REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC MISC. NO. 40 OF 2019

CHRISTOPHER ALUDA KEYA .... APPLICANT

VERSUS

MOSES KITAGWA ALLOO ....RESPONDENT

RULING

The application is dated 28th June 2019 and is brought under Order 50 Rule 1, Order 50 Rule 5, Sections and 3A of the Civil Procedure Act, Articles 21 (1), 23 (3) (f), 25 (c), 27 (1), 47 (1) & 50 (1) of the Constitution seeking the following orders;

1. That this honourable court be pleased to allow the applicant herein to commence judicial review proceedings to quash the decision of the Vihiga Land Disputes Tribunal and the adopted judgment in Vihiga Miscellanous application No. 64 of 2001, out of time.

2. That this honourable court be pleased to issue a restriction in respect to land parcels South Maragoli/Bunyonga/2035 and South Maragoli/Bunyonga/2036, pending the hearing and determination of this application.

It is grounded upon the affidavit of Christopher Aluda Keya the applicant and on the grounds and other grounds that the applicant herein was not a party to the proceedings before the Vihiga Land Dispute Tribunal yet the land was in his name and neither was his father's personal representative. That it is therefore clear from the foregoing that a significant decision was made in respect to the applicant's land and he was never granted the opportunity to present his case and/or served with any orders in respect to his land. That the delay to commence judicial review proceedings has been occasioned by the late knowledge of the decision of the Vihiga Land Dispute Tribunal and its consequent adoption as judgment in Vihiga Miscellanous Application No. 64 of 2001. That it is clear that the plot referred to in the sale agreement between Ephainitus Fundi Kilasi and Moses Kitagwa Aloo (deceased) as Plot No. 340 Buyonga Sub location South Maragoli and South Maragoli/Bunyonga/1589 are not one and the same thing.

This court has considered the application. It has been adduced theat the judicial review proceedings would relate to the decision of the Vihiga Land Dispute Tribunal and its consequent adoption as judgment in Vihiga Miscellanous Application No. 64 of 2001.

On extension of time, the court in the case of *Republic vs Mwangi Nguyai & 3 Others ex-parte Haru Nguyai High Court at Nairobi, Constitutional & Judicial Review Division, Miscellaneous Application No. 89 of 2008 held that;*

> "*Judicial review proceedings ought as a matter of public policy to be instituted, heard and determined within the shortest time possible hence the stringent limitation provided for instituting such proceedings. It is recognised that judicial review jurisdiction is a special jurisdiction. The decisions of parastatals and public bodies involve million and sometimes billions of shillings and public policy demands that the validity of those decisions should not be held in suspense indefinitely. It is important that citizens know where they stand and how they can order their affairs in the light of such administrative decisions. The financial public in particular requires decisiveness and finality in such decisions. People should not be left to fear that their investments or expenditure will be wasted by reason of belated challenge to the validity of such decisions. The economy with the current volatile financial markets cannot afford to have such uncertainty. As such judicial review remedies being exceptional in nature should not be made available to indolents who sleep on their rights. When such people wake up they should be advised to invoke other jurisdictions and not judicial review. Public law litigation cannot and should not be conducted at the leisurely pace too often accepted in private law disputes. See* **Republic vs. The Minister for Lands & Settlement & Others Mombasa HCMCA No. 1091 of 2006.**
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> In **Republic vs. The Minister For Lands & Settlement & Others Mombasa HCMCA No. 1091 of 2006** *it was held that legal business can no longer be handled in a sloppy and careless manner and some clients must realise at their cost that the consequences of careless and leisurely approach must fall on their shoulders."*

In the case of Rosaline Tubei & 8 others v Patrick K. Cheruiyot & 3 others [2014] eKLR it was held that;

> "*It follows that a court cannot grant leave to a party seeking to file an application for judicial review out of time, and if such leave is granted, it can be challenged at the substantive hearing of the motion.*
>
> *It is upon the ex-parte applicants to find other avenues to push their grievances, for the door to access the remedy of judicial review, is now firmly shut and the key to open the door is not available, for it was thrown into the proverbial sea by effluxion of time."*

I concur with the above authorities this application has been filed in this court on 19th July 2019. This is almost 20years later. In Ivita v Kyumbu (1984) KLR 441, Chesoni J as he then was, stated that the test is whether the delay is prolonged and inexcusable and if justice will be done despite the delay. Justice is justice for both the plaintiff and the defendant. The delay in the instant case is inexcusable. I find this

application has no merit and is an abuse of the court process and I dismiss it.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 5TH NOVEMBER 2019.

N.A. MATHEKA

JUDGE