



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. E005 OF 2021

IN THE MATTER OF

AN APPLICATION BY JUDAH MUTHEE FESTUS FOR LEAVE TO APPLY FOR

ORDERS OF CERTIORARI, MANDUMUS AND PROHIBITION

AND

IN THE MATTER OF

SECTION 8 AND 9 OF THE LAW REFORMS ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF

THE MATTER OF THE LAND CONSOLIDATION ACT CAP 283 LAWS OF KENYA

AND

IN THE MATTER OF

THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF

THE JUDICATURE ACT CAP 8 LAWS OF KENYA

AND

IN THE MATTER OF

LAND PARCEL NO. 2757 KARAMA

JUDAH MUTHEE FESTUS APPLICANT

VERSUS

ADJUDICATION 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

JOSEPH MATHITA IKIRIMA INTERESTED PARTY

RULING

1. By an amended chamber summons dated **1st October 2021** the ex parte applicant seeks leave under **Order 8 Rule 3, Order 53 Rule (1) (1) (2) (3) (4) Section 7,9,10 & 11** of the **Fair Administration of Actions Act 2016** to commence judicial review proceedings against the respondents for certiorari to call for and quash the 1st respondent's decision dated **23rd November, 2020** dismissing objection **No. 938**, prohibition from dealing with property known as **Parcel No.2757 Karama** Adjudication Section, mandamus for the 1st respondent to hear the objection and further, if leave granted to act as stay of the implementation of the aforesaid decision.
2. The application is premised on the amended statement of facts of the even date and a further affidavit verifying the facts sworn on 1st October, 2021.
3. The ex parte applicant filed submissions dated 13th October and relies on ***Republic –v County Council of Kwale & Another Ex Parte Kondo & 57 Others (1998) (IKLR E & L*** on the principles to be applied at leave stage and which he maintains he has met, and ***National Hospital Insurance Fund Management Board ex parte Patanisho Maternity & Nursing Home (2019) eKLR*** on the principles to apply in granting leave to act as a stay.
4. The decision complained of was made on **23rd November 2020**. Though the application for leave was filed on **11th February 2021** within the six months as envisaged under **Order 53 Rule 2 of the Civil Procedure Rules** the same was not prosecuted on time or at all until the court brought it to this attention of the parties.
5. The ex parte applicant has amended the application and now seeks leave to commence judicial review both under **Order 53 of the Civil Procedure Rules and Section 7 of Fair Administrative Actions Act hereinafter F.A.A.A.**
6. The ex parte applicant has not attempted at all to explain to this court the status of the land adjudication process particularly on whether if decision he seeks to annul has been implemented or not.
7. The **Land Adjudication Act Cap 284** has stages and internal mechanisms set out for dealing with any such eventualities. The ex parte applicant has not succinctly disclosed all material facts, so as to guide the court in making the decision.
8. Be that as it may the court takes judicial notice that the application was brought within 6 months as required by **Order 53 Rule 2**. However due to inadvertent mistake by the ex parte applicant and perhaps on the part of the court, leave was not granted on time or at all.
9. The right to fair administrative action is a constitutional right under **Article 47 of the Constitution** and has been given more weight through enactment of the **Fair Administrative of Actions Act 2015**. Both the Article and the law are silent on whether it is still mandatory for one filing for judicial review proceeding to seek leave.
10. **Article 22 of the Constitution** to which the ex parte applicant has invoked that his rights as to fair hearing and access to justice have been violated, and **Section 14 of Fair Administrative Actions Act 2015**, require the Honouable Chief Justice to formulate rules to guide the process. In absence of these rules, parties are still using **Order 53 of the Civil Procedures. Article 22 (4)** of the Constitution stipulates that the absence of such rules does not limit the rights of any person to commence court proceedings for court's determination. **Article 23 (3) (f) of the Constitution** grants the High Court the power to entertain cases for judicial review so as to uphold and enforce the bill of rights.
11. Given the foregoing provisions, I take the view that **Order 53** must be read together with the letter and spirit of the Constitution as well as **Fair Administrative Actions Act 2015**. It would be, in my view contrary to the letter and spirit of the Constitution and especially **Article 159 2(d)** thereof to deny the ex parte applicant his legal rights yet he submitted himself before the court within time.
12. Leave is hereby granted to commence judicial review proceedings but shall not act as stay for reasons above stated.
13. The notice of motion shall be filed and served within 7 days from the date of this ruling. Costs shall be in the course.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 27TH DAY OF OCTOBER, 2021

In presence of:

Michuki for Interested Party

Miss Kiety for 1st and 2nd respondents

Miss Mbuluya for Ex parte applicant

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE