



M'Thiringi (Suing as the legal representative of the Estate of M'Thiringi M'Anampiu) v District Land Adjudication And Settlement Officer Karama Adjudication Section & another; Munya & 3 others (Interested Parties) (Environment and Land Judicial Review Case E007 of 2023) [2024] KEELC 598 (KLR) (7 February 2024) (Judgment)

Neutral citation: [2024] KEELC 598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E007 OF 2023**

CK NZILI, J

FEBRUARY 7, 2024

BETWEEN

NKOYAI M'THIRINGI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF M'THIRINGI M'ANAMPIU) APPLICANT

AND

THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER KARAMA ADJUDICATION SECTION 1ST RESPONDENT

THE OFFICE OF THE ATTORNEY GENERAL 2ND RESPONDENT

AND

KOBIA STEPHANIE MUNYA INTERESTED PARTY

ANDREW GITIRIME INTERESTED PARTY

SHADRACK GUANTAI INTERESTED PARTY

NKUBITU LICHUNGI INTERESTED PARTY

JUDGMENT

1. On 26.7.2023, the applicant was granted leave to commence judicial review proceedings to quash and prohibit the implementation of the decision made on 6.12.2022 by the 1st respondent regarding Objections No's 3084, 3086 and 3094 over Land Parcel No's. 1136, 7770, 11478 and 3866 Karama Adjudication Section. The notice of motion was to be filed within 21 days. A mention date was fixed for 28.9.2023 to confirm compliance.
2. Mr. Kiambi, an advocate, appeared before the court for the exparte applicant, while Mr. Ngeera and Mr. Mohammed appeared for the 1st – 3rd interested parties and the respondents, respectively. Counsel



for the applicant said they had filed a notice of motion on 16.8.2023 and served it upon the respondents and the interested parties.

3. The court directed the respondents and the interested parties to file their responses within 21 days and the motion to be canvassed by way of written submissions, the deadline being 15.11.2023.
4. During the mention on 21.11.2023, a judgment date was fixed for 7.2.2024. From the court record, this court has not come across any notice of motion filed on 16.8.2023 or dated 15.8.2023, which the respondents and the interested parties allude to in their responses and written submissions.
5. Efforts to trace any copy duly filed in our e-filing and e-payment systems for any date after leave was sought and obtained have been futile. Similarly, the ex parte applicant did not share any filed copy from their end with the court.
6. Once leave is granted the law provides a notice of motion shall be filed within 21 days from the date of leave or such other period as may be fixed by the court. From 26.7.2023, the notice of motion ought to have been filed by 16.8.2023.
7. Non-compliance with the timelines has consequences. The leave becomes spent. Anything else filed by the respondents and or interested parties becomes a nullity.
8. Without extending time and re-issuing of fresh leave, any proceedings thereafter are a nullity. He who alleges must prove. The onus was on the ex parte applicant to establish that she complied with the court's orders on time or at all. It is either the notice of motion was filed before the court through the production of duly stamped and paid receipts. It cannot be guesswork for the applicant or the court registry.
9. If the ex parte applicant had duly complied with the court orders, the original assessed and duly paid notice of motion, and the receipt would have been in the court file and not elsewhere.
10. Given the foregoing, I find it unnecessary to consider the respondents replying affidavits sworn by Anthony D. Mureithi on 16.11.2023, Kobia Stephen Imunya, Andrew Gitirime and Shadrack Buangai Ithiciu on 25.10.2023, the submissions dated 15.11.2023 and the 1st and 2nd respondents submissions dated 16.11.2023.
11. The same were filed against a notice of motion or Judicial review proceedings that had ceased to exist when the ex parte applicant failed to file the substantive notice of motion on time.
12. The upshot is that I find the proceedings a nullity. The same is dismissed with costs to the respondents and the interested parties.

File closed.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 7TH DAY OF FEBRUARY 2024

In presence of

C.A Kananu

Applicant

Aketch for ex parte applicant

Atheru for interested parties

Miss Mbaikyatta for 1st & 2nd respondents



HON. CK NZILI
JUDGE

