



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

JR MISC. APPLICATION NO. 45 OF 2015

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS UNDER
ORDER 53 OF THE CIVIL PROCEDURE RULES**

AND

IN THE MATTER OF: THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF: THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010

AND

**IN THE MATTER OF: AN APPLICATION BY MARIAKANI HOLDINGS LIMITED FOR THE
GRANT OF LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW AGAINST
THE DECISION BY THE MINISTER IN CHARGE OF LAND ADJUDICATION IN AN
APPEAL IN RESPECT OF PLOT NO. 5 KAWALA "B" ADJUDICATION SECTION,
KILIFI COUNTY, KALOLENI DISTRICT**

HEARD ON 6TH SEPTEMBER, 2012

MARIAKANI HOLDINGS LIMITED.....APPLICANT

VERSUS

MINISTER'S APPEAL TRIBUNAL.....RESPONDENT

SHAMSHUDIN TAR MOHAMED.....INTERESTED PARTY

RULING

The Application

1. The Notice of Motion application before the court is dated 28th October, 2015 filed under Order 53 rules 1, 2, 3 and 4 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act. The Applicant prays for the following orders:

- (a) An order of certiorari to remove into the high court for purposes of quashing the decision by the Minister and/or District Commissioner Kaloleni District contained in the decision and Ruling certified by the Director of Land Adjudication Nairobi on 3rd August, 2015 dismissing the Applicant's appeal to the Minister regarding proprietorship of Plot No. 5 Kawala "B" Adjudication Section Kilifi County Kaloleni District between the Applicant herein as Appellant and Shamshudin Tar Mohamed as the Respondent.
- (b) An order of prohibition to prohibit Shamshudin Tar Mohamed as proprietor of Plot No. 5, Kawala "B" Adjudication Section Kaloleni District, Kilifi County pursuant to the decision contained in the certified copy of Ruling of the Minister and or District Commissioner, Kaloleni District.
- (c) That the costs of this application be provided for.

2. The application is premised on the grounds set out in the statutory statement dated 12th October, 2015 and the Verifying Affidavit of **Himatlal Dharamshi Patel** sworn on 12th October, 2015 and a further affidavit sworn on 30th September, 2016.

