



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITUI

ELC CIVIL MISC APPLICATION NO. 3 OF 2021

IN THE MATTER OF

AN APPLICATION BY RUTH KAVENGI MULYUNGI FOR AN

ORDER OF CERTIORARY AND MANDAMUS

IN THE MATTER OF

THE LAND ADJUDICATION ACT CAP 284 OF THE LAWS OF KENYA

AND

IN THE MATTER OF

AN APPEAL TO THE MINISTER OF LANDS AND SETTLEMENT

IN RESPECT OF LAND PARCEL NUMBER 39 ILAMBA “A”

ADJUDICATION SECTION IN APPEAL NUMBER 33 OF 2012

RUTH KAVENGI MULYUNGA AND MUSYOKA MBENI KIMULI

REPUBLIC.....APPLICANT

-VERSUS-

THE DEPUTY COUNTY COMMISSIONER,

IKUTHA SUB-COUNTY.....RESPONDENT

-AND-

MUSYOKA MBEENI KIMULI.....INTERESTED PARTY

EX-PARTE APPLICANT..... RUTH KAVENGI MULYUNGA

JUDGEMENT

1. The Ex Parte Applicant **RUTH KAVENGI MULYUNGA** filed a Notice of Motion dated 30th April 2018 under Order 53 Rule 3(1) of the Civil Procedure Rules seeking for **ORDERS: -**

1. **THAT** an order of CERTIORARI to move into this Honourable Court and quash the judgment of the Deputy County Commissioner, Ikutha Sub-County in Appeal No.33 of 2012 Ruth Kavengi Mulyunga-versus Musyoka Mbeni Kimuli delivered on 2/8/2017 in respect of Land Parcel Number 39 ILAMBA “A” ADJUDICATION SECTION.

2. **THAT** an Order of Mandamus directing the Deputy County Commissioner, Ikutha Sub-County to vacate his decision delivered on 2/8/2017 in Appeal No.33 of 2012 Ruth Kavengi Mulyunga-versus-Musyoka Mbeni Kimuli and to re-hear the appeal.

3. **THAT the costs of this application be awarded to the ex-parte applicant.**

The Ex-Parte Applicants case and submissions

2. The Applicant claims that the suit **Land Parcel No.39 Ilamba "A" Adjudication Section** belongs to her and she has been in occupation since 1987. She claims that during land adjudication in the year 2011, the land adjudication officer awarded the land to the Interested Party, who claimed to have bought it from one Kailu Mbuno(now Deceased) in the year 2003. Being aggrieved by this decision, the applicant lodged an appeal where the Respondent upheld the decision of the land adjudication officer.

3. The Applicant states that she was aggrieved by this decision which she stated was contrary to the evidence adduced and was based on other considerations. She claimed that the Deputy County Commissioner's decision was biased a miscarriage of justice and prejudicial to her rights over the subject property. The applicant further states that the Respondent failed to arbitrate the dispute as required by failing to facilitate the just, equitable and expeditious resolution of the dispute before him.

4. Counsel for the Applicant submitted that the Minister's Judgment should be quashed and the matter remitted back for hearing before an impartial designate of the Minister as provided for in law. He submitted that the Minister ignored the evidence that the Interested Party was claiming ownership of the subject land through purchase from a Third Party who was not available to testify and did not consider that the ex-parte applicant had lived on the land since 1987, while the Interested Party started laying his claim thereon from 2003 when he purchased the land from Kalua Mbono(Deceased). Counsel further submitted the Ministers judgement was not just and equitable as it was not reached based on the overriding objective of the Ministers mandate to ensure fairness.

