



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC JUDICIAL REVIEW NO. E003 OF 2020

MARIQUETA NKOYAI M'THIRINGI

JOSEPH THIRINGI M'THIRINGI

(Suing as the Legal Representatives of the Estate of

M'THIRINGI M'ANAMPIU (Deceased)..... APPLICANTS

VERSUS

THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER

KARAMA ADJUDICATION SECTION.....1ST RESPONDENT

THE OFFICE OF THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. Through an application dated **15.4.2021** the applicants seek the court under **Order 50 Rule 5** and **Section 3A** of the **Civil Procedure Act** to extend time within which to file judicial review proceedings against the respondents. The application is supported by the affidavit of **Mariqueta Nkoyai M'Thiringi** sworn on even date.
2. The reasons given are that the delay was occasioned by the applicants who did not have instruction fees until 30.3.2021 and when their counsel went to file the papers, the court systems were down yet the deadline for the filing was due on 31.3.2021.
3. The application is opposed by the interested party through a replying affidavit sworn on 13.7.2021 on the reason that the same is an abuse of the court process, and bad in law for lack of letters of administration ad litem to sue on behalf of the estate of the deceased.
4. Secondly the interested party states the consent to sue was granted on 21.9.2020 whose validity was for 60 days but leave was only sought on 7.12.2020 long after expiry of the 60 days.
5. Thirdly the interested party states the applicants knew of timelines, were indolent as has been the case and hence do not deserve any discretion in their favour under the circumstances otherwise it would amount to miscarriage of justice.
6. The ex parte applicants came to court on 1.12.2020 seeking for leave to apply for order of mandamus to quash decisions made regarding **objection No. 835 and 834** over **Parcel No's 4920 and 2619** on **1.9.2020** and an order of mandamus against 1st respondent to supply demarcation maps for Karama Adjudication Section.
7. Leave was granted on 9.3.2021 with directions that the substantive motion be filed within 21 days with a mention on 21.4.2021 for pretrial directions. The applicant had up to 30.3.2021 to comply with the court orders.
8. The applicants' reasons for non-compliance is that the instruction fees came late and secondly the court's electronic filing systems were down. Unfortunately, counsel for the applicant has not sworn any affidavit to that effect. Counsel did not write any complaint that there was an impending deadline. The applicant did not seek audience with the deputy registrar so as to seek indulgence and or directions on the mode of filing the notice of motion if at all the systems were down as alleged.

9. The applicants waited until the eve of the mention on 21.4.2021 to lodge the current application. If indeed there was a systems failure one would have expected a prudent applicant to move to court without any delay and seek leave for the extension of time. Further the applicants had a whole three weeks to comply with the law and lodge the substantive motion.

10. The words used under **Order 53 (3) (1)** are in mandatory terms. Under **Order 53 rule 1 (1) and (3)** the application has to be accompanied by a statement setting out the names, description of the parties, relief sought and grounds upon which the application is made and a verifying affidavit of facts.

11. In the instant case, no such mandatory documents have been filed. The interested party has opposed the application on account of locus standi and non-compliance with timelines. The consent letter dated 21.9.2020 is explicit that it shall be valid for 60 days and proceedings instituted thereafter shall be null and void. The sixty days period expired on 21.11.2020.

12. That notwithstanding **Order 53 Rule 2** as read together with **Section 8 & 9** of the **Law Reform Act** provides leave to apply for judicial review shall be sought and obtained within 6 months from the date the decision sought to be quashed was made.

13. In my view the consent letter cannot limit timelines granted by a statute. It is therefore inconsequential so far as it tries to limit a right which is expressly provided for by the statute. See **Republic –vs- Kenya School of Law & Council for Legal Education Exparte David Mwaure Marai**.

14. As regards locus standi the applicants claim to be the legal representatives of the estate of M’Thiringi M’Anampiu. As indicated above the exparte applicants have not supplied the court with duly filed statement verifying affidavit and supporting affidavit accompanying the application seeking leave. This would have shown the description of the exparte applicants with regard to their capacity in lodging these proceedings for a person alleged to have died in 2019.

15. Having addressed the above issues as raised by the respondents, I now turn to the issue as to whether this court has jurisdiction to extend time to file a notice of motion and the principles to be applied under **Order 50 Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**.

16. In **Republic –vs- Kenya Revenue Authority Exparte Stanley Mombo Amuti [2018] eKLR** the court held an applicant must show good reasons and sufficiently explain the delay. Further the court went on to say that judicial review post 2010 is now a constitutional right and that over and above, the **Law Reform Act** and **Order 53** of the rules one has to consider the **Fair and Administrative Actions Act 2015** together with **Article 10** of the **Constitution**.

17. The discretion to allow for the extension of time must therefore be based on sound principles guided by the law depending on the circumstances of each case.

18. A party must have capacity to institute the proceeding through letters of administration. He must also file an application for leave accompanied by the requisite documents. The exparte applicants have not demonstrated they have the legal capacity to file the substantive motion even if the time to file the same were to be extended.

19. In my considered view whereas the delay of 19 days may not be inordinate and the explanation for non-compliance reasonable, the failure to seek and obtain letters of administration ad litem and secondly file vital documents accompanying the application for leave militates against extending the discretion in favour of the applicants. Even if the court was to admit the application out of time, the same would not undo the fatal omissions demonstrated above.

20. In the circumstances the application dated 19.4.2021 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 15TH DAY OF DECEMBER, 2021

In presence of:

Miss Gatheru for Aketch for applicants

Kieti for 1st and 2nd respondents

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE