



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JUDICIAL REVIEW NO. E001 OF 2020**

**IN THE MATTER OF PARCEL NO. 2109 ANKAMIA ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT**

**BETWEEN**

**JOHN KUBAI KAILIBI.....APPLICANT**

**VERSUS**

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT**

**OFFICER ANKAMIA ADJUDICATION SECTION.....1<sup>ST</sup> RESPONDENT**

**THE PERMANENT SECRETARY, PROVINCIAL THE HON.**

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

**GEORGE KAMUI M'LAMATA.....INTERESTED PARTY**

**JUDGMENT**

1. By a preliminary objection dated **18.1.2021** both the respondents and the interested party submit the application dated **12.10.2020** is time barred, bad in law and an abuse of the court process.

2. The exparte applicant filed a chamber summons dated **12<sup>th</sup> October, 2020** under **Order 53 Rule 1 & 2** of the **Civil Procedure Rules** seeking for leave to apply for orders of certiorari to quash the 1<sup>st</sup> respondent's decision made on **27.7.2014** regarding objection **No. 636** in Tigania East Adjudication Area, Ankamia Adjudication Section.

3. He requested for the leave once granted to act as a stay of the decision aforesaid and its implementation. The chamber summons is supported by a verifying affidavit of one John Kubai Kailibi.

**4. Section 8 & 9** of the **Law Reform Act** and **Order 53 rule 2 of Civil Procedure Rules** provides that any application for certiorari must be made within 6 months from the date the decision sought to be quashed was made.

**5. Order 53 Rule (1)** after **Gazette supplement No. 11 of 26<sup>th</sup> February 2020** states an application for leave shall be made by a statement setting out the name and description of the applicant, the reliefs sought, and grounds upon which it is sought and affidavits verifying that there is no other cause pending and that there have been no previous proceedings in any court between the applicant and the respondent over the same subject matter and that the course of action relates to the applicant named in the application.

6. The exparte applicant's verifying affidavit lacks the above details. Be that it may the decision sought to be impugned was made in 2014 under both the **Land Adjudications Act and Land Consolidation Act Cap 283 and 284 Laws of Kenya** respectively. The exparte applicant has not explained why he has come to court close to six years after the decision was made.

7. Further there are internal dispute resolutions mechanisms under the **Land Adjudication Act**. It is not clear if upon the decision being made, the exparte applicant exercised his rights to appeal **to the Minister**.
8. Similarly the exparte applicant has not disclosed the status of the adjudication process especially on whether the decision he seeks to overturn has been implemented.
9. Timelines in which to seek for judicial review of administrative decisions are set because the decisions are of public nature, with ramification on how public entities or officers run public affairs.
- 10. Section 4 (1) of Fair Administrative Actions Act 2015** gives every person a right to administrative action in an expeditious, effective, lawful, reasonable and under procedural fairness. **Section 7** grants an aggrieved party right to apply for review of an administrative action or decision to the High Court. **Section 8** provides the court shall consider an application for judicial review and determine it within ninety days of filing. **Section 9** provides an aggrieved party by an administrative action may, without unreasonable delay, apply for judicial review but with a proviso the High Court shall **NOT** review an administrative act under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies under any written law are first exhausted and if not satisfied, direct the applicant to first exhaust such remedy before instituting proceedings.
11. Under **Section 9 (4)** the High Court may in exceptional circumstances and on application by the applicant exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
12. In instant case, though the application is not made under the Fair Administrative Actions Act, the said law now supplements the **Land Reform Act** and amplifies the parameters of judicial review post 2010.
13. Even though the **Fair Administrative Actions Act** does not have specific timelines over certiorari and prohibition, an applicant is required to move to court without unreasonable delay.
14. The exparte applicant has not explained the inordinate delay of over six years since the decision was made. He has also not shown if he took advantage of the internal appeal mechanism under both the **Land Adjudication Act** and **Land Consolidation Act**.
15. Similarly the exparte applicant has not demonstrated he invoked **Section 29 of Land Adjudication Act** and was denied an opportunity to do so. Both **Section 9 of Land Reform Act** and **Order 53 Rule 2** are couched in mandatory terms. This court has no discretion and for that matter lacks jurisdiction to entertain a claim which is statute barred as this one.
16. In the premises I find the preliminary objection merited. I dismiss the exparte chamber summons and the entire proceeding with costs to the respondent and the interested party. This file stands closed.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2021**

**In presence of:**

Miss Otieno for applicant

Kieti for 1<sup>st</sup> and 2<sup>nd</sup> respondents

Ondieki for interested party – absent

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**