Republic v Igembe South Sub County Adjudication Officer & 2 others; Maingi (Exparte Applicant); Miriti & another (Interested Parties) (Environment and Land Case Judicial Review Application E015 of 2022) [2023] KEELC 18514 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18514 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E015 OF 2022

CK YANO, J

JULY 5, 2023

IN THE MATTER OF: AN APPLICATION BY, JOHN GICHUNGE M'MAINGI FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATER OF: JUDICIAL REVIEW FOR ORDERS OF CERTORARIA AND PROHIBITION

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA ARTICLES 23, 40, 48 & 50 THEREOF

AND

IN THE MATTER: ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER: SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26

AND

IN THE MATTER OF: IGEMBE ADJUDICATION AREA, IGEMBE SOUTH SUB COUNTY, AMUNGENTI A ADJUDICATION SECTION OBJECTION NUMBER 116 AND 117 DELIVERED ON 27TH NOVEMBER,

2022 IN RESPECT TO THAT PARCEL OF LAND KNOWN AS PARCEL 1562 & 12946

BETWEEN

REPUBLIC ..... APPLICANT

AND

IGEMBE SOUTH SUB COUNTY ADJUDICATION OFFICER .... 1ST RESPONDENT

MERU NORTH LAND REGISTRAR ..... 2ND RESPONDENT

ATTORNEY GENERAL ..... 3RD RESPONDENT

AND

JOHN GICHUNGE MAINGI ..... EXPARTE APPLICANT

AND

SIPHAH MUKOANJAGI MIRITI ..... INTERESTED PARTY

JACINTA MUKOITI MIRITI ..... INTERESTED PARTY

RULING

1. By the ex-parte chamber summons dated 5th December, 2022 brought under Order 53 Rule 1, 2, 3 and 4 of the *Civil Procedure Rules*, Section 8 and 9 of the *Law Reform Act* Cap 26 and all enabling provisions of the law, the ex-parte applicant is seeking the following orders-;

    1. Spent

    2. That this Honourable court to grant leave to the ex-parte applicant to institute proceedings for judicial review for orders of certiorari to quash the decision of the 1st respondent and compel the 2nd respondent not to register or implement the decision of the land Adjudication officer in accordance with the *Land Adjudication Act* Cap 283 in Igembe South Sub County in Meru County.

    3. That an order of prohibition prohibiting the respondents their servants, agents any other person, body or authority from implementing the decision of Igembe South Adjudication Officer.

    4. That the leave so granted do operate as a stay of the decision until the determination of the substantive application or further orders of the court are issued

    5. The costs of this application be provided for but abide the results of the substantive motion.

2. The application is accompanied by the statutory statement and verifying affidavit of John Gichunge Maingi the Ex-parte applicant sworn on 5th December 2022 in which he has annexed copies of proceedings and ruling of clan on the suit land dated 29th September 2009, copies of letters dated 26th October, 2003 and 28th October, 2003, the A.R decision of the Land adjudication Officer dated 15th June 2022.

3. When the application came up ex-parte as by law, before Nzili J. on 9th January 2023, the learned judge noted that the application was filed outside the statutory period of six months and directed that the same be served for inter parties hearing on 19th January, 2023.

4. The interested parties filed a replying affidavit sworn by Shiphirah Mukwanjagi Miriti on 20th February, 2023.

5. The respondents were granted time to file their responses and directions were also given that the application be canvassed by way of written submissions. The respondents did not file any response and none of the parties filed submissions as directed by the court on 20th February 2023.

6. The court has considered the application, the statutory statement, the affidavit in support and the annextures thereto as well as the response filed. In my opinion, the issues for determination are whether

the application is incompetent for being time barred, and if not, whether leave should be granted as sought by the ex-parte applicant.

7. Order 53 Rule 2 of the *Civil Procedure Rules* as read with Section 9(3) of the *Law Reform Act* provides for the time limits within which an application can be filed. Order 53 Rule 2 provides that:

> " Leave shall not be granted for an order of certiorari to remove any judgment, Order, decree, Conviction or other proceedings for the purpose of its being quashed, unless the application for leave is made not later than six, months after the date of the proceedings or such shorter period as may be prescribed by any Act, and where the proceedings is subject to appeal and a time is limited by the law for bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired."

8. Similarly, Section 9(3) of the *Law Reform Act* provides as follows.

> " In the case of an application for an order of certiorari to remove any judgment, Order decree, conviction or other proceedings, for purposes 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 judgments, order, decree, conviction or other proceedings or such period as may be prescribed under any written law..."

9. I have carefully perused the court record. As per the court stamp, the ex-parte chamber summons herein indicates that the same was filed on 20th December, 2022. I note however, that the payment receipt was issued on 7th December, 2022, although the stamp reads 6th December, 2022. It appears that probably someone had not changed the date of the stamp from 6th December, 2022 to 7th December, 2022.

10. Be that as it may, the decision complained of is dated 15th June 2022 as shown in the annexture marked "JGM 5". Therefore it is clear that the application was filed eight days before the expiry of the statutory period. I therefore find that the application was filed within the stipulated time.

11. Having found that the application was filed within the stipulated time, and this being an application for leave which is ordinarily ex-parte, I grant leave in terms of prayers 2 and 3 of the application dated 5th December, 2022. The substantive motion to be filed and served within 21 days from the date hereof.

12. Costs of the application to abide the outcome of the substantive motion.

13. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 5TH DAY OF JULY, 2023

IN THE PRESENCE OF

Court Assistant – V. Kiragu

Kaberia for ex-parte applicant

Ms. Kaimenyi holding brief for Atheru for interested parties

No appearance for Respondents

C.K YANO

JUDGE