



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

JUDICIAL REVIEW NO. 86 OF 2009

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDER OF
CERTIORARI & PROHIBITION BY EX-PARTE APPLICANTS ESTHERINA MUTHONI
MURIITHI.**

AND

**AND IN THE MATTER OF OBJECTION NO. 832/05 IN RESPECT OF P/NO. 10654
NDOLELI/ATHIRU RUUJINE ADJUDICATION SECTION.**

ESTHERINA MUTHONI MURIITHI.....EX-PARTE APPLICANT.

VS

LAND ADJUDICATION AND SETTLEMENT

OFFICER OF IGEMBE

DISTRICT.....RESPONDENT

WILFRED KIWANTHI BAIBURUINTERESTED PARTY.

RULING

This application by way of chamber summons and dated 11th November, 2009 seeks orders;-

1. *That this Honorable court be pleased to certify tis application urgent in the first instance.*
2. *That this Honourable court be pleased to grant leave to the ex-parte applicant to apply for orders of Judicial Review in the nature of certiorari to call and quash the award of the District Land Adjudication and settlement Officer of Igembe District in objection proceedings No. 832/05 on land parcel P/NO. 10654 NDOLELI/ATHIRU RUUJINE ADJUDICATION SECTION and prohibition to prohibit the implementation of the said award pronounced on 3rd of August 2009.*
3. *That once leave is granted the same to operate as a stay of implementation of the award in objection proceedings No. 823/05 pronounced by the District Land Adjudication and Settlement Officer.*
4. *That cost be provided.*

It is supported by the applicant's affidavit, by the statement of facts of the applicant and is predicated upon the following grounds;

- (a) *The respondent duly approved the transfer of the subject matter hereto in the name of the applicant but later on illegally and irregularly awarded the interested party*

half of my land.

(b) The respondent had no authority whatsoever to sub-divide or transfer any portion thereof and the award thereof is ultra vires.

(c) The applicants land is in the process of being alienated if this application is not heard on priority basis.

In his replying affidavit dated 20th November 2009, the interested party opposes the application through, inter-alia, the following grounds.

- 1. The decision being challenged was pronounced in 2006 and, therefore, it was wrong and illegal for the applicant to come to court 3 years down the line.**
- 2. The applicant had failed to obtain a consent letter from the adjudication officer as required by section 30 of Cap 284, Laws of Kenya.**

I have carefully looked at the averments of the parties. I agree with the interested party that the applicant did not obtain the consent of the Adjudication Officer as required by Section 30 of the Land Adjudication Act. In accordance with this section I am required not to entertain this suit.

Section 9 (3) of the Law Reform Act states;

“ In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law, and where that judgment order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

Prayer 2 includes certiorari. Consequently, this application is time barred as it was filed in 2009 whereas the decision being impugned was pronounced in 2006. There has also been an inordinate delay in that it is now 5 years since this application was filed.

In the circumstances, I dismiss this application. For avoidance of doubt, this means that the entire suit is dismissed. Consequently, this court is rendered *functus Officio*.

It is so ordered.

Delivered in Open Court at Meru this 29th day of October 2014, in the presence of; Cc. Daniel /Lilian

Parties not present.

P. M. NJOROGE

JUDGE