



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC MISCELLANEOUS JUDICIAL REVIEW APPLICATION NO.E009 OF 2021

PETER MUTUNDU GAICHU.....APPLICANT

VERSUS

THE CABINET SECRETARY MINISTRY OF LANDS & PHYSICAL PLANNING.....1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....2ND RESPONDENT

THE CHIEF LAND REGISTRAR.....3RD RESPONDENT

THE ATTORNEY GENERAL OF KENYA.....4TH RESPONDENT

AND

BERNARD MUCHOMBA MITAMBO.....INTERESTED PARTY

RULING

1. Before me is the chamber summons application dated **9th September, 2021** brought pursuant to **Order 53 Rules 1 and 2** of the Civil Procedure Rules **2010**. The application was filed by one Mary Karia Ndege who signed the application, the verifying affidavit and statutory statement on **9th September, 2010**. When the matter went before C. K. Nzili J, at ELC Meru on **16.9.2021** under certificate of urgency, the application was certified urgent and prayers **1 (a), (b) and (c)** were granted. The Applicant was further directed to file the substantive notice of motion within **21 days** from **16th September, 2021** and the matter was listed before me for directions on **18th October, 2021**, but none of the parties appeared in court. The matter was then fixed for mention on **8.11.2021** but again there was no appearance by any of the parties. The matter was fixed for mention on **23rd November, 2021**.

2. On the said **23rd November, 2021**, Peter Mutundu Gaichu, the Applicant was present in person. There was however, no appearance by the Respondents and the Interested Party. The court noted that the pleadings were drawn and filed by one Mary Karia Ndege who was also present in court and confirmed that she is the one who signed the pleadings, though she was neither the Applicant nor an authorized agent.

3. Order **9 Rule 1 and 2** of the Civil Procedure Rules provides as follows:

1. Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the person in person, or by his recognized agent, or by an advocate duly appointed to act in his behalf:

provided that-

(a) any such appearance shall, if the court so directs, be made by the party in person; and

(b) where the party by whom the application, appearance or act is required or authorized to be made or done is the Attorney-General or an officer authorized by the law to make or to do such application, appearance or act for and on behalf of the Government, the Attorney General or such officer, as the case may be, may be writing under his hand depute an officer in the public service to make or do any such application, appearance or act.

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a) subject to approval by the court in any particular suit persons holding powers of attorney authorizing them to make such appearances and applications and do such acts on behalf of parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts;

(c) in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.

4. In the instant case, Mary Karia Ndege is not shown to hold any power of attorney to make the application and execute pleadings on behalf of Peter Mutundu Gaichu, the Applicant. She therefore had no authority to make the application as she was not a recognized agent of the applicant as per the law. That the said Mary Karia Ndege purported to file an application for leave on behalf of the Applicant without the requisite power of attorney, no doubt the application is defective and must be struck out.

5. There is also a further issue that I need to consider. Whereas the court on **16th September, 2021** granted the Applicant leave to file an application for Judicial Review, the main motion was to be filed within **21 days** from that date. Todate, there is no substantive notice of motion filed. Suffice to say, that even if one was filed, it would have been incompetent since the pleadings were made by a stranger in law. The leave obtained by the Applicant is itself defective and of no consequence having been made by a person who is not a recognized agent of the Applicant. Moreover, there is no application for Judicial Review that has been filed by the Applicant within the stipulated time for consideration by the court.

6. For the reasons outlined above, I find that the subject application is defective and incompetent and must be struck out. The same is hereby struck out with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF JANUARY, 2022 IN THE PRESENCE OF:

CA: MARTHA

PETER MUTUNDU GAICHU, THE APPLICANT PRESENT IN PERSON

NO APPEARANCE FOR RESPONDENTS

NO APPEARANCE FOR INTERESTED PARTY

C. K. YANO,

JUDGE.