



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPLI 951 OF 2004
IN THE MATTER OF AN APPLICATION BY MUSYOKA KAVINGO FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW
AND
IN THE MATTER OF THE MINISTRY OF LANDS AND SETTLEMENT & HOUSING
AND
IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 OF LAWS OF KENYA
BETWEEN
MUSYOKA KAVINGO APPLICANT
VERSUS
MINISTER FOR LANDS & SETTLEMENT & HOUSING.... 1ST RESPONDENT
WANZA ILELI 2ND RESPONDENT
(An Appeal from the decision of Minister of Lands, Settlement and Housing in Appeal No. 1695 of
1986 rendered on 24th May, 2004)

JUDGMENT

Mrs. Wanza Ileli is an old woman, presently 91 years of age, who has spent 27 years of her retirement life, fighting to keep and maintain her little piece of land in Kyanika, Kitui.

In 1980, the Land Adjudication Officer, Kitui District allowed her objection against Mr. Musyoka Kavingo, the Applicant before this Court, and awarded her “a portion” of the suit land. Unhappy with that decision, she appealed to the Minister of Lands, Settlement and Housing pursuant to the provisions of the Land Adjudication Act, Cap. 284 of the Laws of Kenya (hereinafter “the Act”). It took the Minister some 14 years to render his decision, which was handed down on 24th May, 2004. The Minister allowed her Appeal, and ordered that she be allocated 60% of the suit land, and the Applicant, 40%.

Now, it is the Applicant who is unhappy with that decision, which under Section 29(1) of the Act, is final. So, the Applicant has now moved to this Court, by way of a Judicial Review Application, under O.53, R. 3,4, and 7 of the Civil Procedure Rules, for an order of Certiorari

“to remove to the High court and quash the proceedings and decision made by Minister for Lands & Settlement & Housing on 24th May 2004 sub-dividing Land Parcel No. 878 into two portions and awarding 2nd Respondent 60% of the said land (southern portion) and MUSYOKA KAVINGO 40% of the remainder”

The application is based on the following three grounds outlined in the Notice of Motion:

(a) THAT the District Commissioner, Kitui acting for the Minister of Lands & Settlement & Housing entertained, heard and made a decision on an appeal which had been brought by the 2nd Respondent six (6) years after the award of the Land Adjudication Officer, Kitui.

(b) THAT the act of the Minister of entertaining the appeal by the 2nd Respondent herein and making the award was illegal, ultra vires and in contravention of Section 29 of the Land Adjudication Act, Cap 284 of Kenya.

(c) THAT the District Commissioner acting for the 1st Respondent herein relied on inconsistent facts in arriving at the decision thus the said decision was based on error of facts and the same ought to be quashed.

The main ground relied upon in this application is that the Second Respondent's Appeal to the Minister was out of time, and filed in contravention of Section 29 of the Act. According to the Applicant it was filed six years after the award of the Land Adjudication Officer. Section 29 of the Act prescribes a time limit of only 60 days.

However, in her Replying Affidavit, the Second Respondent has annexed her Appeal to the Minister showing that it was filed on 29th February, 1980, which is well within the 60 days prescribed in the Act. The Land Adjudication Officer's award was rendered on 18th January, 1980, 39 days before the Appeal to the Minister was filed. These facts have not been controverted by the Applicant. I accept these facts as deponed to by the Second Respondent **and find that the Appeal to the Minister was within the time prescribed in the Act**, and accordingly, grounds one and two of this application fail.

With regard to ground three, that “the First Respondent relied on inconsistent facts in arriving at the decision and the decision was based on error of facts,”, I find that the Applicant has failed to show what facts were inconsistent with what evidence, and how the Minister's decision was based on error of facts. In any event, in a Judicial Review application, the Court is not so much concerned with the **merits** of the decision, as it is with the **process** by which that decision was made. As long as the correct process in law was followed, the Court cannot, and will not, interfere with the decision itself. Here, I find that the Minister's decision was made in accordance with the law, it is final, and there is nothing to quash.

Accordingly, and for reasons outlined, I find that this application is completely without merit, and I dismiss the same with costs to the Respondents.

Dated and delivered at Nairobi this 20th day of February, 2007.

ALNASHIR VISRAM

JUDGE