



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
JUDICIAL REVIEW NO. 45 OF 2011
NJERU NJAGI.....APPLICANT
VERSUS
GABRIEL NJUE JOSEPH.....1ST RESPONDENT
HON. ATTORNEY GENERAL.....2ND RESPONDENT
R U L I N G

By his notice of motion brought under Section 95, 1A, 1B, 3A, 63(e) and order 50 Rule 6 of the Civil Procedure Act Cap 21 Laws of Kenya, the applicant seeks for the following orders:-

- *That the ruling dated 2/8/2012 be extended to such a period that the court may deem fit to enabled the applicant to file the substantive application for judicial review Application No. 45 of 2011.*
- *Any other order/direction deemed fit and just to grant in the circumstances.*

The facts leading to this application are that the applicant filed an application dated 20/6/2012 seeking leave to file judicial review proceedings. A preliminary objection was raised by the counsel for the interested party seeking for dismissal on grounds that the application was defective.

The objection was heard and dismissed in the ruling delivered by Ongudi, J. on 2/8/2012. In the same ruling the court granted leave to the applicant to file the judicial review application within 21 days. The applicant failed to comply which gave rise to this application.

The applicant relies on the grounds that his advocate Mr. H.M. Utuku fell ill after obtaining leave and subsequently passed on mid February 2013. The counsel was not in a position to file the substantive motion within 21 days. It was later in May 2013 when he visited his advocate's office and was shocked to learn of Mr. Utuku's death and to find his office closed. He then engaged another advocate to take up the matter.

The application was disposed of by way of written submissions. The applicant was represented by Mr. Eddie Njiru who filed his submissions on 22/10/2014 and the reply to the respondent's submissions on 30/10/2014. Ms. Fatuma for the 1st respondent filed her submissions on 29/10/2014.

The applicant in his submissions urges the court to grant the orders considering the unfortunate

circumstances he found himself in upon the illness and demise of his counsel. He pleads that as a party he should not be punished for the mistakes of his counsel. In his response to the 1st respondent's counsel submissions which challenged the legal provisions, relied on the merit of the application, he asked the court to disregard the 1st respondent's submissions. Firstly because they appeared to confuse extension of time for leave and extension of time to file judicial review proceedings.

The 1st respondent submitted that judicial review is a special process in which the Civil Procedure Act and rules cannot be invoked. He relied on two decided cases where the applications of similar nature were dismissed/struck out for invoking the provisions of Civil Procedure Act:-

a. Malindi ELC JR Application No. 3 of 2013 Republic vs Kahindi Nyafula & 3 Others & Kilifi East Farmers Co-operative Society.

b. Eldoret ELC JR Application No. 5 of 2014 John Kotut Exparte Applicant Vs Patrick Cheruiyot & 3 others.

The Attorney General despite being served did not participate in this application. The issues arising from this application are two fold:-

a. Whether the provisions of the Procedure Act are applicable to the judicial review process.

b. Whether the time for leave to file the substantive motion in JR proceedings may be extended.

Judicial review proceedings are governed by the Law Reform Act which is the substantive law, while Order 53 of the Civil Procedure Rules sets out the procedural law. By those provisions the High Court is mandated to issue orders of mandamus, certiorari or prohibition in appropriate judicial review proceedings. It therefore follows that the Civil Procedure Act and the rules made there under have no place in a judicial review proceedings.

In the Court of Appeal **Civil Application No. 41 of 2013 PAUL MAFWABI WANYAMA VS JACINTA PAPA & AMAGORO LAND DISPUTES TRIBUNAL** the court was dealing with an application for setting aside the ruling of the judge of the superior court in **Busia HCCC JR. No 10 of 2010** where the court had granted orders for extensions of leave to file judicial review proceedings. In allowing the appeal the court held:-

“The judicial review proceedings before the learned judge, which have given rise to this appeal, were therefore special in nature and the learned judge erred in importing provisions of the civil Procedure Act and Rules to proceedings governed by the said provisions of the Law Reform Act and Order 53 Civil Procedure Rules. We agree with learned counsel for the appellant that the learned judge erred in extending time which he had no jurisdiction to do. This appeal is therefore allowed with the consequence that the order extending time for filing judicial proceedings is hereby set aside. The appellant shall have costs of this appeal and costs of proceedings in the High Court.”

I have looked at the first authority of 1st respondent **MALINDI ELC JR. NO. 3 OF 2013 (supra)** which I find relevant to the facts in this application. The presiding judge Angote, J. dismissed an application for extension of leave to file judicial review proceedings on grounds that the Civil Procedure Rules were not applicable.

The second authority of the respondent is not relevant for it deals with extension of time to file judicial review proceedings.

The application before me is brought under Section 95, 1A, 1B and 63(e) and Order 50 Rule 6 of the Civil Procedure Act and Rules. The applicable law in judicial review proceedings is the Law Reform Act Sections 8 and 9 and Order 53 of the Civil Procedure Rules. Oder 50 Rule 6 allows for extension of time

for doing a particular thing as required by the Civil Procedure Act. This provision and all the other sections of the Act relied on by the ex parte applicant are inapplicable in these proceedings as was held in the Court of Appeal of Civil Application of ***PAUL MAFWABI WANYAMA (supra)***.

The relevant legal regime applicable to judicial review proceedings has no provision for extension of time for leave to institute such proceedings. The applicant's application is therefore not properly before the court.

The application dated 20/6/2013 is hereby struck out with cost to the 1st respondent.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF MAY, 2015.

F. MUCHEMI

J U D G E

In the presence of:-

Ms. Wanjiru for Fatuma for 1st Respondent