



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. APPLICATION NO. 96 OF 2010 (JR)

IN THE MATTER OF: AN APPLICATION BY MWANASHA SALIM NGARE, FATUMA OMAR ALI, MWAPENGU OMARI ALI AND MOHAMED OMAR BAKARI, FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI DIRECTED AT THE KWALE LAND REGISTRAR AND PROVINCIAL SURVEYOR COAST PROVINCE

IN THE MATTER OF: THE REGISTERED LAND ACT CAP 300 LAND DISPUTES ACT SURVEY ACT CAP 299 OF THE CONSTITUTION, THE LAW REFORM ACT CAP 26 LAWS OF KENYA AND ORDER LIII RULE 1(1) AND 2 OF THE CIVIL PROCEDURE RULES

BETWEEN

REPUBLIC OF KENYA.....APPLICANT

AND

1. MWANASHA SALIM NGARE

2. FATUMA OMARI ALI

3. MWAPENGU OMARI ALI

4. MOHAMED OMARI BAKARI.....EX-PARTE APPLICANTS

AND

1. ALI MUMBWE MLEVI

2. MOHAMED OMAR BAKARI

3. JUMA MAKOBA.....INTERESTED PARTIES

RULING

1. The ex-parte applicants Mwanasha Salim Ngare, Fatuma Omari Ali, Mwapengu Omari Ali and Mohamed Omari Bakari, have moved this court under order 49 Rule 5 of the Civil Procedure Rules, and section 3A of the Civil Procedure Act seeking enlargement of time, by a further 7 days to enable the applicants file the substantive notice of motion for orders of certiorari.

2. Apparently the applicants were granted leave on 17th September, 2010 to apply for orders of certiorari

and prohibition against the Kwale Land Registrar and Provincial Surveyor Coast Province. In an affidavit sworn on 9th November, 2010 by the applicants advocate Martin Tindi Khaemba, it is averred that the applicants were unable to file the substantive application within the mandatory 21 days because they were unable to raise the requisite court fees.

3. I have given due consideration to this application. The power of the court to make orders of mandamus, prohibition and certiorari is a special jurisdiction granted under section 8 of the Law Reform Act. Section 9 of the Law Reform Act provides for the making of specific rules of procedure relating to the orders of mandamus, prohibition and certiorari. These rules have been provided under Order 53 of the Civil Procedure Rules. In my view the application of the Civil Procedure Rules to application for review is limited to Order 53. Thus the general rules provided in the Civil Procedure Rules do not apply.

4. Order 53 Rule 3(1) is a mandatory provision. It provides that where leave is granted to apply for orders of judicial review, the substantive application must be filed within 21 days. There is no provision for extension of time and the application is therefore misconceived.

5. Further, assuming that the court could extend time, the applicants have not made out any clear case that would justify the exercise of the court's discretion in their favour. This is because the explanation given for the delay has not been substantiated. None of the applicants has sworn any affidavit to explain their circumstances or confirm the implication that they are truly indigent and unable to raise the required court fees. Instead the applicants have relied on an affidavit sworn by their advocate who has merely made a blanket statement that the applicants were unable to raise the requisite court fees. No explanation has been given for this inability. Nor has there been any explanation as to why it took the applicants another 30 days from 8th October, 2010 after the 21 days expired, to 9th November, 2010 when the application for extension of time was made. Thus there is no just or equitable cause for the court to extend time.

5. For the above reasons I find that the application dated 9th November, 2010 must fail. It is accordingly dismissed.

Dated, signed and delivered this 21st day of November, 2011.

H. M. OKWENGU
JUDGE

In the presence of:

Koech H/B for Tindi for Ex-Parte Applicants

Advocate for Interested Parties absent

Kiponda Court Clerk