



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW APPLICATION NO. 18 OF 2014

JOSHUA MURUYU M'IKIARA EXPARTE APPLICANT

VERSUS

THE LAND ADJUDICATION OFFICER IGEMBE NORTH SOUTH DISTRICT...1ST RESPONDENT

ATTORNEY GENERAL2ND RESPONDENT

SAMUEL MEME M'MWERERA.....INTERESTED PARTY/APPLICANT

RULING

1. This matter relates to a Notice of Motion dated 12/07/2019 brought under **Article 159 (1) and (2) (d) of the Constitution of Kenya 2010, Sections 1A, 3A and 80 of the Civil Procedure Act and Order 45 and 51 of the Civil Procedure Rules and all other enabling provisions of the law**. The applicant seeks for an order to review, vary or set aside the order made on 31/10/2018 directing that costs of the application and chamber summons be borne by the respondent and interested party jointly and severally.

2. The grounds in support of the application are set out in the body of the application and the supporting affidavit of Samuel Meme M'Mwereria sworn on 12/07/2019. It is contended that the decree-holder is likely to execute against the Interested Party, which will occasion irreparable damage on him. Applicant contends that the suit was allowed due to procedural improprieties occasioned by the 1st respondent with regard to the proceedings, findings and decision dated 17/07/2014 in Objection No. 606 in respect to land parcel No. 173 situated in Akirang' Ondu 'B' Adjudication section. It would be unfair and prejudicial for the Interested Party to shoulder to pay costs for the mistake of the 1st respondent considering he did not occasion the said improprieties.

3. This application was opposed vide the replying affidavit of Joshua Murunyu M'Ikiara sworn on 16/09/2019. He deponed that the application is an afterthought as it is filed nine (9) months after delivery of the order delivered on 31/10/2018. Moreover, it is defective due to the provisions of the law it is based on. That the award of costs is purely upon the discretion of the court and no valid reasons have been provided to warrant any interference. The decision that the costs be paid by the respondents and Interested Party jointly is merited because the interested party proceeded to prosecute the objection proceedings in his absence without giving him notice. As a result he benefited by being awarded 0.42 acres out of his land. When he filed this judicial review the Interested Party vehemently opposed it. Therefore, he is not a genuine litigant for if he was he would have conceded and the ex parte applicant would not have incurred expenses.

4. This matter was canvassed by way of written submissions.

The Interested Party submitted that as per **Order 45 of the Civil Procedure Rules** he seeks review based on sufficient reasons. He had no control over the objection proceedings since he was just an aggrieved party. Neither did he conspire with the 1st respondent to defraud the ex-parte applicant. Thus, he should not be punished for the wrongful acts of government officers.

5. The ex parte applicant submitted by reiterating what he had stated earlier. To support his assertions he relied on the cases of **Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR** and **Mwangi S. Kimenyi v Attorney General & another [2014] eKLR**.

6. The issue for determination is **whether to set aside the order as to costs**.

7. **Order 45 Rule 1 of the Civil Procedure Rules** provides the grounds upon which a decree/ order may be reviewed as follows:

“...the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his

knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

8. The order that the Interested Party seeks to review was delivered on 31/10/2018 and his application is dated 12/07/2019. This is about eight and a half months later. In the case of **Paul Obonyo v Kenya Revenue Authority & 2 others [2019] eKLR**, Onyiego J held that delay of six (6) months without any justifiable reason is unreasonable delay. In **Kenfreight (E.A.) Limited vs Star East Africa Company Limited [2002] 2 KLR 782** Onyango Otieno J (as he then was) found a delay of three months to be unreasonable and disallowed an application for review. In **Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers [2016] eKLR** Mativo J held that it would require sufficient explanation to justify a delay of one year. In this case the delay of about eight and a half (8 ½) months in my opinion is unreasonable delay of which the Interested Party failed to provide this court with an explanation as to the reason for the delay.

9. Determination of costs is based on the discretion of the court as provided for under **Section 27 of the Civil Procedure Act**. At the time of making the decision as to the award on costs, the court had all the grounds raised by the Interested Party in mind. The court based its decision based on the information that was tabled before it. No appeal was lodged, while there was inordinate and in excusable delay in filling the application for review.

10. Accordingly, I hereby proceed to dismiss the application with no order as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF APRIL , 2020 IN THE ABESENCE OF THE PARTIES AND THEIR ADVOCATES.

NB:The electronic delivery of this ruling has been occasioned by the prevailing circumstances on Covid 19 pandemic. The advocates concerned have nevertheless given their consent for the said ruling to be delivered and transmitted to them through the emails they have provided.

HON. LUCY. N. MBUGUA

ELC JUDGE