



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JUDICIAL REVIEW NO. 01 OF 2020**

**REPUBLIC.....APPLICANT**

**CHARLES KABURIA KIUNGA.....EXPARTE APPLICANT**

**(LEGAL REPRESENTATIVE OF PAUL KIUNGA-DECEASED)**

**VERSUS**

**JAPHET MWONGO RUCUGO.....DEFENDANT**

**RULING**

1. This matter has been filed by way of a Judicial Review chamber summons dated 3.2.2020 and is brought under the provisions of order 53 rule 1, order XL of the Civil procedure Rules as well as Article 159 of the constitution. The applicant is seeking the following orders:

- (i) *“This hon. Court be pleased to exercise its judiciary discretionally powers and grant the applicant herein leave to question legality of section 26c of the limitation of Actions Act cap 22 laws of Kenya to aid justice and avoid injustice and disaster in the matter of law and any other questions herein to dispense justice.*
- (ii) *This Hon. Court further upon answers of questions of legality do review vary quash and set aside the ruling dated 4.12.2019.*
- (iii) *This Hon. Court further do grant an order to interpret land control Act cap 302 law of Kenya and any other question of legality.*
- (iv) *Whether by virtue of section 26c of the limitation Act cap 22 of the law of Kenya means accruing period of limitation as provided for starts running from the date when the action is discovered from the year 2014.*
- (v) *Whether the land control board consent approved was implemented to sub-divide ½ an acre from L.R No. Nyaki/Kihtoka/Mwanika/64 to affect transfer to applicant father vis;- Paul Kiunga Kimucii in his lifetime but who is now deceased.*
- (vi) *Whether the chief magistrate court decree order dated 19.9.2002 is in force to affect transfer of ½ an acre by the respondent or the applicant herein being a legal representative of the deceased.*
- (vii) *Unless by virtue of section 26c of the limitation of action act cap 22 Law of Kenya a cause of action accruing period starts from the period of discovery of the cause of action the chief magistrate court ruling dated 4.12.2019 be reviewed, varied, quashed and set aside for lack of competence”.*

2. The grounds in support of the application are:

- (a) *“The applicant discovered chief magistrate court decree order for transferring ½ an acre to his deceased father in his lifetime together with the approved land control board consent to sub-divide ½ an acre from L.R No. Nyaki/Kihtoka/Mwanika/64 in the year 2014 and took action accordingly.*
- (b) *The applicant and other family members were evicted from their occupied ½ an acre of land by the defendant and rendered destitute with nowhere to settle.*
- (c) *The applicant herein is continuing to suffer irreparable loss and damages for being evicted from occupied and developed ½ an acre comprised in L.R. Nyaki/Kithoka/Mwanika/64.*

*Which application is supported by annexure affidavit of Charles Kaburia Kiunga the applicant of P.O Box 103 – 60600 Maua with*

the nature of the case.

(d) Costs be provided for”.

3. The applicant has also filed a supporting affidavit reiterating the grounds set out in the application.

4. The respondent, Japhet Mwangi Rucugo has filed a replying affidavit in opposition to the application. He contends that the application is an abuse of the court’s process and should be struck out as the same is incompetent.

5. In the case of **Sangani Investment Limited vs Officer in charge, Nairobi Remand and Allocation Prison (2007) 1 EA 354**, it was held that;

***“Section 8 of the Law Reform Act specifically sets out the orders that the High Court can issue in Judicial Review proceedings and the orders are Mandamus, certiorari and prohibition. A declaration does not fall under the purview of Judicial Review for the simple reason that the court would require viva voce evidence to be adduced for the determination of the case on the merits. Judicial review on the other hand is only concerned with the reviewing of the decision making process.....”.***

6. The orders sought by the applicant are not in the nature of mandamus certiorari and prohibition. Further, I note that the applicant has not even sought leave to file these proceedings as stipulated under order 53 rule 1 (1) yet this is a provision of law which applicant has quoted.

7. The rationale for obtaining leave was succinctly put by **Odunga J** in the case of **Lady Justice Joyce Khaminwa vs. Judicial Service Commission and Another (2014) eKLR** where it was held as follows:

***“The rationale for the requirement that leave be sought and obtained is to exclude frivolous vexatious or applications which prima- facie appear to be an abuse of the process of the court or those applications which are statute barred. Leave should be granted if on the material available, the court considers without going into the in-depth, that there is an arguable case. Leave stage is therefore a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralyzed for months because of pending court action which might turn out to be un meritorious”.***

8. The applicant has skipped the leave stage and as such these proceedings are incompetent. The applicant is also put on notice that the orders he is seeking do not fall under the ambit of Judicial Review Proceedings. The upshot of my findings are that this entire suit is an abuse of the court’s process, and the same is struck out with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT MERU THIS 28<sup>TH</sup> DAY OF MAY, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**