



Kamau v Dlaso & another; Mboya & another (Interested Parties) (Judicial Review E002 of 2022) [2022] KEELC 2644 (KLR) (6 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2644 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW E002 OF 2022**

**CK NZILI, J
JULY 6, 2022**

BETWEEN

M'AITIMITU KAMAU APPLICANT

AND

DLASO 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

PASILIUS MBOYA INTERESTED PARTY

DANIEL RWITO INTERESTED PARTY

RULING

1. By an application dated February 7, 2022 the court is asked to enlarge time to commence judicial review proceedings for an order of certiorari, outside the prescribed period and if so allowed, the leave granted to act as stay of the implementation of the decision in objection no. 3441 of 2016 regarding the ownership and occupation of L.R Antubetwe/Kiongo/722.
2. The application is supported by a sworn affidavit of M'Aitimitu Kamau of the even date.
3. The reasons given are that the exparte applicant is the recorded owner of the subject land as per the adjudication record attached as MK-1 that when he went to collect his title deed in December 2017 he established which he has attached as annexure marked MK-2, he had less acreage. The applicant avers he made a complaint to the land registrar by a letter dated 21.8.2019 but was informed the acreage indicated was correct since objection proceedings had been brought against him in 2016 by the interested party who was awarded one acre from his land and after a subdivision a new title deed was issued to that effect. He attached a copy of the said objection proceedings as MK-4. The applicant avers



- the said objection proceedings were heard *ex parte* without notice to him and hence was condemned unheard.
4. The *ex parte* applicant avers there was collusion between the respondents and the interested party more so since he has been the sole occupant and or user of the suit land for over 60 years as shown by annexed photographs marked as MK-5.
 5. The *ex parte* applicant states the delay in lodging the application on time was due to the late discovery and the developments herein coupled with the Covid 19 situation, financial challenges, hence the delay unavoidable.
 6. The application is opposed by the respondent's grounds of opposition dated 24.2.2022 on the basis that; the JR proceedings are not the most efficacious remedy since the decision made on 31.8.2016 has been implemented and title deeds issued hence the only remedy the applicant has was in a civil claim, the law cited has no room for extension of time; there has been inordinate delay in filing the application; there is no reasonable basis for the court to exercise discretionary orders in favour of the applicant under the circumstances and lastly that the application offends Section 26 of the *Land Registration Act* which protects the rights of an absolute proprietor created once an Adjudication Register is declared final in all aspects.
 7. The 1st and 2nd interested parties oppose the application through a replying affidavit sworn on February 2022 and a notice of preliminary objection dated March 29, 2022. The reasons are that:- the applicant had made a similar application over the same land in JR No. E03 of 2013 wherein a preliminary objection dated October 6, 2021 was raised and determined on November 17, 2021; that the said judgment had not been reviewed or appealed against hence the proceedings herein are *res judicata*.
 8. The applicant's through written submissions dated March 17, 2022 stats the inordinate delay was curable under Article 159 (2) (d) of *the Constitution* and the oxygen rule given he only discovered the status of his land in 2019 which clearly indicates he was condemned unheard contrary to Articles 40 and 48 of *the Constitution*.
 9. Reliance was placed on *Belinda Murai and others vs Amos Wainaina* (1978) KLR 278 cited with approval in *Nyeri C.A 18 of 2013 & Richard Ncharpi Leiyangu vs IEBC & 2 others* on the proposition that a party should be accorded an opportunity to ventilate his grievances and should not be ousted from the seat of judgment.
 10. Further the *ex parte* applicant urges the court to be guided by Order 50 Rule 6 *Civil Procedure Rules* as read together with the decision in *Aviation and Allied Workers Union vs KQ Ltd and Nicholas Arap Korir Salat vs IEBC and 7 others*, Section 9 (1) *Fair Administrative Action Act, Rep vs Public procurement Administrative review Board Ex parte Syner – Chemical Ltd Loita vs Kyumbu* (1984) KLR 441, *Rep vs Kenya Revenue Authority, Ex parte Stanley Mumbu Amuti* (2018) eKLR and *Republic vs Speaker of Nairobi City County Assembly and another ex parte Evans Kidero* (2017) eKLR.
 11. This court on November 17, 2021 in *M'Aitimitu Kamau vs District Land Adjudication and Settlement Officer & another, Passiloius Mboya M'Mingane and another* (2021) eKLR determined a similar application, involving the same parties over the same subject matter in which the same firm of advocates, represented the applicant herein.
 12. This time round the only paragraph added to the said application is the invocation of Section 9 (1) of *Fair Administrative Action Act* 2015.



13. Whereas a court has powers to entertain an application for constitutional reliefs of judicial review seeking to challenge an administrative action under section 9 (1) of the *Fair Administrative Action Act*, the application must be brought without unreasonable delay.
14. The decision sought to be challenged was made on 31.8.2016 by the 1st respondent.
15. Thereafter the decision was implemented and eventually the subject parcels of land passed from the regime governed by the Land Adjudication Act to the *Land Registration Act* 2012 which falls under the jurisdiction of the land registrar.
16. Further the process to challenge a title deed as opposed to adjudication record is totally different.
17. In the instant application the ex parte applicant seeks leave to commence judicial proceedings outside the statutory period of 6 months. In the previous ruling alluded above, the court found it had no jurisdiction to enlarge time under Order 53 Civil Procedure Rules and Section 8 & 9 of the *Law Reform Act*.
18. The ex parte applicant has now ingeniously invoked Section 9 (1) of the *Fair Administrative Action Act* 2015 on the same facts and circumstances so as to go around the doctrine of res judicata.
19. There is however nothing new to explain the inordinate delay; further there is evidence a title deed was issued on December 5, 2017 to the applicant. He collected the same on December 5, 2017. The complaint letter was written close to two years on 21.8.2019. Between August 2019 and February 11, 2022 when the instant application was filed over a year and a quarter had elapsed. This delay in my view is inordinate and not sufficiently explained.
20. Even if the court were to find leave required under Section 9 (i) of the *Fair Administrative Action Act*, which was indicated in the previously ruling as unnecessary the court would be acting in futility to grant leave based on a chamber summons and a statutory statement of facts.
21. It is also curious and strange that at the same time and in the same file the ex parte applicant has filed a notice of motion of the even date seeking conservatory orders yet the same is not accompanied by any petition.
22. In the premises I find no merits in the application herein. The same is dismissed with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 6TH DAY OF JULY, 2022

In presence of:

C/A: Kananu

Miss Karimi for ex parte applicant

HON. C.K. NZILI

ELC JUDGE