3. The Applicant's case is that he is the owner and proprietor in possession, use and occupation of a parcel of land at Kabendarani/Mkwajuni at Mariakani Kilifi County measuring 7.3 Hectares which the Applicant purchased in 1986 in four parts namely from SAID R. CHUKA on 20th March, 1986 and 17th April, 1986 and from NAZIR MOHAMED AMJEE on 11th March, 1986 and from PAKAR B. TAJUDDIN on 12th March, 1986. The said parcels of land were unsurveyed and unadjudicated at the time of the purchase in 1986 and the Applicant formally applied to the Town Council of Mariakani to set it apart and consequently the application was approved and a survey was done by the Ministry of Lands and Settlement. In about 2005 one **Purshottam Govind Parmar** and **Somchand Mulji Shah** trespassed and unlawfully entered upon the Applicant's said land claiming ownership and the Applicant filed claims at the Kilifi District Lands Disputes Tribunal at Kaloleni Case Number LND/KAL/29/2005 and after trial and hearing the Tribunal allowed the Applicant's claim of ownership and proprietorship of the parcel of land on **12th March, 2007** and the decision of the Lands Tribunal was affirmed and adopted as a Decree of the Court in **SRM Court at Kaloleni Land Case No. 9 of 2007**. The Applicant subsequently filed a suit in Mombasa High Court Civil Case No. 324 of 2007 against **Purshottam Govind Parmar** and **Somchand Mulji Shah** seeking *inter alia* a declaration that the aforesaid land was the property of the Applicant and Judgment was entered in favour of the Applicant as sought on **26th June, 2008**. The area where the Applicant's land is situate was later proclaimed and declared an adjudication area before the process of setting apart was completed and one **Shamshudin Tar Mohamed** claimed that he had purchased a portion of the Applicant's land measuring approximately 1.3 acres from a Mr. Dio Ngoka. The Adjudication Committee after a full hearing awarded the portion of land to the Applicant. **Shamshudin Mohamed** thereafter appealed to the Adjudication Board of the Adjudication Area. The Adjudication Board ruled in favour of the said **Shamshudin Tar Mohammed** prompting the Applicant to appeal to the Minister of Lands pursuant to the provisions of **S.29 of the Lands Adjudication Act Cap 284 Laws of Kenya**. The Minister through the District Commissioner Kaloleni District on 3rd August, 2015 notified the Applicant that the Applicant's Appeal had been dismissed. The Ex parte Applicant's case is that the dismissal of the Applicants Appeal was presided over by a panel of 3 members illegally constituted contrary to S.29 of the Lands Adjudication Act. **FREDRICK AYIEKO** who signed the undated decision of the Minister was not among the three members of the panel which heard the Applicant's Appeal on 17th July, 2014. The members of the panel who heard the Applicant's appeal on 17th July, 2013 were: Leonard Ongeyo, Laban Mwanzo and Nathaniel Medza. The panel that dismissed the Applicant's appeal declined to hear the Applicant's case in full on the ground that the Applicant's witness had not identified himself by producing his Identity Card. The Applicant was therefore denied a right of being heard before the decision was made. The Applicant's case is that the panel dismissed the Applicant's appeal based on erroneous conclusion of facts, for example that the Applicant had bought the land in 1996 when in fact it was in 1986 when the Applicant bought the land from **SAID CHUKA** who had previously bought from Dio Ngoka in 1978. The Applicant's case is that **Shamshudin Tar Mohamed's** claim that he had bought a portion of the Applicant's land in 1985 from **DIO NGOKA** was not therefore tenable because that portion of land had already been sold and bought by the Applicant in 1986 from the lawful owner namely **SAID CHUKA**. It is the Applicant's case that the Minister ignored the Judgment of Kaloleni Senior Resident Magistrate Land Case Number 7 of 2007 which had awarded the portion of land to the Applicant on 12th March 2007. The Minister further ignored the order and decree of Mombasa High Court Civil Case Number 324 of 2007 which confirmed that the portion of land claimed by **Shamshudin Tar Mohamed** belonged to the Applicant. The High Court declared so in Mombasa HCC Case Number 324 of 2007. The Applicant avers that the Panel of members who convened to hear the appeal was contrary and in breach of the provisions of the Land Adjudication Act and the panel's decision was consequently null and void. The Applicant had been in continuous possession, occupation and use of the portion of land since 1986 when he purchased it from **SAID CHUKA**. Shamshudin Tar Mohamed had never occupied or used the portion of the land in question. Further, the Applicant avers that the Ruling of the Panel of Members was undated and signed by only one member of the Panel namely **FREDRICK AYIEKO** who was not one of the three members who heard the Applicant's appeal on 17th July, 2013. The decision of the Minister was consequently invalid and void. The Panel of members which was illegally constituted took into consideration other information beyond what was presented before it by the parties and thus acted *ultra vires* contrary to the due process of law and the provisions of the Land Adjudication Act. The Applicant further avers that since buying the portion of land, Mariakani County Council has demanded and the Applicant has paid land rates to the Council as the proprietors of the portion. The Applicant states that the decision of the Minister is consequently:

- a. An abuse of statutory power, unreasonable and irrational;
- b. Made without jurisdiction and in breach of the provisions of the Land Adjudication Act Cap. 284 Laws of Kenya;
- c. In bad faith and error of fact and in breach of natural justice;
- d. An abuse of statutory discretion;
- e. Biased, oppressive and unlawful;
- f. Arbitrary and unprocedural and *ultra vires* the Provisions of the Lands Adjudication Act;

g. Unfair and unjust in all circumstances of the case.

The Response

4. The application is opposed by the Respondent through Grounds of Opposition filed on 20th December, 2016 and a Replying Affidavit sworn by Shamshudin Tar Mohamed on 20th January, 2016. The Respondent's case is that the Motion is improper, baseless and does not raise any grounds to warrant Orders of Judicial Review or any other Orders for this Court's determination. The Respondent states that the Motion has been filed two (2) years from the date of decision hence bad in law and is an abuse of the court process. The Respondent states that the motion is unmerited as the relief sought is improper, incapable of remedy and untenable and that the application is frivolous and vexatious. The Respondent's case is that the Ministerial decision in its favour was proper and well within their powers as provided by law and that no rules of Natural Justice are demonstrated to have been breached, and also that the Respondents acted in accordance with the Law and the orders made were not *ultra vires*.

5. The Interested Party herein also opposed the application vide his Replying Affidavit sworn on 20th January, 2016. The Interested Party avers that he is a stranger to the averments contained in the application and Supporting Affidavit. His case is that the ex Parte Applicant is the owner of a property situated next to his property known as Plot No. MARIAKANI/KAWALA 'B'/5. He is in full occupation of the property and at one time the ex parte Applicant even proposed to purchase the property from him, but he rejected the proposal. The Interested Party maintains that the Adjudication Committee of the area allocated the Parcel of land to him. The ex parte Applicant appealed to the Arbitration Board which ruled in their favour. He however lodged an objection which was ruled in his favour. The ex parte Applicant then appealed to the Minister who still found in his favour.

6. The Interested Party avers that Fredrick Ayieko is the one who presided over the panel and signed its determination. He avers that he has never been a Party to proceedings both at the Senior Resident Magistrate's Court at Kaloleni and the High Court in Mombasa. In both previous matters the Defendants were separate and the Parcels of land separate from the Interested Party's land. The Interested Party states that he has already been issued with a Title Deed for the property known as Plot No. MARIAKANI KAWALA'B/5 and that these proceedings are therefore in vain.

Submissions

7. Mr. Asige counsel for the Applicant submitted that on 3rd August, 2015 the Minister of Lands through the District Commissioner Kaloleni District made a decision contained in the Ruling certified by the Director of Land Adjudication on 3rd August, 2015 dismissing the Applicant's appeal to the Minister of Lands regarding the proprietorship of Plot No. 5 Kawala "B" Adjudication Section, Kilifi County, Kaloleni District between the Applicant herein who was the Appellant and Shamshudin Tar Mohamed who was the Respondent therein and an Interested Party in the present motion.

The decision dismissing the Appeal was expressed as under:

"Decision

In view of the above findings and other confirmed information as stated in these case proceedings, this case is hereby dismissed. The objection Ruling which lead to sub-division and creation of new numbers should be cancelled. Parcel No. 5 (five) originally holding in the names of the Respondent SHAMSHUDIN TAR MOHAMED ID NO. 5392520.

Signed: FREDRICK AYIEKO

DISTRICT COMMISSIONER

KALOLENI DISTRICT".

8. Mr. Asige submitted that the Applicant herein had appealed to the Minister against the decision of Kawala Land Adjudication Arbitration Board who had ruled that land Plot Number 5 Kawala "B" Adjudication Section Kilifi County Kaloleni District measuring about 1.3 acres be awarded and registered in favour of the Respondent, who is the Interested Party in this Notice of Motion application. It is the Minister's decision reproduced above that is the subject matter of this motion and which is sought to be quashed and prohibited.

9. Mr. Asige referred to the proceedings before the Minister's Tribunal. The Appeal to the Minister was filed by the Applicant herein and the appeal heard on 17th July, 2013. At the hearing before the Ministerial Tribunal the Applicant gave evidence and was cross examined by the members of the Tribunal as well as the Interested Party. The Appellant's witness who was the caretaker of the disputed land was present to testify but the Tribunal refused to take his evidence on the ground that he did not have an Identity Card. At page 33 of the record of Notice of Motion and particularly at paragraph 4, the Tribunal stated:-

"The original sellers of these plots are still alive...the appellant has never bothered to involve them in any of the cases instead he does come with a caretaker whom in this appeal case was not allowed to give evidence since he couldn't identify himself. (He didn't have an ID)"

10. The Interested Party herein who was the Respondent in the Appeal gave evidence. He was cross examined by the Tribunal members (see page 39 of the record of Notice of Motion). However, the Applicant/Appellant was not invited to cross examine the Interested Party. The record of appeal at page 32 reveals that after the Interested Party completed giving his evidence only the Tribunal panel members cross examined him and not the Applicant/Appellant.

Mr. Asige referred to page 32 of the record of Notice of Motion where the Tribunal observed and recorded:-

“Findings

...The Appellant has been casing with different people and in fact the proceedings of the court case he has presented to this Court do not have any relevance with the Defendant on this land”.