The Respondents Case

5. The Respondent filed Grounds of Opposition dated 23rd July 2018 claiming as follows: -

i) That there is no cause of action against the Respondent since the Deputy County Commissioner Ikutha Sub county acted within his power as set out in section 29 of the Land Adjudication Act Chapter 284 Laws of Kenya.

ii) That the application is frivolous, vexatious and misconceived as against the Respondents as the judgement delivered by the Respondent was in accordance to the rules of natural justice.

iii) That the application is devoid of any merit as against the Respondent and is therefore an abuse of court process

The Interested Party's Case and submissions

6. The Interested Party filed a replying affidavit and stated that the dispute between him and the Applicant had been dealt with by panels of competent jurisdiction from the Committee stage to appeal to the Minister and the same were heard on merit and conducted with professionalism and that he was held to be the owner of the suit land. He insisted that the rules of procedure were adhered to with each party being allowed to call his/her witnesses, and to produce their documents.

7. The Interested Party claims that he filed a court case No.63 of 2017 at Mutomo Law Courts where the Ministers decision was adopted and the ex parte applicant was ordered to vacate the suit premises. He claims that the ex parte Applicant has no justification whatsoever in bringing these proceedings and that she has not shown how the Respondent procedurally erred or acted *ultra vires* his powers.

8. The Interested Party claims that the Application herein is incompetent for the reasons that the application for leave to institute these proceedings was filed out of time having been filed on 25th January 2018, approximately eight months and twenty days after the judgment of the Minister's Appeal was delivered which offends the provisions of Section 9 of the Law Reform Act and Order 53(2) of the Civil Procedure Rules(2010). That the ex parte Applicant has not faulted the procedure followed during the appeal to the Minister but she has dwelt on the merits of the case contrary to the tenets of judicial review.

9. In addition to the Replying Affidavit, the Interested Party filed Grounds of Opposition dated 16th October 2018 opposing the present application on grounds that:

1. The application is mischievous, misconceived, vexatious, frivolous and an abuse of court process and so it should be struck out.

2. The application is a non-starter as the same does not disclose any cause of action. The same does not comply with Order 53(2) of the Civil Procedure Rules(2010), Section 9(2) and 9(3) of the Law Reform Act and Section 29 of the Land Adjudication Act CAP 284.

3. The application does not disclose any cause of action which warrants that orders of Judicial Review be granted and does not show how the Deputy County Commissioner acted *ultra vires* or unprocedurally.

4. The Judicial Review Application is incompetent as the same was filed out of time and as such this court lacks jurisdiction and should be expunged from the court record.

5. The motion lacks merit by delving into the merits of the decision dated 5th July 2017 as opposed to the process.

10. Counsel for the Interested Party submitted that Section 9(3) of the Law Reform Act provides that leave for an order of certiorari must be made within six months after the date of such decision and that this position is replicated in Order 53(2) of the Civil Procedure Rules(2010). He stated that the Applicant's Chamber Summons Application seeking leave to file this judicial review application was filed on 25th January 2018 while the judgment in the Minister's Appeal was delivered on 5th July 2017, outside of the prescribed six months. They also added that the Ex parte Applicant did not seek leave to cure the delay. They relied on the decision in **Ako v Special District Commissioner Kisumu and Another(1989)eKLR** where the court found that the six months limitation period is absolute and **Republic v Council of Legal Education & another Ex parte Sabiha Kassamia & Another (2018)eKLR** which was dismissed for being out of the six months period. Similarly, the Interested Party stated that leave was granted to file the Notice of Motion Application within 21 days on 19th April 2018 but the ex parte Applicant missed the 21days timeline and filed the substantive Notice of Motion Application on 5th May 2018.

11. The Interested Party submitted that the notice of motion is incompetent for the reason that in breach of section 107 of the Evidence Actthe applicant failed to itemize the manner in which the principles of natural justice were breached.He further claims that both the verifying Affidavit to the substantive notice of motion and the supporting affidavit do not annex documents as exhibits despite being made under oath. He also claims that the Applicant did not place before the court the proceedings and decision of the Minister in an admissible wayHe relied on the cases of **Republic vs Kenya Power & Lighting Company Limited & Another (2013)eKLR**, **Commissioner General, Kenya Revenue Authority through Republic v Silvano Owaki t/a Mareng Filing station(2001)eKLR** and **Republic v Busia Chief Magistrate & 2 others Ex parte Mathias Murumba Makokha(2016) eKLR**

12. Further, the Interested Party submitted that the Ex parte Applicant failed to itemize the grounds upon which the Notice of Motion was premised contrary to the rule in Order 51 Rule 4 of the Civil Procedure Rules.

