



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW APPLICATION NO. 20 OF 2018

IN THE MATTER OF THE LAND CONSOLIDATION ACT CAP 283,

LAND ADJUCIATION ACT CAP 284 LAWS OF KENYA,

LAND REGISTRATION ACT CAP 3 AND

LAND ACT CAP 6 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLCIATION FOR LEAVE TO APPLY FOR

JUDICIAL REVIEW FOR CERTIORARI, MANDAMUS AND PROBIBITION

GERALD NTEERE M'ARACHI.....APPLICANT

VERSUS

THE LAND ADJUDICATION OFFICER

MERU CENTRAL (RUIRI/RWARERA ADJUDICATION SECTION).....RESPONDENT

JOHN MURIUNGU ARACHI.....INTERESTED PARTY

RULING

1. By a preliminary objection dated **26.8.2020** the interested party objects to the notice of motion dated **14.2.2018** on the grounds that the prayers for certiorari are time barred since the decision sought to be quashed was made on **25.5.2018** yet the proceedings were commenced on **17.12.2018** contrary to **Sections 8 & 9** of the **Law Reform Act** as read together with **Order 53 Rule 2** of the **Civil Procedure Rules**.
2. On **16.11.2018**, the exparte applicant filed an exparte chamber summons dated 13.11.2018 which was accompanied by a statutory statement dated 13.11.2018 and a verifying affidavit sworn on the same date with annexures marked GNM 1 – 5. The decision to be quashed was attached as annexure marked GNM 4 delivered on 25.5.2018.
3. From my computation, the six months statutory period was expiring on 25.11.2018. The court did not certify the matter urgent but placed for inter partes hearing on 26.11.2018. Leave was granted to act as stay for six months and the substantive motion was ordered to be filed within 21 days.
4. The notice of motion was filed on 17.12.2020 which was within the 21 days and in line with **Order 53 rule 3 (1)**. It is therefore not true the matter was filed on 17.12.2018.
5. **Order 53 Rule 2** talks of the application for leave to be made not later than 6 months and not the notice of motion.
6. In ***Nakumatt Holdings Ltd. –vs- Commissioner of Value Added Tax [2011] eKLR*** the court held that the six months rule applies to a judgment, order, decree, conviction or other proceedings.
7. In ***Republic –vs- Kenya Highways Authority & 2 Others Ex-parte –vs- Amica Business Solutions Ltd [2016] eKLR*** the court held **Order**

53 rule 2 applies to both judicial and quasi – judicial decisions.

8. Further in Henry Njagi Muruaria –vs- A.O. Akello District Commissioner Mbeere District & Another [2014] eKLR the court took the view that after the grant of leave, the court of concurrent jurisdiction cannot set aside orders granting leave **suo moto** and without following the procedure of applying before the Judge who granted leave to set aside the orders as held in Njuguna –vs- Minister for Agriculture [2000] E A 184.

9. In the instant case the interested party has not followed the said procedure. Needless to say and as I have found above the court granted leave having established the chamber summons was filed within time. The said application is spent and hence this court is **functus officio** on the issue of leave.

10. I therefore find no merits in the preliminary objection dated 26.8.2020. The same is dismissed with costs. Parties are ordered to comply with **Order 11 within 45** days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20TH DAY OF DECEMBER, 2021

In presence of:

Mutuma for Interested Party

Kieti for Respondent

C.A Kananu

HON. C.K. NZILI

ELC JUDGE