



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

HC MISC APP. NO. 100 of 2011

LESIIT, J

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT

CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT

CAP 40 LAWS OF KENYA

AND

IN THE MATTER OF THE PUBLIC AUTHORITIES LIMITATIONS ACT

CAP 39 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE SUIT OUT OF TIME

VERSUS

**JAMES MARETE THURANIRA &
ANDREW MIRITI THURANIRA**

As legal Representatives of the Estate of

M'THURANIRA KIRERU – DECEASED.....APPLICANTS

R U L I N G

This is an ex-parte Originating Summons brought under the Limitation of Actions Act Cap 22, Government Proceedings Act Cap 39 and Public Authorities Act Cap 39. It is dated 20th July 2011. The application seeks leave as legal representatives of the deceased named to be granted to the Applicants to file a suit out of time against the Attorney General, for and on behalf of the District Land Adjudication and Settlement Officer, Tigania West/East District and another for various reliefs, declarations and orders in respect of Land Parcel No. 1514 situated within Athiga Athaiya Adjudication Section belonging to the deceased.

The grounds for the application are cited on the face of the application and in the supporting affidavit sworn by the applicants and annexures thereto.

I considered submissions by Mr. Nyamu Nyaga, counsel for the Applicants. In brief counsel for the applicants were aggrieved by a decision made by the Adjudication Officer made two years after the officer conceded the matter, without notice, and in which the deceased was dispossessed of his land.

I have carefully considered the application, affidavits and annexures in support and submissions by counsel. I am satisfied that the applicants have demonstrated that the process used by the government officer was void ab-initio. First for reason that no notice of date the decision on the objection was to be delivered was served on the deceased.

The applicants who are the legal representatives of the deceased cannot be blamed for delay in filing the suit second the decision was delivered against a deceased party.

Thirdly and most important the objection in question was heard in the absence of the deceased, and at a time he was already deceased. Prima facie the process applied by the Adjudication Officer was null and void for breach of the rules of natural justice.

I do find merit in this application. Accordingly I grant leave sought in terms of prayer 1 of the ex-parte Originating Summons dated 20th July 2011.

Dated, signed and delivered this 28th day of July 2011.

LESIT, J
JUDGE