



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. JUDICIAL REVIEW NO. 51 OF 2019

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

FOR AN ORDER OF MANDAMUS AND CERTIORARI

AND

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

ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT NO. 4

OF 2015 SECTIONS 7, 8, 9, 10, 11 AND 12

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES

IN THE MATTER OF ARTICLE 22, 23 AND 47 OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF ARTICLES 22, 23 AND 47 OF THE CONSTITUTION OF KENYA 2020

KOMU MUKUNGI NDAMBUKI.....EXPARTE APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY OF LANDS

AND PHYSICAL PLANNING.....2ND RESPONDENT

AND

DANIEL MUSYOKA MWANTHI.....INTERESTED PARTY

RULING

1. In the Notice of Motion dated 4th June, 2020, the Ex-parte Applicant has prayed for the following orders:

- a. An order of mandamus directed to the 2nd Respondent's agents as Machakos Land Registrar Chief Land Registrar to deregister stop, effecting registration of land parcel No. 759 Kyua Adjudication in the name of Interested Party and Register the same to the Applicant.

b. An order of certiorari to remove to this Honourable Court and to quash proceedings and decision of Minister's Appeal No. 167 of 2000 and delivered on 2nd July, 2017 by Sub -County Commissioner Yatta Sub County awarding Land Parcel No.759 Kyua Adjudication Section the Interested Party and proceeding findings of objection on No. 60 at Kyua Adjudication Section relating to land parcel aforesaid.

c. That costs of this Application be awarded to the Applicant.

2. The Application is supported by the Affidavit of the Applicant who has deponed that on 13th February, 2020, he was granted leave to file a substantive Application for Judicial Review; that when his advocate's clerk approached the registry to file the substantive Application on time, the registry clerk could not trace the file and that the registry clerk informed his legal representative on a different occasion that the file was pending signature by the Deputy Registrar in the Chambers.

3. The Applicant deponed that when his advocate's representative approached the registry again, the file No.51 of 2020 could not be traced; that the delay to file the substantive Application herein was not deliberate and that the confusion caused the registry to open file *No. ELC Judicial Review No.11 of 2020* which was not occasioned by him but by the misplacement of the court file.

4. The Applicant finally deponed that *ELC Judicial Review No. 11 of 2020* was struck out by the court for failure to seek leave, which mistake was occasioned by filing the substantive Application in the wrong file; that the delay to file the substantive Application is not inordinate and that he made efforts to file the substantive Application in good time but for the lost file.

5. Although the Application was served on the Respondents and the Interested Party, they did not file a response.

6. The Applicant's advocate submitted that the Ex-parte Applicant filed an Application seeking leave to file Judicial Review proceedings and that the said Application for leave was granted. Counsel submitted that when his agent attended the registry to file the substantive Application, the file was missing and that instead, the Application was filed in the wrong file being Judicial Review Application No. 11 of 2020.

7. It was submitted that the mistake of filing the substantive Application in a different file number 11 of 2020 was occasioned by the court registry clerk when he allocated the substantive Application a different number; that this file only resurfaced on 6th May, 2020 and that this court has discretion to extend time to file the substantive Motion out of time.

8. The record shows that on 22nd October, 2019, the Applicant filed a Chamber Summons dated 22nd October, 2019. In the said Application, the Applicant sought for leave to apply for Judicial Review orders for Mandamus and Certiorari, and for the said leave to operate as a stay of any further interference of parcel number 759 Kyua Adjudication Section.

9. When the matter was placed before Mbogo J. on 24th October, 2019, he directed the Applicant to appear before this court to argue the Ex-parte Application. Indeed, the Application was argued on 13th February, 2020 on which date the court allowed the Chamber Summons as follows:

“The Chamber Summons dated 22nd October, 2019 is allowed as prayed. The Notice of Motion to be filed within twenty one (21) days.”

10. The Applicant has deponed that when his agent visited the registry to file the substantive Notice of Motion, this file could not be traced, and in a rather ingenious manner, the clerk manning the court registry opened a file with a new number being ELC Judicial Review number 51 of 2019 in which they placed the Notice of Motion.

11. The Applicant has annexed a copy of the filed Notice of Motion in Judicial Review Case No. 11 of 2020. The copy of the Notice of Motion shows that the same was received on 5th March, 2020 and registered as Judicial Review No. 11 of 2020 instead of being filed in this matter.

12. Order 50 Rule 6 of the Civil Procedure Rules provides as follows:

“The time for delivering, amending, or filing any pleading, answer or other document of any kind whatsoever may be enlarged by consent in writing of the parties or their advocates without application to the court.”

13. Considering that the Applicant was ready to file the substantive Motion within the period prescribed by this court and the Rules, and in view of the provisions of Order 50 Rule 6 of the Civil Procedure Rules, I shall allow the Application dated 5th June, 2020 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 27TH DAY OF NOVEMBER, 2020.

O.A. ANGOTE

JUDGE