



M’thiringi (Suing as the Legal Representative of the Estate of M’thiringi M’anampiu – Deceased) v District Land Adjudication and Settlement Officer, Karama Adjudication Section & another; Munya & 3 others (Interested Parties) (Environment and Land Judicial Review Miscellaneous Application E007 of 2023) [2023] KEELC 19087 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19087 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E007 OF 2023**

CK NZILI, J

JULY 26, 2023

BETWEEN

MARIQUETA NKOYAI M’THIRINGI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF M’THIRINGI M’ANAMPIU – DECEASED) APPLICANT

AND

DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER, KARAMA ADJUDICATION SECTION 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

AND

KOBIA STEPHEN MUNYA INTERESTED PARTY

ANDREW GITIRI INTERESTED PARTY

SHADRACK BUANGAI ITHICIU INTERESTED PARTY

NKUBITU LICHUNGI INTERESTED PARTY

RULING

1. By an application dated 25.4.2023, the exparte applicant seeks leave to apply for judicial review proceeding for certiorari, mandamus, prohibition, declaratory orders, and injunction regarding the decision made on 6.12.2022 by the 1st respondent in objection No.’s 3084, 3086 & 3094 regarding Parcel No.’s 11136, 7770, 11478 and 3866, Karama Adjudication Section. Once the leave is granted, the exparte applicant urges the same to act as a stay to implement the decision above.



2. The ground upon which the application is made is that the 1st respondent made the decision without constituting a new and proper committee as per the court's decisions made on 18.5.2022, in Meru JR E009 of 2021 and JR E010 of 2021.
3. The interested parties oppose the application for leave through replying affidavits sworn by Kobia Stephen Imunya, Andrew Gitime and Shadrack Buangai, and Ithiciu on 17.5.2023 on the basis that the objection was re-heard in full compliance with the law and the court decree. That, therefore, the application herein is actuated by malice, and litigation must come to an end. It is frivolous, baseless, and out to waste the court's time.
4. The parameters in which the court exercises its discretion on whether to grant a leave to institute judicial review under Order 53 of the *Civil Procedure Rules* have been settled by courts. In *Mirugi Kariuki v AG* (1992) KLR 8, the court said that an applicant must show reasonable grounds for believing that there has been a failure of public duty, the absence of which the court would be in error if it granted leave.
5. The leave stage is not meant to determine whether or not the applicant's case will succeed but whether it is arguable. The court at this stage need not interrogate in detail the merits or demerits of the application. See *Republic v County Council of Kwale & another exparte Kondo and 57 others Mombasa HMCA No.346 of 1996*.
6. What, then, are some of the factors the court should consider? Courts have held that some are whether an alternative remedy was available to the applicants. See *Republic v Kenyatta University exparte Orwa Dominick and others* (2018) eKLR, *AAR Insurance v Public Procurement Administrative Review Board HCFK No. E087 of 2021*.
7. In *WW Mexner & another v AG* (2005) eKLR, the court held that at the leave stage, the court filters out frivolous applications, and the grant or refusal involves an exercise of judicial discretion, the test being an arguable case.
8. The enactment of the Fair Administrative Actions Act 2016 did not do away with the procedure stipulated under Order 53 of the *Civil Procedure Rules*. See *Felix Kiprono Matagei v AG* (2021) eKLR
9. In this application, the applicant seems to question both the process and the merits of the objection proceedings leading to the decision made on 6.12.2022. Though allowed to respond to the application, the 1st – 2nd respondents failed to file any responses
10. I am satisfied that this application is not frivolous. The 1st – 3rd interested parties have not indicated if the applicant has an alternative dispute resolution mechanism apart from this court. The objections were determined under *Land Adjudication Act* Cap 284, where the decision of the Land Adjudication Officer is final. The interested parties have not demonstrated how this application is frivolous or is an abuse of the court process. See *Republic v CCK & others exparte East African Television Network Ltd* (2001) KLR 82, *Patel Ravji Lalji & another v AG & 2 others* (2020) eKLR.
11. As to whether leave should act as a stay of the implementation of the decision dated 6.12.2022, in *Central Bank of Kenya & another v Ratilal Automobiles Ltd & 10 others* (2018) eKLR, the court cited with approval *JB Maina & Co. Ltd v Grain Bulk Handlers Ltd and others* (2003) eKLR, where it was held that an order of stay granted was so broad, imprecise and ambiguous that it was doubtful whether it was capable of implementation.



12. In this application, the applicant applied close to five months after the decision was made. It is not stated what the implications of the decision would be and whether the same has been implemented. The delay in applying for a stay has not been explained.

13. The upshot is that I find no basis to impose any stay of the decision. The notice of motion shall be filed and served within 21 days from the date hereof. Mention on 28.9.2023 for further orders.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 26TH DAY OF JULY 2023**

HON. CK NZILI

ELC JUDGE

