



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW APPLICATION NO. 3 OF 2020

**IN THE MATTER OF AN APPLICATION BY M'THURANIRA M'MUTEA FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
BY WAY OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF THE DECISION BY THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER MERU
CENTRAL DISTRICT OBJECTION NO'S 2226, 5203, 5201 & 5205 IN RESPECT OF P/NO'S 630, 4178, 4180 & 4182
RUIRI/RWARERA ADJUDICATION SECTION**

BETWEEN

M'THURANIRA M'MUTEAEXPARTE APPLICANT

VERSUS

LAND ADJUDICATION &

SETTLEMENT OFFICER MERU CENTRAL.....1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

BEBNARD M'IMAGANA1ST INTERESTED PARTY

CHARLES THURANIRA2ND INTERESTED PARTY

LYDIA NKATHA M'RUKUNGA3RD INTERESTED PARTY

RULING

1. The exparte applicant seeks the court to extend time within which to file the substantive motion and in the alternative that the attached notice of motion be deemed as duly filed and served.
2. The reasons given are that leave was granted on 27.4.2020 while the exparte applicant was being represented by the firm of M/S John Muthomi & Co. Advocates who did not file the motion on time or at all.
3. The application is supported by a sworn affidavit by the exparte applicant who avers all along he believed his former advocate had filed the motion until they parted ways in September 2020. That the current lawyer came on record on 8.9.2020 but only discovered there was no filed notice of motion on 20.1.2021 after perusing the court file.
4. The exparte applicant states mistakes of his former advocate should not be visited upon him and that the delay was not intentional.
5. The application is opposed by the 1st and 2nd respondents through grounds of opposition dated 1.3.2021 on the basis that the notice of motion offends **Order 53 rule 3 (1)** and **Section 9 (3)** of the **Law Reform Act**. Further it is submitted **Order 12** cannot override a statute, the notice of motion is contrary to the leave order made on 27.4.2020, and that the application lacks merits.
6. The interested party filed a replying affidavit sworn on 22.3.2021 on the basis that **Order 53 rule (3)** is on absolute terms; enlargement of

time is not provided for; the only recourse is to claim damages against the former law firm who should bear the consequences as well as the exparte applicant; there has been inordinate delay of one year, Covid 19 cannot be the cause; timelines in judicial review are necessary; on 8.6.2020 his former lawyers misled the court though had filed the motion; and that the court has no jurisdiction to enlarge time.

7. On 13.10.2021 counsel for the exparte applicant sought to orally amend the notice of motion to include **Order 50 rule 6** and **Section 95** of the **Civil Procedure Act**. The court allowed that amendment.

8. **Order 53 rule 3 (1)** provides a substantive motion shall be filed within 21 days from the date of grant of leave or such other time as the court granting leave may specify.

9. Expounding on this Order, in *Wilson Osolo –vs- John Ojiambo Ochola & Another [1996] eKLR* the court held **Order 53** is lifted from **Section 9 (3)** of the **Law Reform Act** hence time stipulated cannot be extended by **Section 98** of the **Civil Procedure Act** and **Order 50** of the **Civil Procedure Rules**. The court went on to state if there is no motion filed within 21 days no proceedings for judicial review are in place.

10. In *Republic –vs- Speaker of Nairobi City Council Assembly & Another Exparte Evans Kidero [2017] eKLR* the court held following under the after **Civil Procedure Rules 2010** and **Constitution of Kenya 2010**, court now have powers to enlarge time under **Order 53 rule 3 (1)**.

11. In *Aviation & Allied Workers Union –vs- KQ [2015] eKLR* the parameters to apply in determining if to extend time as:- conduct of the party during the proceedings, reasons advanced, adverse effects to the other parties, the amount of delay and if there was sufficient explanation and whether the delay is excusable.

12. Looking at the above principles, the delay in the instant case is from 27.4.2020 till 23.1.2021. The alleged reason for not filing is out of mistake by the then counsel for the exparte applicant. The record indicates the court brought it to the attention of the said counsel on 8.6.2020 who insisted he had filed the application.

13. On 8.6.2020, the court made directives for all the parties to comply with the filing of responses in soft copy and the matter be mentioned on 30.9.2020. Unfortunately parties were absent on 30.9.2020 and another date was given for 26.1.2021 when the current application was filed.

14. As at 26.1.2021 neither the respondents nor the interested parties had complied with the orders given on 8.6.2020. Consequently none of the parties can be said to have been prejudiced or adversely affected by non-compliance with the directives to file the substantive motion within 21 days.

15. Further contrary to the exparte applicant's supplementary affidavit, this court did not grant the leave to operate as stay for reasons already indicated in the court file.

16. In the premises I allow the application. The substantive motion shall be filed and served within 7 days from the date hereof. Each of the respondents and interested parties shall file and serve their response within 14 days upon service and the matter be listed for case conference within 45 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 8TH DAY OF DECEMBER, 2021

IN PRESENCE OF:

NDUBI FOR APPLICANT

KIETI FOR 1ST AND 2ND RESPONDENTS

KAUME FOR 1ST INTERESTED PARTY

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE