the case of Municipal Council of Mombasa vs. Republic, Umoja Consultant Ltd, (2002) eKLR was held follows;
- “The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who make the decision have the power i.e the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a Court hearing a matter by way of Judicial Review is concerned with and such Court is not entitled to act as a Court of Appeal over the decider. Acting as an Appeal Court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of judicial review”.
53. Section 9(3) of the Law Reform Act provides as follows;
- “in the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of



that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

54. Whereas Order 53 Rule 2 of the Civil Procedure rules on the other hand provides that:

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any Act; and where the proceedings is subject to appeal and the time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

55. In *Wilson Osolo v John Ojiambo Ochola & another* [1996] KECA 217 (KLR) the court of Appeal observed as follows;

“It can readily be seen that Order 53 Rule 2 (as it then stood) is derived verbatim from Section 9(3) of the *Law Reform Act*. Whilst the time limited for doing something under the civil procedure rules can be extended by an application under order 49 of the Civil Procedure Rules that procedure cannot be availed of for the extension of time limited by statute, in this case the *Law Reform Act*. There is no provision for extension of time to apply for such leave in the *Limitation of Actions Act* (Cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a limitation period. But this Act has no relevance here.”

56. Similarly the Court of Appeal in *Kihoro v Commissioner of Lands & 3 others* [2022] KECA 958 (KLR) had held as follows;

“Consequently, we hold and find that leave to institute Judicial Review proceedings having been sought on 17th January 2013, eleven years from the date of the impugned decision i.e. on 23rd January 2002, the 4th respondent’s Judicial Review application before the High Court was incompetent and time barred and could subsequently not stand. Accordingly, we find this ground of appeal to be merited and we hereby allow the same.”

57. Section 9(3) of the *Law Reform Act* as read with Order 53 rule 2 of the Civil Procedure Rules prescribes a specific time of six months within which an application for leave to apply for an order of certiorari must be made. The decision complained of having been made on 1st March, 2019, the Subject / Applicants ought to have sought to quash it by 1st September 2019. The application by the Applicants having been filed on 29th August, 2024 was therefore outside the 6 months period allowed by law. The said application is therefore statute barred and a nullity and this court has no jurisdiction thereof to enlarge and/or extend time as per the provisions of relevant law.

58. As was held in *Benjamin Leonard Mafay – v- United Africa Company Limited* (UK) 1962 AC 152 ;

“If an act is void, then in law it is a nullity, it is not only bad, but incurably bad...and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”



59. I therefore decline to grant the leave sought wherein in effect both the Applications dated the 18th May, 2024 and 29th August, 2024 are hereby dismissed with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 30TH DAY OF JANUARY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

