



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW 20 OF 2019

**IN THE MATTER OF AN APPLICATION FOR LEAVE BY LILIAN GACERI MWENDA
TO APPLY FOR ORDERS OF JUDICIAL REVIEW OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA

AND

IN THE MATTER OF ORDER 53 RULE 1 AND 2 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF OBJECTION NUMBER 1362 AND 3448

IN KARAMA ADJUDICATION SECTION TIGANIA EAST

AND

IN THE MATTER OF LAND PARCEL NO. 6221 KARAMA ADJUDICATION SECTION TIGANIA EAST

LILIAN GACERI MWENDAEXPARTE APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER

TIGANIA EAST SUB-COUNTY.....RESPONDENT

KEN KIAMBI CICIUNA.....1ST INTERESTED PARTY

MARTHA MWILA M'MBIRITHI.....2ND INTERESTED PARTY

RULING

1. The exparte applicant filed the chamber summons application on 1.11.2019 seeking leave to apply for Judicial Review orders to have the decision of the respondent made on 22.11.2016 in respect of objection case no. 1362 and 3438 of Karama Adjudication section quashed through the writ of certiorari and to prohibit the respondent from implementing the said decision through the writ of prohibition.

2. In addition, he desires that leave so granted operates as a stay of the aforementioned decision.

3. When the matter came before me on 4.11.2019 I made the observation that the decision sought to be quashed was made more than **3 YEARS** ago and in the circumstances, I directed the application to be served and to be heard on 20.1.2020. Come 20.1.2020 and no arguments were presented in support of the application.

4. Section 9 (3) of the Law Reform Act cap 26 laws of Kenya provides that:

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree.....”

5. **Order 53 rule 1 (4)** provides that:

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise: Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave.....”

While **order 53 rule 2** provides that:

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act;”

6. This is a case whereby the ex parte applicant has not applied for extension of time to bring this application outside the given time-lines of 6 months. The ex parte applicant was given a chance by this court to put forth his arguments on the issue of timelines but he remained mute.

7. In the case of **Mohamed Abushiri Mukullu vs Minister of lands and settlement & 6 others (2015) eKLR**, the court of appeal at Mombasa while dealing with a matter arising from denial of leave to file Judicial Review case stated that:

“It should also be noted that in deciding whether or not to grant leave, the Judge exercises Judicial discretion”.

Such discretion can only be exercised upon the material presented before the court. In this particular case, nothing at all has been put forth to explain the 3 years delay in filing the application for leave.

8. The rationale for this requirement was succinctly put by Justice **Odunga** in the case of **Lady Justice 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”.

Also see- **Republic vs Mwangi Nguyai & 3 others, Ex parte Harun Nguyai (2013) eKLR, (Odunga J)**.

9. In the final analysis I dismiss the application for having been filed outside the given statutory time-lines. No orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH 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 17th March, 2020 and published in the Kenya Gazette of 17th 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