13. Lastly, the Interested Party submitted that the applicant has not adduced evidence to prove that the Judgment of the Respondent was unreasonable and relied on the case of **Republic vs Kenya Revenue Authority & Another Ex parte Bear Africa(K) Limited** where the court found that judicial review is concerned with the process a statutory body employs to reach its decision and not the merits of the decision itself.

Analysis and Determination

14. Having considered the notice of motion dated 30th April 2018 the Chamber summons for leave, verifying affidavit, supporting affidavit and Statement of Facts and the grounds of opposition by the Respondent, the grounds of opposition and replying affidavit of the Interested Party and all the supporting documents and submissions on record, I opine that the following issues are for determination:

- A) Whether the application for leave filed on 25th January 2018 and Notice of Motion application filed on 5th May 2018 were filed out of time.
- B) Whether the substantive Notice of Motion is competent
- C) Does the substantive notice of motion have merit and should the Judicial review orders sought be granted?

A) Whether the application for leave filed on 25th January 2018 and Notice of Motion filed on 5th May 2018 were filed out of time.

15. This issue is premised on the Interested Party's claim that the Ex parte Applicant seeks an order of *Certiorari* to quash **Minister's Appeal No. 33 of 2012 Ruth Kavengi Mulyunga -versus- Musyoka Mbeni Kimuli** delivered on 2nd August 2017 in respect of **Land Parcel Number 39 ILAMBA "A" ADJUDICATION SECTION** contrary to Section 9 of the Law Reform Act and Order 53(2) of the Civil Procedure Rules(2010) that provide that the judicial review application should be filed within 6 months from the date the decision was given.

16. Section 9(3) of the Law Reform Act provides that,

"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 proceeding 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."

The above provision is replicated under Order 53(2) of the Civil Procedure Rules.

17. The Court of Appeal in the case of **Ako v Special District Commissioner Kisumu & another [1989] eKLR** found that leave shall not be granted unless application for leave is made inside six months after the date of the judgment and stated that: -

"It is plain that under sub-section (3) of section 9 of the Law Reform Act Cap 26 leave shall not be granted unless application for leave is made inside six months after the date of the judgment. The prohibition is statutory and is not therefore challengeable under procedural provisions of the Civil Procedure Rules, more specifically order 49 rule 5 which permits for enlargement of time."

18. It is noted that in the present case the court is not dealing with an application for leave. The applicant applied for leave by way of the chamber summons dated 22nd January 2018 and filed in court on 25th January 2018. The court record shows that the application was placed before the Judge on 26th January 2018 and the court directed that *"The application be fixed for hearing in the usual manner. The Applicant*

to address the court if indeed the application was filed within six (6) months". The application was fixed for hearing on 19th April 2018 when the court after hearing the Counsel for the Applicant allowed the application as prayed and directed that the motion be filed within 21 days. The substantive notice of motion dated 30th April 2018 was filed on 9th May 2018 which date was well within the 21 days granted. It is noted from the Court record that the exparte applicant informed the court that "the decision was made on 2nd August 2017."

19. Leave having been granted the court finds that the question for determination is whether this Court may enter into an investigation as to whether leave was properly granted and whose possible outcome would be to set aside the said leave. That this Court has jurisdiction to set aside leave granted in judicial review proceedings is not in doubt. The Court of Appeal made this clear in **R vs. Communications Commission of Kenya & 2 Others ex Parte East Africa Televisions Network Ltd. Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199** where it held:

"The appropriate procedure for challenging such leave subsequently is by an application by the Respondent under the inherent jurisdiction of the Court, to the Judge who granted leave to set it aside." See also **Njuguna vs. Minister for Agriculture Civil Appeal No. 144 of 2000 [2000] 1 EA 184.**

20. Such an application as envisaged above has not been filed and the Interested party has sought to challenge leave granted by way of the replying affidavit and through submissions during the hearing of the substantive notice of motion. I am of the view that the failure to file an application for setting aside the grant of leave does not preclude the Interested Party or any party from raising matters that vitiate the grant of leave during hearing of the substantive application for judicial review.

