



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC. APPLICATION NO.278 OF 2018

FRANCIS MAINA WAINANINA.....1ST PLAINTIFF

GODFREY MWANGI MWAURA.....2ND PLAINTIFF

REGINA WANJIRU MUNENE.....3RD PLAINTIFF

MARTIN KAMAU KABOGO.....4TH PLAINTIFF

-VERSUS-

THE SETTLEMENT LAND

FUND TRUSTEE.....1ST DEFENDANT/RESPONDENT

THE NAKURU DISTRICT LAND

ADJUDICATION.....2ND DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL.....3RD DEFENDANT/RESPONDENT

RULING

1. This is a ruling on application dated 2nd November 2018. It seeks leave to appeal out of time. The application is supported by affidavit of the 1st plaintiff **Francis Maina Wainaina** who is the Chairman of Kenya National Liberation War Veteran Association. He averred that he has the authority and mandate to swear affidavit on behalf of the other plaintiffs.

2. He averred that the applicants as a group of landless war veterans registered under Society's Act as per copy of certificate attached to the affidavit. He further averred that they were allocated parcel of land number Nakuru District Number I.R 67258/1, L.R NO.67259/2,L.R No.6759, L.R 20229/1 vide presidential directive issued in 1992.

3. That other claimants filed suit Misc. No.187 of 2006 claiming for the suit land and by order dated 19th July 2010, they were advised to file another suit as they could not institute suit through miscellaneous application.

4. He averred that one **James Karanja Nyoro** who was their chairman then became sickly and finally passed on in July 2014. Further, the chairman who was elected to take over on 20th March 2016 filed originating summons seeking prohibitory orders to restrain the respondents from allocating or disposing farm known as **Ol-Jorraai Settlement Scheme** in Nakuru County and an order of *mandamus* to compel the respondents to issue the applicants with allotment/offer letters and to compel settlement trustees to issue certificate of title to bonafide owners.

5. He averred that after filing the application, the court file disappeared and efforts to trace in the registry proved futile. He averred that the delay in filing the suit is not inordinate; that applicants have an arguable and merited case; he sought opportunity to be heard; that the applicants stand to suffer irreparable loss and damage if this application is not allowed.

6. In response the respondent filed grounds of objection dated 20th November 2018. Grounds cited are inordinate delay, no reasonable grounds have been demonstrated, suit is *resjudicata* and the subject matter no longer exist.

ANALYSIS AND DETERMINATION

7. I have perused the annexures to affidavit filed and note that the applicant filed miscellaneous application number 187 of 2006 seeking to be allowed to file judicial review in respect of this matter and on 5th April 2006 the applicant was given 21 days to file judicial review.

8. On 19th July 2010, Judge Maraga as he then was directed that, the added parties' prayer be considered separately; that it could be dealt with in that matter; that if they wish to file their claim they should pursue separate proceedings.

9. This application was filed about 9 years after determination by the High Court that the additional parties who are applicants herein file separate suit. Explanation given for delay is that the chairman was sick and later passed on and two, which the court file, was missing. In respect inability of chairman to pursue the matter due to ill health, there is no doubt that the group registered had other officials who should have carried on the matter. No explanation has been given as to why they failed to pursue the matter as directed by the court.

10. In respect to missing court file, no document has been attached to show that the file was missing and efforts were made to look for the file. From the foregoing, I find that there was inordinate delay in filing suit, which has not been sufficiently explained. I see no merit in this allowed.

11. FINAL ORDERS

1. Application dated 2nd of November 2018 is dismissed
2. Costs to the respondents.

Ruling dated, signed and delivered at Nakuru this 21st day of November 2019

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RACHEL NGETICH

JUDGE

In the presence of:

Schola Jeniffer – Court Assistant

Wairimu holding brief for Gatoni counsel for applicants

Weche for Attorney General