



Republic v Land Registrar; Bungoma & another; Grace Nasimiyu Mufutu (Exparte Applicant) (Miscellaneous Application E003 of 2024) [2024] KEELC 6741 (KLR) (11 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6741 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E003 OF 2024
EC CHERONO, J
OCTOBER 11, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE LAND REGISTRAR; BUNGOMA 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

GRACE NASIMIYU MUFUTU EXPARTE APPLICANT

JUDGMENT

1. The Ex parte Applicant commenced these proceedings vide a Notice of Motion dated 12th day of April, 2024 seeking leave to apply for an order of Certiorari to bring into this Honourable court for purposes of quashing the 1st Respondent’s action/decision that nullified/revoked land parcel Nos. Ndivisi/Ndivisi/2054 and 2055 and restored title NO. Ndivisi/Ndivisi/1044
2. The Ex parte Applicant also sought leave for an order of mandamus to compel the 1st Respondent to restore the name of the Ex-parte Applicant; Grace Nasimiyu Mufutu as the registered owner of Land parcels NO. Ndivisi/Ndivisi/2054 and Ndivisi/MUCHI/2055 respectively.
3. When that Ex parte application came up for directions, this Honourable Court directed the Ex parte Applicant to serve the same upon the Respondents for further directions/orders on 20/05/2024.
4. When the matter came up on the 20/05/2024, the Ex parte Applicant filed an affidavit of service indicating that the Respondents had been served. Upon being satisfied that the Respondents were duly served and no response had been filed, this Honourable Court granted leave to the Ex parte Applicant to file and serve a substantive motion for an order of certiorari to quash the action/decision of the



- 1st Respondent and for an order of mandamus to compel the 1st Respondent to restore the name of the Ex parte Applicant Grace Nasimiyu Mufutu as the registered owner of land parcels NO. Ndivisi/Ndivisi/2054 and 2055 respectively.
5. On 07/06/2024, the Ex parte Applicant complied with the directions of this Honourable court and filed the substantive Notice of motion supported by her affidavit sworn on 27th May, 2024 in which she stated that the suit land parcel NO. Ndivisi/Ndivisi/1044 Measuring approximately 10.16 Ha was registered in the name of Philip Sambu Sasaka who passed away on 04/12/1980. She further stated that prior to the passing on of the said Philip Sambu Sasaka, her husband Mufutu Masake had bought 12 acres of the suit land from Philip Sambu Sasaka out of the suit land parcel NO. Ndivisi/Ndivisi/1044. She annexed a copy of the certificate of search, a sale agreement dated 30/08/1971 as GNM-(Ii). (II) and (III) respectively. She stated that by the time Philip Sambu Sasaka died on 04/12/1980, the land had not been formally sub-divided and registered in the name of her husband. She deposed that vide Bungoma HC Misc. Summons Application NO. 100 of 2002, she cited one Frank Mukoyani Sambu, the son of Philip Sambu to apply for succession but failed to respond to the court Summons making the court to grant her leave to apply for an order for citation. She annexed a copy of the said order marked GNM-IV. She further stated that vide Bungoma Succession Cause NO. 75 of 2002, she applied for letters of Administration in respect of the Estate of Philip Sambu Sasaka and served upon Frank Mukoyani Sambu but failed to respond making the Court to grant her grant of letters of succession. She then proceeded to have land parcel NO. Ndivisi/Ndivisi/1044 registered in her name. She annexed a copy of the application, grant and a certificate of official search as GNM-V(a) to v(f), GNM-VI and GNM-VII respectively. Thereafter, she caused to be subdivided the said land into 2 portions being LR NO. Ndivisi/Ndivisi/2054 Measuring Approximately 5.19 Ha and Ndivisi/Ndivisi/2055 comprising 4.58 Ha and had each of them registered in her name. She annexed copies of mutation forms and marked GNM-VIII(a) to (d).
 6. Before taking any further step, Frank Mukoyani filed an application to revoke her citation and upon being served, they entered into a consent in which the citation was revoked and Frank Mukoyani was to take over the Administration of the estate and confirm the grant within 60 days. A copy of the application and consent are annexed and marked GNM-ix (a) to (e) and GNM-x respectively. However, Frank Mukoyani failed to implement the said order and subsequently died in the year 2009 before implementing the said order.
 7. It is obtained that land parcel NO. Ndivisi/Ndivisi/2054 and 2055 were still registered in his name and subsequently, she subdivided land parcel NO. Ndivisi/Ndivisi/2055 into several numbers; about 22 no. and sold the portions to people. She annexed a map and marked GMN XI
 8. The applicant further stated she made several efforts to deal/transact in the said parcels but the Respondent deliberately hid the green card and always frustrated her purporting that the same was lost and/or misplaced.
 9. She stated that the continued withholding of the green card by the Respondent appears deliberate aimed at obstructing her ability to proceed with transactions related to the said parcels. She stated that vide Gazette Notice NO.6789 of December 2021, the Respondent (Land Registrar) published the loss of the Certificate of Title deed NO. Ndivisi/Ndivisi/2054 and 2055 and that at the time of the said publication, the two Titles NO. Ndivisi/Ndivisi/2054 and 2055 were still registered in her name. She stated that on 15th March 2021, she was surprised to learn that the Land Registrar on her own volition and without any colour of right purported to cancel the two Titles NO. Ndivisi/Ndivisi/2054 and 2055 registered in her name and reverted land parcel NO. Ndivisi/Ndivisi/1044 in the name of Philip Sambu Sasaka (deceased). She stated that the actions by the Land Registrar are unlawful and have occasioned a miscarriage of justice.



10. The Respondent did not file response to the application and having satisfied itself that service upon the Respondent was proper, this Court directed the application as unopposed.

Legal Analysis And Decision

11. I have considered the Notice of Motion application dated 28th May 2024, the statutory statement, verifying affidavit, the annexures thereto and the submissions by the applicant's counsel.
12. It is trite that that judicial Review jurisdiction is a special jurisdiction governed under Section 8 & 9 of the Law Reform Act and Order 53 of the Civil Procedure Act. Section 8 & 9 are the substantive Law while Order 53 of the Civil Procedure Rules is the procedural law. By those provisions, the court is mandated to issue orders of certiorari, mandamus and prohibition in appropriate judicial Review proceedings. However, applications for prerogative orders have a limitation period of six (6) months as stipulated under Section 9(3) of the Law Reform Act as follows

“ In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or any other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings is subject to appeal, and a time is limited by law for bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
13. It goes without saying that an applicant seeking an equitable relief of the nature of certiorari, mandamus or prohibition must do so within the statutory period of six (6) months from the date of the impugned decision.
14. The applicant in these proceedings is challenging action/decision by the respondent nullifying/revoking land parcel NO. Ndivisi/Ndivisi/2054 and 2055 as well as restoring title NO. Ndivisi/Ndivisi/1044 on 15/03/2021 and publishing the loss of certificate of Title deed in respect of land parcel NO. Ndivisi/Ndivisi/2055 vide Gazette Notice NO.6789 of December, 2021.
15. The decision/action sought to be quashed is said to have been made by the Respondent on 15/03/2021 and December 2021 respectively. These proceeding were filed by the applicant on 12th day of April, 2024 which is more than six (6) months from the date the decision was made. The application is therefore out of time.
16. The court of Appeal has pronounced itself on the interpretation of these statutory provisions in the case of; Republic v Chairman Amagoro Land Dispute Tribunal & Another Ex-parte Paul Mafwabi Wanyama (2014) eKLR where D. Maraga JA (as he then was) held;

“The judicial review proceedings before the learned judge, which have given rise to this appeal were therefore special in nature and the learned judge erred in importing provisions of the Civil Procedure Act and rules to proceedings governed by the said provisions of the Law Reform Act and Order 53 Civil Procedure Rules. We agreed with learned Counsel for the appellant that the learned judge erred in extending time which he had no jurisdiction to do.”



17. The Court of Appeal in the case of Republic v Wilson Osolo v John Ojiambo Ochola & Another (1996) eKLR expressed itself as follows;

“It can really be seen that Order 53 Rule 2 (as it then stood) is derived verbatim from Section 9(3) of the Law Reform Act. Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil Procedure Rules that procedure cannot be availed of for the extension of time limited by statute, in this case the Law Reform Act. There is no provision for extension of time to apply for such leave in the Limitation of Actions Act (CAP 22 Laws of Kenya) which gives some limited right for extension of time to file suit after expiry of a limitation period. But this Act has no relevance here.”

18. From the materials placed before me, I am unable to see what law one can base this application to extend time for the commencement of judicial review proceedings. I do not even think that the so often referred cure for all, Article 159(2) (d) of the Constitution which require courts to administer justice without undue regard to procedural technicalities can be of any assistance.

19. The upshot of my finding is that these judicial proceedings commenced by way of a Notice of motion dated 28th May, 2024 is without merit and the same is hereby dismissed. Since the application proceeded ex-parte, I make no order as to costs.

20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 11TH DAY OF OCTOBER, 2024.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Sambwami H/B for Capten for the Applicant

Respondent/advocate-absent

Bett C/A