11. Mr. Asige submitted that the Court cases the Appellant had presented to the Tribunal were the Judgment of the Senior Resident Magistrate court at Kaloleni **Land Award Case No. 9 of 2007** whose Judgment appears at **page 35** of the record of Notice of Motion and Decree of the High Court of Kenya at Mombasa in **High Court Civil Suit No. 324 of 2007**. These two Judgments had determined the ownership of the parcel of land the Applicant was claiming in the Applicant’s favour and ordered and directed the Register of Titles to have the land registered in the Applicant’s favour (see order 4 of the High Court at **page 38** of the record of Notice of Motion. Further, Mr. Asige submitted that although the Defendants names in the said two suits were different names, the subject matter in the two suits were the same as the Minister’s Tribunal was presiding over in the Appeal before it. The Tribunal however simply chose to ignore the Judgment and decree on account of the different names of the Defendants when however the land, the subject matter in the appeal before them was the same parcel of land as in **SRM Court at Kaloleni Land Award No. 9 of 2007 and Mombasa High Court Civil Suit No. 324 of 2007**.

12. Mr. Asige submitted that the proceedings before the Minister’s Tribunal were wrought with numerous illegalities, violations of law and impropriety. These are alleged as follows:-

i. The Tribunal before making its decision ignored, failed and omitted to consider or at all address its mind to the grievances that were set out in the Applicant’s Grounds of Appeal marked as **exhibit “HDP1”** and which appear at pages **25 to 27** of the record of this Notice of Motion.

This was an omission and error in law that entitles the Applicant to be granted the orders of certiorari and prohibition as sought in this motion. None of the 9 grounds of appeal were addressed, considered or answered by the Ministerial Tribunal. Instead the Tribunal embarked on dealing with issues and taking steps that were ultra vires its appellate mandate and were improper in substance and procedure. The applicant was thus denied a fair hearing in breach of the rules of natural justice.

ii. Upon conclusion of giving evidence by the Respondent, the Tribunal omitted to invite the Appellant to cross examine the Respondent. The Tribunal instead proceeded to cross examine the Respondent and forgot and/or ignored to give the Appellant an opportunity to interrogate the Respondents evidence.

13. Mr. Asige submitted that the omission to afford the Appellant an opportunity to cross examine rendered the proceedings unfair and unprocedural contrary to due process which violation attract the remedy of quashing and prohibiting the decision by an order of certiorari.

14. The refusal to fully hear the Applicant before the Tribunal similarly attracts the grant of an Order of Prohibition to prohibit the implementation of the decision of the Tribunal which is tainted with errors of illegalities and unfairness and contrary to the legitimate expectation of the Applicant that the law and rules of natural justice would be applied and observed by the Tribunal that was hearing its appeal. Further, the Tribunal panel literally took over the complaint in the appeal before it as a party and not as an impartial arbiter. The Tribunal descended into the arena of conflict and engaged in excessive cross examination of the parties before it. In the end the Tribunal became a party to the Appeal rather than an umpire. The decision of the Tribunal is thus tainted with procedural impropriety and calls for quashing and prohibiting as sought in the motion.

15. Mr. Asige submitted that in refusing the Appellant witness to testify the Tribunal not only acted illegally and unlawfully but denied the Appellant a fair hearing of its case before the making of a decision. This was contrary to the rules of natural justice.

16. The Tribunal’s refusal to take the Applicants witness evidence because the witness had no Identity Card was oppressive and arbitrary and attracts the grant of the remedy of certiorari and prohibition.

17. Mr. Asige submitted that the Tribunal’s decision took into consideration extraneous matters which were not canvassed in the evidence before it. **At page 33** of the record of Notice of Motion the Tribunal stated:-

“This area is a commercial area and therefore we would wish all the investors to share the little space they have acquired without selfish interests or opportunity to other weak clients”

And went on to decide:

“Decision

In view of the above findings and other confirmed information as stated in these case proceedings this case is hereby dismissed”

18. The Tribunal thus exceeded its mandate and acted ultra vires when it made conclusion and findings which were totally unsupported by evidence tendered before it. The Tribunal had relied and taken into account other information obtained beyond the evidence that was produced before it.

The admission that other confirmed information, had been considered by the Tribunal denied the Appellant a chance to interrogate that information in breach of the rules of natural justice. The Tribunal thus acted ultra vires the law. The consequence of which is to quash and prohibit the decision rendered by the Tribunal.

19. Mr. Asige submitted that the land dispute which was the subject matter of the appeal had previously been heard and determined by courts of competent jurisdiction, namely, the Senior Resident Magistrate Award made in **Kaloleni SRM Land Award Case No. 9 of 2007** and the Decree of the **High Court issued in Mombasa HCC No. 324 of 2007**.

