



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 45 OF 2004

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW (CERTIORARI) BY

(I)ATHMAN ABDALLA MAMBO

(II)JUMA THMAN MAMBO

AND

IN THE MATTER OF: THE LAND ADJUDICATION ACT CAP 284

AND

**IN THE MATTER OF: LAND APPEAL CASE NO. 220 LAND PARCEL NO. 587 LUNGA
LUNGA ADJUDICATION SECTION**

REPUBLICAPPLICANT

VERSUS

THE DISTRICT COMMISSIONER KWALE DISTRICT RESPONDENT

AND

EX PARTE

(I) ABDALLA ATHMAN MAMBO

(II) JUMA ATHMAN MAMBO AFFECTED PARTIES

JUDGEMENT

This is an application for judicial review Orders under the provisions of Order 53, Rule 3 of the Civil Procedure Rules. The applicant seeks the following orders: -

1. That an order of certiorari do issue to bring into this court and quash the proceedings and order made on 25th November, 2003 in the Land Appeal Case No. 220.
2. That the cost of this application be provided for:

The grounds on which the reliefs are sought are set out in the Statement dated 28.01.2004, namely: -

(a) That on 25th November 2003, the Applicant's appeal, Land Appeal No. 220 came up for hearing before the District Commissioner Kwale.

(b) That the District commissioner had no jurisdiction to hear the Appeal as provided in the Land Adjudication Act, Cap 284.

(c) That the appeal was dismissed on the grounds that the same had been filed out of time.

The Applicant's case is that it is only the Minister who could hear and determine appeal No. 220 in respect of Parcel No. 582, Lunga Lunga adjudication Section.

I have considered the application, verifying affidavit and statement. I have also considered the grounds of opposition and submissions by Counsel.

On the question of jurisdiction, I was referred to Legal Notice No. 73 of 5th May, 1978 which reads as follows: -

**“Legal Notice No. 73
THE LAND ADJUDICATION ACT
(Cap. 284)
DELEGATION OF POWERS**

IN EXERCISE of the powers conferred by Section 29 (4) of the Land Adjudication Act, the Minister for Lands and Settlement hereby delegates his powers to hear appeals and his duties and functions under Section 29 to the District Commissioners of all Provinces except the Nairobi Area.

Dated this 25th day of April 1978

**J.H. ANGAINE
MINISTER FOR LANDS
AND SETTLEMENT”**

In view of the aforesaid delegation and publication thereof in the Kenya Gazette, I do find and hold that the District commissioner had appropriate jurisdiction to hear and determine the Appeal from the Land adjudication Officer’s Award in respect of the suit property.

With regard to the question of Limitation, the award challenged was made on 19.05.1997 and the best evidence shows that the Appeal was paid for on 17th August 1997. The Act requires that Appeals be filed within 60 days from the date the Award is delivered. This means that the appeal herein was clearly time-barred.

As a result, the application herein is not founded on law or facts on the two grounds. It is hereby dismissed with costs to the Respondent.

DATED AND DELIVERED AT MOMBASA ON THIS 4TH DAY OF MARCH, 2011.

M.K. IBRAHIM

JUDGE