



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**MISCELLANEOUS CIVIL CASE NO. 30 OF 1986**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MINISTER FOR LANDS AND SETTLEMENT.....RESPONDENT**

***EX PARTE* NARANKAIK & ANOTHER**

**JUDGMENT**

May 19, 1988, **Tunoi J** delivered the following Judgment.

This is an application for orders of certiorari to remove to court and quash the decision of the Minister for Lands made on 3.6.1986 through the District Commissioner, Narok, relating to Land Parcel Number 225 Enegetia/Enabelbel, Narok District between the applicant and the said Minister and one Matiko Sadera on the grounds that the said Minister acted in excess of his jurisdiction or without jurisdiction under Section 29(1) of the Land Adjudication Act, Cap 224, Laws of Kenya by accepting, hearing and determining an appeal after the statutory period of sixty days.

The brief history of this application is as follows:- The Land Parcel No.225 Enabelbel/Enengatia – Narok is about 300 acres in size. It was first a Trust Land under the local County Council and was allotted to Katoria Ole Narankaik, one of the applicants herein, in 1965 as a ranch. During the adjudication process in the locality of the said land parcel a dispute arose between the applicants and Matiko Sadera. The same was referred to the Land adjudication officer for the area under Section 26 of the Land Adjudication Act. This officer heard and determined the dispute in favour of the applicants on 27.10.79.

On 31.10.1979 Matiko Sadera applied for the proceedings of the dispute. In the application addressed to the District Land Adjudication Office, PO Box 95 Narok, he stated *inter alia* that he wanted to prefer an appeal to the Minister. The appeal was eventually lodged on 2.1.1980, exactly sixty six days after the decision of the Land Adjudication Officer.

Mr. Kimatta for the applicants has submitted that Matiko Sadera had sixty days within which to lodge his appeal to the Minister under section 29 (1) of the Land Adjudication Act which explanation was given by the Land Adjudication Officer to the said Matiko Sadera. He has argued that the appeal was not competent and that the Minister acted in excess of his jurisdiction since the appeal was incompetent due to the statutory limitation of sixty days. To him what the Minister did has occasioned the applicants great injustice. He went on to aver that Section 29 aforesaid called for strict compliance and is mandatory that

the appeal must be filed within 60 days without any exception and that the Civil Procedure code was inapplicable since there was a specific statute.

Under section 26 of the Land Adjudication Act any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published object to the adjudication officer in writing, saying in what respect he considers the adjudication register is published object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete. Thereafter the said officer shall determine the objection.

Section 29(1) states as follows:

“Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by:

(a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and

(b) sending a copy of the appeal to the director of Land adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”

It is to be noted that this section is silent as to the enlargement of time so as to secure the proceedings. It is also silent as to what documents should accompany the written appeal to the Minister.

However the form of appeal under section 29 which is used for such appeals and is required to be completed by the appellant in duplicate demands that the the copy of the Land Adjudication officer's decision be attached.

Regulation 4 (1) of the Land Adjudication Regulations states that:

“Any person submitting an appeal to the Minister under section 29 of the Act shall attach to his appeal a tracing from the demarcation map of the boundaries of the holdings in dispute.”

The affidavit in reply deposed to by Matiko Sadera shows that he was not supplied with a copy of the record until 2.1.1980 though he had applied for it on 31.10.1979. The appeal appears to have been lodged on the same day.

In my view Matiko Sadera had to attach the copy of the decision of the land adjudication officer to the Appeal before the said appeal could be deemed as properly filed. Furthermore he would not write and specify his ground of appeal unless he had the copies of the proceedings and the decision of the said officer. Likewise he had to apply for a tracing from the demarcation map of the boundaries of the holding in dispute.

The delay in filing the appeal within the statutory sixty days was occasioned by the late receipt of the record of the proceedings. The delay was excusable and indeed reasonable and cannot be blamed on the part of Matiko Sadera. Moreover he acted speedily and filed the appeal on the same day he received the said record.

The irregularity herein does not in fact go into the substance of the matter and neither has it prejudiced the applicants in any way. The appeal was heard in their presence, they were given a right of hearing and the decision was delivered in their presence. It is possible that they are now challenging the excess six days because they cannot appeal any further.

The right of appeal granted in the Land Adjudication Act cannot be exercised in isolation and applied

without reference to the Civil Procedure Act and the Rules since the Land Adjudication Act does not constitute a complete code in itself so as to oust and preclude the application of the general provisions of the Civil Procedure Act and the Rules made thereunder.

I hold that the period taken to obtain the record of the proceedings from the land adjudication officer should not be included in the sixty days stipulated in section 29 of the Land Adjudication Act. Consequently I hold that the appeal was filed within time.

It is to be noted herein that order 49 r 3A of the Civil Procedure Rules provides that the period between 21st December in any year and the 6th January in the year next following, both days included, shall be omitted from any computation of time.

With respect Mr Kimata's submissions, forceful as they are, cannot be entertained as far as section 29 is concerned, because to do so would be giving the said section a very narrow view and may occasion injustice to parties who wish to prefer their appeals under that section.

I now come to the nature of the order sought. According to *Halsbury's Laws of England*, 4th Edition Vol 1 para 147:

“Certiorari lies, on the application of a person aggrieved, to bring the proceedings of an inferior tribunal before the High Court for review so that the court can determine whether they shall be quashed, or to quash such proceedings. It will issue to quash a determination for excess or lack of jurisdiction, error of law on the face of the record or breach of the rules of natural justice, or where the determination was procured by fraud, collusion or perjury.”

According to the 1963 *White Book* any body of persons in a court if it has legal authority to determine questions affecting the rights of subjects, and is under a duty to act judicially. This expression covers the Minister when he is acting in his capacity as a Tribunal under section 29 of the Land Adjudication Act.

Next is what type of action against which certiorari will issue? Where the inferior tribunal has acted without jurisdiction certiorari to quash the proceedings may be granted. It will issue also for error of law on the face of the record or breach of the rules of natural justice.

The applicants have confined their grievances to the excess six days. This does not give rise for excess or lack of jurisdiction. They have not shown an error of law on the face of the record of the proceedings before the Minister. They have not complained of breach of natural justice. They do not allege fraud, collusion or perjury.

I hold that the applicants have failed to persuade me that there do exist grounds herein for granting of the order of certiorari. I refuse the order.

Consequently I dismiss the application with costs.

**Dated and delivered at Nakuru this 19th day of May , 1988**

**P.K TUNOI**

**JUDGE**