21. In the present case I have looked at the decision in the Minister's Appeal and note that the same was made on the 5th May 2017. The said date appears on the stamped and signed judgement by the Deputy County Commissioner. The said judgement was certified as a true copy of the original on 2nd August 2017. The Chamber Summons application to seek leave to file the judicial review application herein is dated 22nd January 2018 and was filed on the 24th of January 2018, eight months after the decision was delivered. It is therefore my view that when the Counsel for the exparte Applicant who appeared before court on 19th April 2018 he wrongly informed the court that the Respondents decision was made on 2nd August 2017 and the application for leave was filed on 25th January 2018. It is on the basis of the said misleading information that leave was granted. It is the courts finding that the application for leave was filed outside of the time provided for under Section 9 (3) of the Law Reform Act and Order 53 (2) of the Civil Procedure Rules.

22. It is well established that a person who makes an exparte application to court is under obligation to candidly, fairly, frankly and faithfully make the fullest possible disclosure of all material facts within his knowledge. An Applicant who fails to discharge this duty of good faith cannot obtain advantage from the proceedings and must be deprived of any advantage gained from such conduct.

23. The question then that arises is determination of consequences for failure to file the application for leave within the time provided for under Section 9 (3) of the Law Reform Act and Order 53 (2) of the Civil Procedure Rules. Following the decisions relied upon by Counsel for the Interested Party to show that the six months limitation under Section 9 (3) of the Law Reform Act is mandatory (**Ako v Special District Commissioner Kisumu & another [1989] eKLR and Republic v Council of Legal Education & Another Ex parte Sabilha Kassamia & Another (2018) e KLR**) I find that failure to conform with the provisions of Section 9 (3) of the Law Reform Act and Order 53 (2) of the Civil Procedure Rules is fatal to the application herein.

24. The court has considered developments made post the Constitution of Kenya 2010 period which have seen the scope of judicial review expanded significantly beyond the provisions of the Law Reform Act and Order 53 of the Civil Procedure Rules. In **National Social Security Fund v Sokomania Ltd & another [2021] eKLR Okongo J stated as follows: -**

"Leave is however still required in my view where an applicant for judicial review moves the court under the Law Reform Act Chapter 26 Laws of Kenya and Order 53 of the Civil Procedure Rules. Following the promulgation of the Constitution of Kenya, 2010 and Fair Administrative Action Act, 2015, applicants for judicial review orders have a choice. They can anchor their judicial review applications under the Constitution of Kenya 2010 and/or the Fair Administrative Action Act, 2015 in which case they will not need leave of the court or go for the same relief under the Law Reform Act Chapter 26 Laws of Kenya and Order 53 of the Civil Procedure Rules like in the present case and be bound to seek leave of the court."

25. The requirement for filing an application for leave within six months from the date of the decision sought to be reviewed is a requirement of Section 9 (3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules. The Applicant anchored his application for leave under the provisions of Order 53 Rule 1 (1) and (2) of the Civil Procedure Rules and the substantive Notice of Motion was anchored under the provisions of Order 53 Rule 3 (1) of the Civil Procedure Rules. He was thus bound to comply with Order 53 Rule 2 and file the application for leave within the six months period.