20. The Ministerial Tribunal therefore had no jurisdiction to re-open and entertain the dispute again. The Tribunal acted illegally and without propriety in entertaining the dispute afresh. The Tribunal was bound by the doctrine of res judicata and was estopped in law from ignoring the previous decisions of courts of competent jurisdiction in regard to the disputed land and exceeded its mandate and proceeded without jurisdiction.

The Respondent's Reply

i. The Respondent herein was duly served and has not filed a reply or appearance. The affidavit of service of the Motion upon the Respondent has been filed in these proceedings. The upshot is that the Respondent does not oppose the orders sought in the motion.

Interested Party's Case

21. On her part M/S Wambani for the Interested Party submitted in opposition to the motion, and relied on Sections 8 & 9 of the Law Reform Act Cap 26 and Order 53 Rule 1, 2, 3, 4 of the Civil Procedure Rules 2010. Counsel cited Lord Diplock in the case of **Council of Civil Service Unions versus Minister for the Civil Service [1984] 3 ALLER (As quoted in Republic versus KPL & Another [2013] eKLR** where the learned Judge summarized the grounds for Judicial Review as follows;

1. Illegality

2. Irrationality

3. Procedural impropriety

22. M/S Wambani also cited the case of ***Municipal Council of Mombasa versus Republic & Umoja Consultants Ltd [2002] eKLR*** in which the grounds for Judicial Review was summarized as follows:

“Court would concern itself with issues as to whether;

i. Whether the decision makers had the jurisdiction

ii. Whether the person affected by the decision was heard before it

iii. Whether in making the decision, the decision maker took into account irrelevant issues”

23. M/S Wambani urged the court to adopt the above stated principle.

24. M/S Wambani referred to the Applicant's submission that the panel which gave the decision was improperly constituted and further that the decision as signed by only Fredrick Ayieko who was among the members of the panel which heard the appeal on 17th July 2013. M/S Wambani submitted that the Tribunal was properly constituted under the Land Adjudication Act Cap 284 Laws of Kenya. Further, the decision was signed by Fredrick Ayieko who was among the 3 members who had the Appeal on the 17th July 2013. M/S Wambani submitted that Applicant has produced a document purported to be the proceedings of the Tribunal. The document is not certified as the true copy and therefore non admissible before this Court. Counsel submitted that the Panel/Tribunal was properly constituted and the decision was signed by the rightful person.

25. As to whether the affected party/applicant was fairly heard, M/S Wambani submitted that there is no evidence to the effect that the Applicant's witness was at any stage denied audience by the panel on ground of lack of an Identity Card. In any case, he could have applied for an adjournment and appear later or on any other day when the said Identity Cards could have been availed. That was not done. M/Smbani submitted that this assertion is an afterthought.

26. M/S Wambani further submitted that the application is only based on contentious facts. These include:

a) whether he bought the land in 1986 or 1996?

b) whether between him and the Interested Party who bought the portion earlier?

c) whether the matter between the Applicant and the Interested Party is the same matter that was handled in SRM Land Case No. 7 of 2007 and Mombasa HCCC NO. 324 of 2007?

27. M/S Wambani submitted that such contentious matters are not subject for judicial review but should be determined in a normal civil proceedings in ordinary suit. The application is calling upon the Court to determine disputed facts. Counsel submitted that it is settled law in Kenya that Judicial Review is concerned with the decision making process and not the merits of the decision itself. Counsel cited the Judgment of **G. V. ODUNGA in Republic versus National Transport and Safety Authority & 10 Others ex parte James Maina Muo [2015] eKLR** where the learned Judge observed:

“It follows therefore that where the resolution of the dispute before Court requires the Court to make a determination on disputed facts; that is not a suitable case for Judicial Review... It follows that, where an applicant brings Judicial Review Proceedings with the view to determine contested matters of facts ... Court would leave the parties to ventilate the merits of the dispute in the Ordinary civil Suits.”

28. M/S Wambani further submitted that the two suits in Court regarding the said portion of land being Kaloleni RMC Land Case No. 7 of 2007 and HCCC NO. 324 of 2007 were different. The cases did not involve Plot No. 5/Kawala 'B'. Moreover, the Interested Party was not a party to those proceedings.

29. M/S Wambani submitted that in any event the Applicant has come to court late, and the application is overtaken by events since the said decision has already been implemented and subsequently the Interested Party was issued with a Title Deed on 3rd November, 2014 and is now recognized as the lawful owner of the said portion. Further, the application is guilty of inordinate delay. The decision was made on 17th July, 2013 and the Applicant was duly notified over the same. This instant application is made two years later without any explanation for the said delay. Counsel submitted that the Court's discretion is not to assist such an indolent party at all.

