



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CIVIL APPLICATION (ELC) NO. 361 OF 2011

PAUL NJUNGE CHEGE ALIAS PAUL KILOKU.....1ST APPLICANT

GACHONGO MUNYAMBU.....2ND APPLICANT

VERSUS

MANDAINE ENE RIPOI SURUM.....1ST RESPONDENT

SIRONGA OLE KEKUTA.....2ND RESPONDENT

DISTRICT LAND ADJUDICATION

& SETTLEMENT OFFICER (NAROK NORTH).....3RD RESPONDENT

RULING

1. This Ruling concerns an Application by way of a Notice of Motion dated 8th October 2011 and filed in court on 13.10.2011 (*the Application*), in which the two applicants seek leave of court to appeal to the Minister under Sections 26(1) & (2) and 29(1) of the Land Adjudication Act, (*Cap. 284, Laws of Kenya*).
2. Section 26(1) of the Land Adjudication Act provides -

26(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may within sixty days of the date upon which the notice of completion of the adjudication register is published object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.

(2) The adjudication officer shall consider any objection made to him under sub-section(1) of this Section, and after such further consultation and inquiries as he thinks fit, he shall determine the objection.

Section 29 of the said Act provides -

29(1) Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the

Minister by -

- (a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and*
- (b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final,*
- (3) is consequential to the Minister's decision,*
- (4) authorizes the Minister to delegate his power to hear appeals.*

3. The Motion was served upon the 3rd Respondent on 1st February 2012, and upon the 1st and 2nd Respondents on 15th February 2012. By the time this application was heard, none of them had filed any objection to the application.

4. The matters complained of in this application concern events which blight the history of this country, and the importance of the maintenance of the rule of law at all times, whether during war, or ethnic tensions and sporadic clashes and displacement of Kenyans internally.

5. The Applicants herein were bona fide purchasers of land for value in an area known as KOJONGA ADJUDICATION SECTION, NAROK NORTH DISTRICT. The 1st Applicant had purchased 2 acres of land, while the 2nd Applicant had purchased 7¹/₂ acres or thereabouts of land. They both have valid, binding and enforceable Sale Agreements.

6. However following the post-ethnic clashes and violence of 1992, both Applicants fearing for their own and the personal safety of their families moved out of their respective parcels of land. The 1st Applicant went to live in his father's land at Mushuru a place about 4 km from the parcels of land. The 2nd Applicant moved to Ngecha in Limuru Division to live with his relatives.

7. Unknown to the Applicants, the objections were heard by the Land Adjudication Officer (*Narok North District*) on 30th March 2009 and again on 21st October 2009 in the Applicants' absence and decisions were made in favour of the 1st and 2nd Respondents respectively. The applicants say on oath that none of them was notified of either the objections or the dates of the hearing of the objections. The Applicants also aver that both the 1st and 2nd Applicants knew that the 1st Applicant lived at Mushuru not far from the suit land and summoning him would not have been difficult.

8. Now that there is restoration of peace, and there is strong maintenance of law and order, the applicants approached the Land Adjudication Officer Narok North District who has authorized them in terms of Section 30(1) of the Land Adjudication Act by letter dated 10th August 2011 to bring these proceedings for leave to appeal out of time in respect of Plot No. 109 Kojonga Adjudication Section. There is no reference in the authorization letter to Plot No. 33 Kojonga Adjudication section but the sale agreements and the proceedings on objection proceedings before the Adjudication Officer relate to both plots.

9. Section 59 of the Interpretation and General Provisions Act, (*Cap. 2 Laws of Kenya*) provides -

59. Where in any written law a time is prescribed for the doing of an act or taking of proceedings, and power is given to a court or other authority to extend that time, then, unless a contrary intention appears, the power may be exercised by the court or other authority although the application for extension (of time) is not made until after the expiration of the time prescribed."

10. There is no provision for extension of time in either Section 26 or Section 29 of the Land Adjudication Act. Both Sections only prescribe periods within which objections (*in respect of the Adjudication Register*), and appeals (*to the Minister*) may be made.

11. The Applicants have cited Sections 1A, 1B of the Civil Procedure Act (*Cap. 21, Laws of Kenya*), (*the oxygen provisions*) as a basis for asking the court to exercise its discretion to enlarge time within which the Applicants may appeal to the Minister. These provisions do not with respect to counsel, help the Applicants. The more appropriate provision would be Section 3A of that Act, that nothing in the Act limits or otherwise affects the power of court to make such orders as may be necessary for the ends of justice

12. The Applicants have painted a rosy picture of themselves, but have not explained why they have not come to court since being given authority on 30/03/1998 (*in respect of Gachongo Munyambu*) and 10th August 2011, and only came to court this month of March 2012.

13. There could be a myriad of other explanations, but the most telling of them is probably insecurity in the area, and fear for their personal safety.

14. Article 159(1) of the Constitution of the Second Republic says that judicial authority is derived from the people and vests in, and is exercised by the courts and tribunals by or under the Constitution. Article 159(2) says that in exercise of judicial authority, the courts and other tribunals shall be guided by the principles inter alia that justice shall be done to all, irrespective of status.

15. The question, I would ask myself would be, what would be the people, untrained in the mechanisms of the law think and decide, in a situation such as this one, where the applicants purchased property within Kenya (*and Kenyans are entitled to live anywhere in Kenya*), and have been forced to move away, for personal security, and now approach the court to enable them pursue legal procedures which would enable them to return to their property? If the time within which to pursue those procedures has expired and no prejudice would be done to the Respondents, I would certainly extend or enlarge that time. This would ensure that substantial justice is done to all, both the Applicants and the Respondents as the Minister or his authorized agent under Section 29(4) of the Adjudication Act would hear all sides of the rival claims.

16. Being therefore of the above mind, and in exercise of the discretion conferred upon this court by both the Constitution, the Civil Procedure Act, to do substantial justice, I hereby allow the applicants Notice of Motion dated 8th October 2012 and filed on 15th October, 2012.

Dated, signed and delivered at Nakuru this 23rd day of March, 2012

M. J. ANYARA EMUKULE
JUDGE