26. In the case of **Stephen Kibowen v Chief Magistrate's Court Nakuru & 2 others [2017] eKLR** the Court of Appeal cited exceptions to the strict application of the six-month limitation period where the decision being challenged was a nullity. The court stated thus: -

"Did the learned Judge so wrongly exercise his discretion as to warrant our interference" We are afraid so. It is clear from the brief ruling that the learned Judge took a strict approach to the 6-month limitation period and concluded that the application before him was incompetent. Ordinarily, such a conclusion would be unimpeachable but, in the matter before the learned Judge, what was being challenged was not a decision properly made within jurisdiction against which time could run. Rather it was a nullity which amounted to nothingness. It was therefore incapable of commencing a reckoning of time and was definitely incapable of triggering a statutory bar, being in every respect barren and of no effect. Had he given full consideration to the nature of the order being challenged before him he would likely have arrived at a different decision."

27. In the present case there is nothing on the face of the decision by the Respondent to show that the same was a nullity incapable of

triggering a statutory bar. I therefore find that the Applicant filed the Chamber summons application dated 22nd January 2018 seeking leave to file an application for prerogative orders of certiorari outside of the mandatory period provided for under Section 9 (3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedures Rules. I find that the leave granted was thus improper and the same is hereby set aside. I further find that the Notice of Motion 30th April 2018 was incompetent for having been filed based on leave granted out of time and the same is subject to dismissal on that ground alone.

28. I will however proceed to consider the other grounds on which the application is anchored on.

B) Whether the substantive Notice of Motion is competent

29. The basis for this issue is the Interested Parties contention that the Judicial review application should be struck out for failing to attach the impugned decision to the Verifying affidavit and for failure to itemize the Grounds of the application in the substantive Notice of Motion. The Interested Party contends that the Notice of Motion filed does not contain grounds on which the applicant relies on. That the verifying affidavit and supporting affidavit attached to the Notice of Motion do not properly annex documents as exhibits and that the allegations contained in the statements of facts are not reiterated in the verifying affidavit and the supporting affidavit under oath.

The provisions of Order 53 Rule 1 (2) state as follows: -

a. An application for such leave shall be made ex parte to a judge in chambers, and shall be accompanied by — a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the applicant and the respondent, over the same subject matter and that the cause of action relates to the application.”

30. I find that the verifying affidavit sworn on 22nd January 2018 and the supporting affidavit sworn on the same day and which accompanied the Chamber Summons application clearly contain the facts stated in the Statement of Facts as well as attach the documents relied upon as exhibits. In particular paragraph 7 of the Applicants supporting affidavit attaches the judgement of the Deputy County Commissioner as an exhibit.

31. Order 53 (3) provides that when leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court. While Rule 4 provides that Copies of the statement accompanying the application for leave shall be served with the notice of motion, and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement.

32. On the question of the grounds in support of the Notice of Motion as provided under Order 51 Rule 1 of the Civil Procedure Rules, I find that Judicial Review proceedings are a specialized procedure sui generis that are neither criminal nor civil in nature which only apply the provisions of Order 53 of the Civil Procedure Rules but do not apply any other provisions of the Civil Procedure Act or rules. I find that Order 50 of the Civil Procedure Rules does not apply to Judicial Review proceedings. This view has been accepted in many cases and in **Republic v Kahindi Nyafula ex parte Kilifi South East Farmers’ Cooperative, High Court, Malindi, Jud. Rev. 3 of 2013 (2014) eKLR**, the court pronounced itself as follows:

“Judicial Review proceedings under Order 53 of the Civil Procedure Rules are a special procedure. A party, other than invoking the provisions of Order 53 cannot invoke the provisions of the civil Procedure Act and the Rules made thereunder.”

c) Is the application merited and should the Judicial review orders sought be granted?

33. It is important to note that this is a Judicial Review Application against a decision arrived by an independent judicial process and it is not an appeal against the Ministers decision. Indeed, the Court cannot in judicial review proceedings sit on appeal on the Minister’s decision. In **Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR**, the Court stated thus;

“...To put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

34. The Applicant claims that the Respondent did not follow the rules of natural justice, he did not act fairly and that he was biased. Essentially, natural justice requires that a person receive a fair and unbiased hearing before a decision is made that will negatively affect them. The three main requirements of natural justice that must be met are adequate notice, fair hearing and no bias. In **Msagha vs. Chief Justice & 7 Others Nairobi HCMCA no. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553** it was held:

“The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material.”

35. In the present case the Applicant has not pleaded or proved particulars of unfairness or bias. Indeed, she confirms that she was notified of

the hearing of her appeal and she attended and was heard and she presented witnesses. The applicant's complaint is that the Respondent did not accord the case the consideration he was supposed to. In my view and upon review of the judgement of the Respondent, I find that the Respondent reviewed and analyzed evidence presented by both parties and their witnesses in coming to his conclusion. This Court's mandate is not to go into the merits of the decision or to sit on appeal on the Respondents decision. I have found no proof of any wrongdoing on the part of the Respondent in the way the appeal was conducted.

36. Further the Ex parte Applicant claims that the Respondent did not consider the fact that she had lived on the land since 1987 while the Interested Party started laying claim on the land from 2003 when he claimed he allegedly purchased the land from the late Kalua Mbuno who could not be called as a witness to confirm the allegations. The Applicants clearly seeks a reconsideration of the evidence adduced during the appeal. The law is clear that the Court cannot rehear and re-litigate matters of land adjudication. The courts role is only supervisory. This was aptly captured by **Okongo Jin Tobias Achola Osidi & 13 Others vs. Cyprianus Otieno Ogalo & 6 others (2013) eKLR** where the court held as follows;

*“It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interest in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act. It is for this reason that, there is injunction under section 30 of the Act to any civil suit being instituted over an interest in land in an adjudication area save with leave of the Land Adjudication Officer. The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. (Emphasize added). As I have mentioned above, the process is elaborate. It is also inclusive in that it involves the residents of the area concerned. I am fully in agreement with the submission by the advocates for the defendants that the Land Adjudication Officer cannot transfer the exercise of this power to the Court. The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. **In my view, the role of the court is supposed to be supervisory only of the adjudication process.** The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. (Emphasize added). The court cannot however usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in land”. The courts role is limited to supervision and enforcement of the decisions of adjudication bodies. The courts also ensure that the process of adjudication is undertaken in accordance with the law. Unfortunately, the Applicant has exhausted his mechanisms of Appeal and cannot come for a further Appeal to this Honourable Court.*

37. I therefore find that on the merit of the case, the ex parte applicant has not proved that the proceedings and decision of the Respondent violated rules of natural justice and that the Respondent was biased. She has also not shown that the decision was contrary to the evidence adduced to the extent to warrant interference by the Court.

38. I have further considered prayer number 2 of the notice of motion dated 30th April 2018 that seeks: -

“THAT an Order of Mandamus directing the Deputy County Commissioner, Ikutha Sub-County to vacate his decision delivered on 2/8/2017 in Appeal No. 33 of 2012 Ruth Kavengi Mulyunga-versus-Musyoka Mbeni Kimuli and to re-hear the appeal.”

39. In my view the above prayer is the same as prayer 1 of the Notice of Motion dated 30th April 2018 that seeks an order of certiorari only that prayer 2 is couched in mandatory terms. The prayer seeks the Deputy County Commissioner, Ikutha Sub-County to vacate his decision delivered on 2nd August 2017. The applicant has not shown to court the factual and/or legal provisions such an order can be anchored upon and I therefore find the said prayer untenable.

40. In the end I find that the Notice of Motion dated 30th April 2018 lacks merit and the same is hereby dismissed with costs to the Respondent and the Interested Party.

DELIVERED, DATED AND SIGNED AT KITUI THIS 21ST DAY OF APRIL, 2022

HON. L. G. KIMANI

ENVIRONMENT AND LAND COURT JUDGE

Judgement read in open court in the presence of-

C. Nzioka: Court Assistant

M/S Ngala for the Exparte Applicant

No Attendance for the Respondent

Mr. Nzioki for the Interested Party