The Determination

30. I have carefully considered the motion before the court. To begin with, M/S Wambani for the Interested Party submitted that he was not a party to proceedings both in the Senior Resident Magistrate Court at Kaloleni and the High Court at Mombasa, and so the Judgment and decree of the court made in favour of the Applicant herein are not binding on him, and that in any event he has been issued with a title for the property known as MARIAKANI/KAWALA "B"/5. The alleged title was issued on 3rd November 2014. However, this allegation cannot be true because the Ministerial Tribunal Ruling was made on 3rd August 2015. The Title could not then have been issued to the Interested Party before the decision of the Tribunal was made. In the opinion of this court this title has been given by the Respondent to the Interested Party apparently to undermine and pre-empt this application and in defiance and disobedience of the order of stay which was served upon both the Respondent and Interested Party on 28th October 2015. The challenge that the remedies of Judicial Review are unavailable to the Applicant is averred by the Interested Party at paragraph 12 of his replying affidavit. Other than declaring that judicial review orders are unavailable to the Applicant herein the Interested Party does not in his entire replying affidavit address the question and issue of the validity of the "decision" of the Minister's Tribunal which this motion seeks to quash and prohibit. The legality; illegality; impropriety of procedure; breach of rules of natural justice; irrationality of the decision; ultra vires conduct of the Ministerial Tribunal; arbitrariness; lack of jurisdiction and unfairness of the decision making process of the Minister's Tribunal is what the Applicant herein has been aggrieved with and consequently seeks the quashing and prohibiting of the Tribunal's decision. The Interested Party has not addressed any of these grievances in his replying affidavit. It is the violations, irrationality and breaches of law stated herein which form the sole question to be determined by the court in this judicial review motion which the Interested Party has not addressed at all.

31. The Minister's Tribunal which heard the Appeal on 17th July 2013 comprised of three members. The Applicant and Interested Party differ as to whether Fredrick Ayieko was a member of that Tribunal. However the significant observation is that the decision has not been signed by all the members of the Tribunal. It is Fredrick Ayieko who signed the decision alone. This court finds that it was a **procedural and legal impropriety** to omit the signatures of the decision of the other members of the Tribunal. The decision made without the signatures of the other 2 members of the Tribunal is accordingly invalid in law.

32. This court is satisfied that there are very many procedural irregularities which this court cannot gloss over. What was going on was a process without any transparency. The Minister's Tribunal whose decision is sought to be quashed decided to ignore valid court orders in which a determination of ownership of the property had been made. The Minister's decision was therefore a faulty process. It could not purport to decide on an issue which had already been decided. The Minister's panel disregarded the Ruling of the High Court which had ruled that the plot belonged to the ex parte Applicant. The Minister's panel disregarded the said Ruling when it awarded and ordered the land to be registered in favour of the Interested Party.

33. As to whether the Judicial Review proceedings herein are time barred, it is the finding of this court that the Minister's decision is not dated. Although the Interested Party alleges that the decision was made in 2013, there is no evidence of that allegation. The only date visible on record is 3rd August, 2015. It is the date the decision was certified. For all practical purposes and applications, that is the relevant date. Who said a decision cannot be certified on the same date it is issued? The submissions by the Interested Party that the decision sought to be quashed is time barred is therefore not correct since the decision is certified and dated 3rd August, 2015 while the current proceedings are filed in court on 30th October, 2015. The proceedings herein are within the time limit under the Civil Procedure Act and under the Law Reform Act.

34. Accordingly, therefore, it is the finding of the court that the Minister's decision certified and communicated to the Applicant on 3rd August, 2015 is an abuse of statutory power, unreasonable, and irrational and made without jurisdiction and in breach of the provisions of the Land Adjudication Act; was made in bad faith and in error of fact and in breach of natural justice. Accordingly, the Notice of Motion dated 28th October, 2015 is allowed as prayed with costs to the ex parte Applicant.

Orders accordingly.

Dated, Signed and Delivered in Mombasa this 12th day of April, 2018.

E. K. O. OGOLA

JUDGE

In the presence of:

No Appearance for Ex parte Applicant

Ms. Wambani for Interested Party

No Appearance for Respondent

Mr. Kaunda Court Assistant