



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

MISC. APPLICATION NO. 60 OF 2013

**IN THE MATTER OF THE MINISTERS LAND APPEAL CASE NO. 1358 OF 1986 (MAVURIA)
ADJUDICATION SECTION**

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI

AND

**IN THE MATTER OF PLOT NO. 432, 661, 121, 122, 448, 452, 572, 109, 569, 606, 607, 608, 609, 610,
611, 612, 613, 614, 615, 616, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 1104, 1098,
1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1108, 1109, 1110, 1111, 1112, 1113, 1114, and 1115
WITHIN MAVURIA ADJUDICATION SECTION MBEERE NORTH**

BETWEEN

REPUBLIC APPLICANT

VERSUS

SULEIMAN NJIRU CIARA 1ST RESPONDENT

FAUSTIN KITHAKA JUSTUS 2ND RESPONDENT

MEMBERS OF RWANGONDI CLAN 3RD RESPONDENT

LAND ADJUDICATION OFFICER, MBEERE SOUTH 4TH RESPONDENT

THE MINISTER FOR LANDS 5TH RESPONDENT

THE HON. ATTORNEY GENERAL 6TH RESPONDENT

AND

FRANCIS NJERU RUNJI 1ST APPLICANT

JOSPHAT NJAGI NDARU 2ND APPLICANT

JOSEPH NDARU MATHURI 3RD APPLICANT

RULING

On 16th April 2013, Justice Ong’udi granted the ex-parte applicants in this Judicial Review application leave to file an application for an order of certiorari arising out of orders of the Ministers Land Appeal Case No. 1358 of 1986 delivered on 5th July 2012. The leave granted was to act as a stay and in granting the said leave, Justice Ong’udi stated as follows in paragraph two of her ruling.

“The decision complained of was made on 5th July 2012. This application was filed on 25th July 2012, a few days after the six months period. The issue herein involves several parcels of land so I would wish to allow the applicant to make his substantive application and the “issue of time be argued then” emphasis mine.

There must have been an error with the dates because if the decision was made on 5th July 2012 and the application was filed on 25th July 2012, that could not have been ***“a few days after the 6 months period”***. The application for leave was itself filed on 25th January 2013 and the Preliminary Objection raised by the 1st, 2nd and 3rd respondents herein and which is the subject of this ruling is that the substantive Notice of Motion dated 29th April 2013 (not 19th April 2013 as indicated in the said Notice of Preliminary Objection) is time barred and therefore this Court has no jurisdiction. Indeed in their grounds of opposition to the Notice of Motion on behalf of the 4th to 6th respondents as represented by the Hon. Attorney General also stated that the same is vexatious, frivolous and an abuse of the process of the Court.

I have considered the Preliminary Objection that the Notice of Motion herein is time barred. I have examined the submissions by both Mr. Njiru for the applicants and Mr. Mogusu for the 1st, 2nd and 3rd respondents. The Attorney General for the 4th, 5th and 6th respondents did not file any submissions on the Preliminary Objection although he filed grounds of opposition to the said Notice of Motion.

The remedy being sought in this Judicial Review application is an order of certiorari to remove into this Court and quash the proceedings, findings and award of the District Commissioner Mbeere North dated 5th July 2012 in Land Appeal Case No. 1358 of 1996. The application for leave was filed on 25th January 2013 and the leave was granted on 16th April 2013. It is the case of the 1st, 2nd and 3rd respondents that vide ***Order 53 Rule 2 of the Civil Procedure Rules***, the application for leave should be made not later than six months after the date of the proceedings, judgment order, decree or conviction sought to be quashed. Therefore, even excluding the period 21st December 2012 and 12th January 2013, the six months period had expired by the time leave was granted on 16th April 2013.

On his part, Mr. Njiru for the applicant argues that since the applicants had a right of appeal against the verdict of the District Lands Tribunal within 30 days, then the six months period began to run on 5th August 2012 and since time stops running between 21st December and 13th January of the following year, therefore the applicant had upto 1st March 2013 to file the application for leave and therefore the leave granted was within time.

Under ***Order 53 Rule 2 of the Civil Procedure Rules***, it is provided as follows:-

“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 it’s 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; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired”

As indicated earlier in this ruling, the order sought to be quashed in this Judicial Review proceeding is the order of the Minister's Land Appeal delivered on 5th July 2012 in Appeal Case No. 1358 of 1986. That appeal was of course heard by the District Commissioner appointed by the Minister under **Section 9 (1) of the Land Disputes Tribunal Act**. Time therefore started running after 5th July 2012 because under **Section 8 (8) and (9) of the Land Disputes Tribunal Act**, the decision of the Appeals Committee "SHALL BE FINAL" and no appeal shall lie therefrom except only on a point of law to the High Court. In computing time, the period between 21st December in any year and 13th January of the next year shall be omitted. – See **Order 50 Rule 4 Civil Procedure Rules**. That would mean that some 24 (twenty four) days would have to be excluded while computing the six (6) months period from 5th July 2012. Without excluding the period 21st December to 13th January as per Order 50 Rule 4 Civil Procedure Rules, the period of six (6) months would therefore expire on 5th January 2013. However, taking into account the 24 days period that is excluded, I am satisfied that this application for leave was filed within the period stipulated under **Order 53 Rule 2 of the Civil Procedure Rules**. Therefore, the objection raised that this application is time barred lacks merit and is rejected.

The other Preliminary Objection raised was that this Court is not seized with the jurisdiction to hear and determined this matter. However, Mr. Mogusu in his submissions dwelt only on the issue that this application was time barred. No submissions were made by him on the issue of this Court's jurisdiction. Mr. Njiru on his part submitted, that this Court has jurisdiction in this matter.

Section 13 of the Environment and Land Court Act provides for this Court's jurisdiction and states as follows under **Section 13 (7)** of the same:-

"In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including:-

- a. ***Interim or permanent preservation orders including injunctions***
- b. ***Prerogative orders***
- c. ***Award of damages***
- d. ***Compensation***
- e. ***Specific performance***
- f. ***Restitution***
- g. ***Declaration; or***
- h. ***Costs"***

The remedy being sought by the applicant herein is the remedy of certiorari and that is a prerogative remedy. It cannot therefore be correct to submit, as the 1st, 2nd and 3rd respondents have done, that this Court lacks jurisdiction over this matter. That Preliminary Objection is clearly not well founded and must be dismissed.

Ultimately therefore, having considered all the submissions herein, I find no merit in the Preliminary Objection raised by the 1st, 2nd and 3rd respondents herein on 27th June 2013 and the same is dismissed with costs.

B.N. OLAO

JUDGE

5TH NOVEMBER, 2013

5/11/2013

Coram

B.N. Olao – Judge

CC – Muriithi

Mr. Njiru for Applicant – absent

Mr. Mogusu for 1st, 2nd and 3rd Respondents – present

Attorney General for 4th, 5th and 6th Respondents absent

COURT: Ruling delivered this 5th day of November 2013 in open Court.

Mr. Njiru for applicant absent

Mr. Mogusu for 1st, 2nd and 3rd respondents present

Attorney General for 4th, 5th and 6th respondents absent.

B.N. OLAO

JUDGE

5TH NOVEMBER, 2013