



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 28 OF 2011

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT COMMISSIONER,

NAROK NORTH DISTRICT.....1ST RESPONDENT

THE MINISTER FOR LAND AND

SETTLEMENT.....2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

AND

KIMURSOI OLE NKAIWATEI &

PARUNI OLE NKAIWATEIINTERESTED PARTIES

EX-PARTE

JANE NASERIAN ENELOKULA

JUDGEMENT

(Judicial review; time within which judicial review should be filed; law requires same to be filed within 6 months; application filed after 6 months and 1 day; whether same can benefit from the time excluded during Christmas; same cannot benefit; month means calendar month; application out of time; judicial review on decision of Minister in land under adjudication; no error in the manner in which the Minister through the DC heard the dispute; application dismissed).

1. On 10 March 2011, the ex-parte applicant filed an application under Sections 8 and 9 of the Law Reform Act, and Order 53 Rules 1(1), 2, 7(2) of the Civil Procedure Rules seeking leave to commence judicial review proceedings for the following orders :-

(i) Prohibition to prohibit the Chief Land Registrar from registering Plot No. 366 and 1068 in Olokurto Adjudication Section in the name of Kimursoi Ole Nkaiwatei and Paruni Ole Nkaiwatei.

(ii) An order of certiorari to quash the decision of the District Commissioner, Narok North District acting on the delegated powers of the Minister for Land and Settlement made on the 9th September, 2010, by the District Commissioner sitting at Narok by virtue of Legal Notice 73 of 1978 with regard to appeal case No. 38 of 2000, filed by the Applicant and the interested parties.

(iii) An order of Mandamus to compel the 1st respondent to hear and determine the Appeal between the applicant and the Interested Parties in respect of Plot No. 366 and 1068 in Olorurto Adjudication area of Olorurto Division in Narok North District in accordance with the law.

2. On 11 March 2011, the application for leave was placed before Ouko J (as he then was) and leave was granted to commence the intended proceedings. The substantial motion was thereafter filed on 17 March 2011.

3. Briefly, the case of the ex-parte applicant is that her husband, Koisiget Ololukula (Ololukula) (now deceased), was allocated by the District Land Adjudication Officer, the Plot No. 366 in Olorurto Adjudication Section through a letter dated 23 July 1980. One Muchiri Githaiga (Muchiri) also claimed the said land and he later sold it to the two interested parties herein. The dispute on who ought to keep the land between the ex-parte applicant and the interested parties was referred to the Arbitration Board under the Land Adjudication Act. It would appear that before the Arbitration Board, the ex-parte applicant claimed that the Plot No. 366 has two portions. She did not raise objection to one portion of the said land, which she conceded was sold to Muchiri by her husband. But she contested a second portion of the said land, which she asserted was never sold to Muchiri. Muchiri had already sold this second portion to the Interested Parties, and it is them who were respondents before the Arbitration Board. At the Board, the interested parties claimed to have purchased this disputed portion from Muchiri in the year 1988 and that the ex-parte applicant had a separate plot which was a Plot No. 104. In a ruling made on 5 April 1995, the Arbitration Board held for the ex-parte applicant and gave the disputed portion of the Plot No. 366 to the ex-parte applicant. This portion became the Plot No. 1068 and was separated from the original Plot No. 366.

4. The interested parties then lodged an objection to the Adjudication Register which was heard and a ruling delivered on 30 July 1999. It was held that the ex-parte applicant was not entitled to the Plot No. 366 and Plot No. 1068. However, it was decided that she gets 10 acres out of the Plot No. 1068 on humanitarian grounds as the other land that she had was marshy. Aggrieved, the ex-parte applicant appealed to the Minister. The interested parties also filed a cross-appeal apparently to challenge the allocation of 10 acres, which 10 acres was now identified as Plot No. 1771. In her appeal, the ex-parte applicant claimed both Plot Numbers 366 and 1068. The Appeal was heard by the District Commissioner Narok North District under delegated powers. He dismissed the appeal by the ex-parte applicant and the cross-appeal by the interested parties. In essence, the ex-parte applicant was left with the 10 acres in the Plot No. 1771 and the interested parties with the residue comprised in the Plot Numbers 306 and 1068.

5. In this motion, the ex-parte applicant has attacked the decision of the District Commissioner on the ground that it was ultra vires and that due process of the law was not followed. It is the contention of the ex-parte applicant that Muchiri never purchased the land from Ololukula and therefore the interested parties cannot get a title to it.

6. The interested parties filed a replying affidavit. They averred that they purchased the Plot No. 366 from Muchiri who had bought from Ololukula. They are of the view that the appeal before the District Commissioner was properly heard and each was accorded a fair hearing. They have further averred that the suit herein is statute barred; that the order of prohibition has been overtaken by events and that the order of mandamus cannot issue. I did not see any response filed by the respondent.

7. I invited counsels to submit and they did file written submissions. I have gone through the same. On the part of the ex-parte applicant, it was argued that the District Commissioner was acting under delegated powers and he could not further delegate to the District Officer (D.O). On the part of the interested parties, it was submitted inter alia that the District Commissioner had power to determine the dispute. It was also argued that the suit herein was filed one day out of time. It was pointed out that the decision of

the District Commissioner was made on 9 September 2010 yet the application for leave was filed on 10 March 2011. It was submitted that this was contrary to Order 53 Rule 2. Counsel for the ex-parte applicant responded by submitting that the suit was not time barred because Order 50 Rule 4 ousts the period between 21 December to 13 January from computation of time.

8. I have considered the matter. I think I first need to determine whether this suit is out of time. Order 53 Rule 2 provides as follows :-

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a 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.

9. It is apparent from the above that Judicial Review proceedings are to be filed within 6 months of the decision. The word “month” is defined by Section 2 of the Interpretation and General Provisions Act, CAP 2, Laws of Kenya, to mean “calendar month”. This is echoed in Order 50 Rule 1 which defines “month” as follows :-

Where by these Rules or by any judgment or order given or made, time for doing any act or taking any proceedings is limited by months, and where the word “month” occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months unless otherwise expressed.

10. Given the above provisions, the ex-parte applicant had to file suit within 6 calendar months of 9 September 2010. It means that the last day for filing the application had to be 9 March 2011. I do not see how the ex-parte applicant can rely on Order 50 Rule 3 which ousts the period from 21 December to 13 January from computation. That period can only apply where days are to be computed, not calendar months. It is therefore apparent to me that this suit was commenced one day late, as it was filed on 10 March 2011. On that point alone the suit is out of time and fails.

11. But even if I am wrong on this, I do not see how the ex-parte applicant can fault the decision of the Minister. It was said that the District Commissioner delegated his powers to the District Officer. I have not seen any such evidence. In fact, the proceedings and decision show that the District Commissioner heard the dispute, questioned the witnesses and wrote and signed the decision. Both parties were given a hearing and I have not found any breach of the principles of natural justice. Judicial Review concerns itself with the process and I can see no fault in the process followed by the Minister. Even on merits, the suit herein would still fail.

12. The upshot of the above is that I find no merit in this motion and it is hereby dismissed with costs. For the avoidance of doubt, the stay orders granted together with leave are vacated.

13. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of May, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of: -

Mr Ngamate holding brief for Ms. Merciline Njoroge for ex-parte applicant

Ms. Monirei present for interested parties

No appearance for the State Law Office for respondents

Court Assistant: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU