



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC JUDICIAL REVIEW NO. E001 OF 2020

ALBANUS KING'OO KING'OO MBALUTU &

CHRISTOPHER NGUI MBALUTO (S/O

VERONICA MBULA MBALUTO – Deceased)EX-PARTE APPLICANTS

VERSUS

THE COUNTY DIRECTOR OF LAND ADJUDICATION

& SETTLEMENT (MAKUENI COUNTY.....1ST RESPONDENT

THE MINISTER HOUSING & LANDS THRO' THE DEPUTY COUNTY

COMMISSIONER – MUKAA SUB-COUNTY 2ND RESPONDENT

AND

ELIUD MAWEU MUTISO SILA1ST INTERESTED PARTY

GRACE MUMBUA MUTISO2ND INTERESTED PARTY

RULING

1. On the 30th September, 2020, Mr. Nzavi counsel for the Exparte Applicants filed a Notice of Motion application dated 19th August, 2020 seeking the following orders;

a) That leave be granted to the Ex-parte Applicants herein to bring forth an application for Judicial Review in the nature of *Certiorari* directed against the Respondents herein and quashing the said Respondent's Judgment in land case Appeal No. 331 of 2017 in respect of land parcel Plot No. 1955 situated within Uvete Adjudication Section of Mukaa Sub-county which judgment is dated 24th May, 2019.

b) That the leave granted do operate as a stay of any further dealings on the said parcel of land, Plot No. 1955 situated within Uvete Adjudication Section of Mukaa Sub-county pending the hearing and determination of the Judicial Review proceedings.

c) That the costs of this application be in the cause.

2. The application was fixed for hearing on 2nd November, 2020 when Mr. Mulei who held brief for Mr. Nzavi told the court that the letter had noticed that he brought the application by way of a Notice of Motion instead of Chamber Summons. The Exparte Applicants sought for leave to amend their application within seven (7) days. The matter was fixed for mention on 10th November, 2020. On the said date, Ms Kyalo who held brief for Mr. Nzavi told the court that the latter had filed the Chamber Summons application and sought for the granting of the orders sought.

3. Upon perusing the Chamber Summons application dated 19th November, 2020, I directed the Ex-Parte Applicants to file brief submissions and give reasons on why they should be granted leave to apply for prerogative orders outside the six (6) months period provided for under Section 9 (3) of the Law Reform Act Chapter 26 of the Laws as well as Order 53 Rule 2 of the Civil Procedure Rules taking into consideration that the judgment of the 2nd Respondent sought to be quashed was delivered on 24th May, 2019.

4. The Exparte Applicants duly filed their submissions as directed.
5. In his submissions, the counsel for the Exparte Applicants urged the court to exercise its discretion judiciously to ensure that parties are not prejudiced nor suffer injustice or hardship. The counsel went on to submit that the application seeks leave for judicial review of the 2nd Respondent's judgement which has aggrieved the Exparte Applicant.
6. The counsel added that the said judgement was issued in disregard to the legal principles, evidence and witness testimony before the aforementioned Tribunal.
7. The counsel further submitted that the application herein hinges on the concept of natural justice and the Applicant's right to be heard. The counsel relied on the cases of **Vipin Maganlal Shah -Vs- Investment and Mortgages Bank Ltd and Others, Ambalal Shankerbhai Patel -Vs- The Plateau Licensing Court [1954]17 LRK 147** and **John Kipkemboi Sum -Vs- Lavington Security Guards Ltd in Civil Appeal No. 124 of 1988.**
8. It is appropriate at this stage to have a look at what the law provides for in respect of an application for judicial review.
9. Section 9(3) of the Law Reform Act Chapter 26 of the Laws of Kenya provides as follows;

“In the case of an application for an order of certiorari to remove any judgement, order, decree, conviction or other proceedings for the purpose 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 judgement, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgement, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

10. Similarly Order 53 Rule 2 of the Civil Procedure Rules provides;

“Leave shall not be granted to apply for an order of certiorari to remove any judgement, order, decree, conviction or other proceeding for purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be described by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time of appeal has expired.”

11. Section 9(3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules are the statutory and procedural laws and both require an application for Judicial Review to be made within six (6) months from the date when the judgment sought to be quashed was made.

12. In the application before me, the Exparte Applicant has sought to quash the judgement dated 24th May, 2019. The Exparte Applicant filed the instant application on 2nd September, 2020 which is about fifteen (15) months from the date when the judgement sought to be quashed was delivered. Whereas I agree with the counsel for the Exparte Applicant that the court should exercise its discretion judiciously to ensure that parties are not prejudiced, the statutory and procedural laws that the Exparte Applicant has approached the court under require that such an application be made within six (6) months. In so far as the Exparte Applicant has not brought this application under any Constitutional provision and the Fair Administrative Actions Act No. 4 of 2015 which do not have time to limit within which to file such an application, it is clear to me that the instant application lacks merits.

13. I have perused the proceedings of the 2nd Respondent and it is clear that the Exparte Applicants were given a hearing by the 2nd Respondent. There is nothing to show that the said Respondent acted in excess of jurisdiction or ultra vires in which case time would have stopped running.

14. In the circumstances, therefore, I hereby decline to grant leave to the Ex-parte Applicants to apply for judicial review in the nature of *certiorari*.

Signed, dated and delivered at Makueni via email this 29th day of June, 2021.

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HON. MBOGO C.G.

JUDGE

Court Assistant: Mr. Kwemboi