



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MILIMANI**

**JUDICIAL REVIEW MISC.APPLICATION NO.54 OF 2019**

**REGISTERED TRUSTEES OF**

**REDEEMED GOSPEL CHURCH.....APPLICANT**

**VERSUS**

**THE NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**UMOJA RESIDENTS ASSOCIATION SUED THROUGH**

**ITS OFFICIALS P.S KINYANJUI (CHAIRMAN)**

**ARKIPO ONYANGO (SECRETARY).....1<sup>ST</sup> INTERESTED PARTY**

**NAIROBI CITY COUNTY.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

The Applicant was granted leave on 6/11/2019 to commence judicial review proceedings against the Respondents. It filed the substantive Notice of Motion dated 20/11/2019 seeking to quash the decision the 1<sup>st</sup> Respondent made on 12/02/2016 and communicated vide the letter dated 14/03/2016 threatening to revoke the Applicant’s title over Nairobi/Block 107/384.

The 2<sup>nd</sup> Respondent filed a notice of preliminary objection dated 24/02/2020 to the hearing of the Applicant’s notice of motion dated 20/11/2019 on the ground that the application offends Order 53 Rule 2 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act.

Parties filed submissions on the preliminary objection. The 2<sup>nd</sup> Respondent submitted that while the Applicant seeks to quash a decision made on 12/02/2016, and communicated on 14/03/2016, yet it instituted the proceedings on 01/11/2019 which was more than three years after the decision was made and outside the 6 months period provided for by Order 53 Rule 2 of the Civil Procedure Rules, 2010 and Section 9 of the Law Reform Act, CAP 26.

The 2<sup>nd</sup> Respondent relied on **Joram Kaberia v District Land Adjudication & Settlement Officer Igembe South & 2 Others [2018] eKLR** where the court dismissed a judicial review application filed more than 6 months from the date of the impugned decision even though leave had been granted to file the application, holding that it was possible to revisit grant of leave where a good reason was provided. In that matter, the court cited **Rosaline Tubei & 8 Others v Patrick K. Cheruiyot & 3 others [2014] eKLR** in which the court dismissed an application for extension of time for commencement of judicial review on the ground that the door to access the remedy of judicial review is firmly shut by effluxion of time.

The Applicant opposed the preliminary objection. It acknowledged that it had filed its motion outside the 6 months period stipulated under Section 9(3) of the law Reform Act but contended that the court had already exercised its discretion in granting it leave despite the fact that it was outside the stipulated timeline and therefore the Respondent should have made an application for review of the decision to grant leave instead of filing a preliminary objection. It relied on **Mramba Said Mramba & 8 others V. Chief Land Registrar, Mombasa & 5 others [2017] eKLR**, where the court stated that once a judge has given leave to commence judicial review proceedings, that decision to grant leave cannot be challenged except through a review of that decision. The Applicant also submitted that if the preliminary objection were to be allowed, then the case would have been decided on a technicality on time limit as opposed to the merits of the case, which is contrary to the spirit of the Constitution at Article 159(2). The Applicant further submitted that it would lose its property since the decision made on

12/02/2016 and the subsequent letter dated 14/03/2016 have the effect of revoking its title known as Nairobi/Block 107/384.

The court has considered the preliminary objection as well as the submissions and authorities cited. The preliminary objection dated 24/02/2020 was brought after this court had granted the Applicant leave to file its judicial review application. At the time of granting leave, the court noted that the application for leave was brought three years after the impugned decision. The Applicant also seeks prohibition which is not time bound like the order of certiorari.

The preliminary objection dated 24/012/2020 lacks merit and is dismissed. Costs shall be in the cause.

**DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF MARCH 2021.**

**K.BOR**

**JUDGE**

**In the presence of:-**

Ms. Cecilia Masinde for the 1<sup>st</sup> Respondent

Ms. Ruth Kerubo for the 2<sup>nd</sup> Respondent

Mr. V. Owuor- Court Assistant

No appearance for the Applicant and Interested Party