



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO. E007 OF 2020**

**JOSEPH KIRUJA MAINGI**

**(legal representative of HENRY MAINGI (deceased)).....APPLICANT/PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT/DEFENDANT**

**DLASO KIGUCWA ADJ SECTION.....2<sup>ND</sup> RESPONDENT/DEFENDANT**

**LAND ADJUDICATION OFFICER KIGUCWA ADJ SECTION....3<sup>RD</sup> RESPONDENT/DEFENDANT**

**LAND REGISTRAR.....4<sup>TH</sup> RESPONDENT/DEFENDANT**

**RULING**

1. Before me is a notice of motion dated 3.12.2020 brought pursuant to Order 1 Rules 11 of the Civil Procedure Rules and Section 12 of the Government Proceedings Act. The applicant/plaintiff seeks the following orders;

*1) That this Honorable court be pleased to grant the applicant/plaintiff leave to sue the respondent/defendant for fraud by abuse of office.*

*2) That this Honorable court be pleased to make an order compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents/defendants to rectify the adjudication records of land parcel No. 312 KIGUCWA ADJUDICATION SECTION by way of reverting TOTAL DIMENSION of 17.78 acres of land.*

*3) That this Honorable court be pleased to make an order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> respondents/defendants to supply the applicant/plaintiff with adjudication records of R.E.R and A.R of land parcel No. 312 KIGUCWA ADJUDICATION SECTION.*

2. The application is based on the grounds on the face of it and on the supporting affidavit of the applicant. He avers that the suit land is registered in his deceased father's name measuring a total of 17.78 acres and the same has been defrauded by abuse of office. That at all times, the suit land measured 17.78 acres and not 10.93 acres as per the RER during the land adjudication exercise in 1960's and the deducted area was transferred to a 2<sup>nd</sup> party by abuse of office process which has caused him to suffer irreparable loss and damages. That the actions of the 1<sup>st</sup> to 3<sup>rd</sup> defendants/respondents is motivated by malice.

3. The matter came up for hearing on 9/02/2021 with the plaintiff acting for himself and Mr. Kimathi representing the defendants, who averred that they intended to oppose the application and needed time to file their replying affidavit. The court granted him 7 days to file the response. When the matter came up again on 23/2/2021, Mr. Kiety for the defendants averred that they had filed their grounds of opposition dated 9/2/2021 filed on the same date. However, the said grounds of opposition are not in the file. Nevertheless, the court will proceed to determine the application as it was argued orally.

4. The applicant solely relied on the averments set out in his application. For the respondents, it was argued that prayer 2 in the application is similar to prayer 3 in the plaint hence the plaintiff should wait for the determination of the main suit. Secondly the title sought to be rectified was issued on 29/8/2017, so in principle the matter is filed out of time under section 3 of the Public Authorities Limitation Act which requires a suit against the government to be filed within 12 months. The orders are contrary to section 24 and 26 of Cap 283, hence the applicant should have sought for the rectification of the register. Applicant has been indolent so his application should be dismissed.

5. I have considered all the arguments raised herein. The defendants stated that the title seeking to be rectified was issued on 29/8/2017 and the suit was filed on 15/12/2020 which is beyond the one year time frame provided, meaning it is caught by the statutory limitation period. However, the defendants are asserting their claim through submissions only. As I have stated, no pleadings of the defendants can be traced in this file. As such, the submissions being proffered for and on behalf of the defendants are anchored on nothing and are hereby disregarded.

6. However, seeing that the applicant has also not stated the point at which he discovered the alleged fraud, then, I allow prayer 1 in the application with a rider that the issue of limitation be properly raised by way of a preliminary objection or through pleadings. The plaint already in the court file is deemed as properly on record.

7. In regard to prayer 2 in the application, I find that the same mirrors prayer a) in the plaint. The court cannot therefore grant a major relief at the interlocutory stage.

8. In respect of prayer 3, the applicant has not demonstrated how he has exercised his constitutional right to information by requesting for the relevant documents from the aforementioned entities. The applicant can also utilize the notice to produce and discovery procedures in line with the civil procedure rules during the pre-trial in order to get the documents he wants. I find that prayer no. 3 is uncalled for at this stage.

9. In the final analysis, only prayer 1) is allowed in the application dated 3.12.2020. The costs of this application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

M/s Kung'u for all respondents

Applicant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**