



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

MERU JUDICIAL REVIEW CASE NO. E005 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE BY ROSE THIRINDI KAMAU

APPLY FOR ORDERS OF JUDICIAL REVIEW OF CERTIORARI AND PROHIBITION

AND

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

AND

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

AND

IN THE MATTER OF LAND DISPUTE TRIBUNAL MERU NORTH DISTRICT CASE NO. 07 OF 2006

AND

IN THE MATTER OF LAND PARCEL NO. NJIA CIA MWENDWA/1168

ROSE THIRINDI KAMAU.....EX-PARTE APPLICANT

VERSUS

JOHN M'IBUURI M'ITUMITU.....1ST RESPONDENT

THE DISTRICT LAND

ADJUDICATION AND SETTLEMENT OFFICER MERU NORTH.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. This application states that it has been brought to court under order 53 Rule 1(1) and (2) AND Rule 2 of the Civil Procedure Rules and section 8 and 9 of the Law Reform Act CAP 26 of the Laws of Kenya. It seeks the following orders:

1. That this application be certified urgent and heard ex-parte in the first instance.
2. That leave be granted to the ex-parte applicant to apply for an order of certiorari to bring into the court and quash the proceedings, findings and ruling of the 2nd respondent delivered in LDT No. 07 of 2006 and adopted as an order of the court in Maua LDT. NO. 11 of 2007.
3. That leave so granted do operate as stay of implementation on/or execution of the ruling made in LDT No. 07 of 2006 and the order issued in MAUA LD No. 11 of 2007 pending hearing and determination of the substantive application.

4. That costs of this application be provided for.

2. The application is verified by the affidavit of Rose Thirindi Kamau, the Intended Exparte Applicant sworn on 26th December, 2020 and has the following grounds:

- a. That the said LDT case was heard in the absence of the exparte applicant who had no notice of the hearing date.
- b. That the impugned decision is erroneous, illegal, unfair, biased and ultra vires.
- c. That the 1st respondent is moving with unprecedented tempo to implement the said ruling via execution of the resultant order.
- d. That the 3rd respondent ordered sharing of the suit land, converse to section 3 (1) (a), (b) and (c) of the L.D.T. Act.

3. Due to Covid-19 concerns, this application has been handled in chambers at Chuka.

4. This application is, inter alia, predicated upon the provisions of order 53 Rule 2 of the Civil Procedure Rules. The said order provides as follows:

“(2) Leave SHALL NOT be granted to apply for an order of certiorari to remove any judgment, decree, conviction at 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 proceedings 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 of appealing has expired.”

5. This requirement is also contemplated in section 9(3) of the Law Reform Act.

6. The impugned decision was made on an undisclosed date in the year 2006. That decision was adopted as an order of the court in Maua LDT No. 11 of 2007. This is about 13 years ago.

7. I opine that litigants must be bound by their pleadings. Order 53 Rule 2 which the applicant relies upon to prosecute this application in a veritably pellucid manner prescribes that an application pertinent to an order of certiorari must be made not later than six months after the date of the apposite decision. This application for leave is being brought to court about 13 years after the impugned decision was made.

8. In the circumstances, I issue the following orders:

- a. This application has been certified urgent and has been heard exparte in the first instance.
- b. This application is hereby dismissed and for avoidance of doubt prayers 2, 3 and 4 are denied.
- c. No order as to costs is issued.

**Delivered in open Court at Chuka this 15th day of December, 2020 in the presence of:
CA: Ndegwa**

Ruling delivered electronically

P. M. NJOROGE,

JUDGE.