



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

JUDICIAL REVIEW APPLICATION NO. 2 OF 2020

RIFT VALLEY ENTERPRISES LIMITED.....APPLICANT

VERSUS

THE NAKURU DISTRICT LAND DISPUTES TRIBUNAL...1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT AT NAKURU.....2ND RESPONDENT

ANTHONY MICHAEL HUGHES (On his own behalf

and as the administrator of the estate of

Alexandra Theresa Hughes (Deceased)..... 3RD RESPONDENT

RULING

1. Proceedings herein were commenced on 9th June 2020 when Chamber Summons dated 2nd June 2020 was filed by the applicant. The following orders are sought in the application:

1. *[Spent]*

2. *THAT the applicant be granted leave to apply for an order of Certiorari to remove into the High Court for quashing and to quash the decision of the Nakuru District Land Disputes Tribunal made on 21st October 2009 in Kalenjin Enterprises Lid (now Rift Valley Enterprises Ltd) v Alexandra Theresa Hughes & another Claim Number 37 of 2007, alongside the decree of the Chief Magistrate's Court at Nakuru made on 25th March 2010 in Alexandra Theresa Hughes & another v Kalenjin Enterprises Ltd alias Rift Valley Enterprises Lid Land Dispute Case No. 63 of 2009 and all orders issued therein.*

3. *THAT the respondents pay the applicant's costs of this application.*

2. The application was brought under **Order 53 rule 1** of the **Civil Procedure Rules**. The applicant essentially seeks leave to commence judicial review proceedings. Ordinarily, such an application is made ex parte in chambers and leave may in fact be granted ex parte. Nevertheless, pursuant to the proviso to **Order 53 rule 1**, the court may, if the circumstances so require, direct that the application be served for hearing inter partes. I directed that the matter takes the route of inter parte hearing owing to the circumstances of the case which will become manifest later in this ruling.

3. The application is supported by a verifying affidavit and further affidavit, both sworn by Elijah K. K. Chelaite, the chairman of the applicant company. He deposed that the applicant was the registered proprietor of a parcel of land East of Nakuru Municipality known as L.R. 10457 and that through a sale agreement dated 12th May 1983, the applicant sold a permanent house, other developments and a portion of land measuring approximately 2 acres to be excised from L.R. 10457 to Alexandra Theresa Hughes for KShs 150,000. That upon subdivision of L.R.10457, the portion sold to Alexandra Theresa Hughes was comprised in title number Dundori/Mugwathi/Block 227. That in addition to the portion she had purchased, Alexandra Theresa Hughes and the 3rd respondent herein started trespassing onto all those properties known as Dundori/Mugwathi/Block 227 measuring approximately 3.2 hectares or 8 acres and Dundori/Mugwathi/Block 228 measuring approximately 1.2 hectares or 3 acres.

4. He deposed that the applicant commenced proceedings against Alexandra Theresa Hughes and the 3rd respondent herein before the Nakuru District Land Disputes Tribunal, being Claim Number 37 of 2007 and that the tribunal made its decision on 21st October 2009 which decision was adopted by the 2nd respondent on 25th March 2010. That further orders were made in Nakuru High Court Miscellaneous Application No. 342 of 2011 pursuant to which Alexandra Theresa Hughes and the 3rd respondent had the parcels of land known as

Dundori/Mugwathi/Block 2/227 and Dundori/Mugwathi/Block 2/228 registered in their names.

5. Mr Chelaite further deposed that the 1st respondent had no jurisdiction to deal with matters of title and that Alexandra Theresa Hughes passed away on 27th June 2010 after which the 3rd respondent herein was appointed the administrator of her estate. He also stated that the applicant filed Nakuru ELC No. 147 against the 3rd respondent herein and two others and that the said case was struck out.

6. Although counsel for the 1st and 2nd respondents sought and was granted time to file a response to the application, no response or even written submissions were filed by the said respondents.

7. On his part, the 3rd respondent filed grounds of opposition in which he contended that the application is incompetent, misconceived, bad in law, an abuse of court process and violates both **Order 53 rule 2 and Order 4** of the **Civil Procedure Rules**. He also took the position that the applicant should provide security for costs.

8. The application was canvassed through written submissions. Both the applicant and the 3rd respondent filed and exchanged submissions. I have considered the application, the affidavits, grounds of opposition and the submissions.

9. The applicant seeks leave to apply for a judicial review order of certiorari to quash the decision of the Nakuru District Land Disputes Tribunal made on 21st October 2009 and adopted by the Chief Magistrate's Court at Nakuru on 25th March 2010. The applicant concedes in its submissions that its application, to the extent that it seeks leave to apply for a judicial review order of certiorari, would ordinarily be subject to **Section 9 (3)** of the **Law Reform Act** and **Order 53 rule 2** of the **Civil Procedure Rules**. **Section 9 (3)** provides:

In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law;

10. Similarly, **Order 53 rule 2** provides:

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 its 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;

11. Accordingly, the impugned decision of the 1st respondent having been made on 21st October 2009 and adopted by the 2nd respondent on 25th March 2010, any proceedings seeking certiorari to quash it ought to have been filed by 25th September 2010. Instead, the applicant filed the present application on 9th June 2020, over 9 years late. The applicant has argued that the 1st respondent's decision made on 21st October 2009 dealt with matters of title to land which fell outside the 1st respondent's jurisdiction and that the decision is therefore a nullity. It further argued that the six months limitation does not apply in a situations of a decision that is a nullity. It relied *inter alia* on the cases of **Republic v Judicial Commission of Inquiry Into the Goldenberg Affair & 3 others Ex Parte Mwalulu & 8 others [2004] eKLR** and **Stephen Kibowen v Chief Magistrate's Court Nakuru & 2 others [2017] eKLR**.

12. The 3rd respondent has however taken the position that the applicant brought a case of trespass before the 1st respondent and that the 1st respondent had jurisdiction to deal with the matter. The 3rd respondent has therefore argued that the present application should be dismissed since it violates the six months limitation. The 3rd respondent has relied on the cases of **Polycarp Wathuta Kanyugo & 2 Others v The County Government of Kirinyaga [2014] eKLR** and **Republic v Kenya Revenue Authority, Commissioner Ex parte Keycorp Real advisory Limited (2019) eKLR**.

13. Land dispute tribunals were established pursuant to **Section 4** of the **Land Disputes Tribunals Act, 1990**. The Act has since been repealed by **Section 31** of the **Environment and Land Court Act, 2011**. Jurisdiction of the tribunals was provided for at **Section 3 (1)** of the **Land Disputes Tribunals Act, 1990** as follows:

(1) Subject to this Act, all cases of a civil nature involving a dispute as to

(a) the division of, or the determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land,

shall be heard and determined by a Tribunal established under section 4.

14. Although the tribunals did not have jurisdiction to determine ownership of registered land, claims to occupy or work land and matters of trespass to land clearly fell within their jurisdiction.

15. A perusal of the impugned decision of the 1st respondent shows that proceedings in Nakuru District Land Disputes Tribunal Claim Number 37 of 2007 were brought by the applicant herein as plaintiff against Alexandra Theresa Hughes and the 3rd respondent herein as objectors. The applicant sought eviction of Alexandra Theresa Hughes and the 3rd respondent from the parcels of land known as

Dundori/Mugwathi/Block 2/227 and Dundori/Mugwathi/Block 2/228 on grounds that the two were occupying the parcels without any acquisition documents and without authority from the applicant. Upon hearing the matter, the 1st respondent came to the conclusion that the applicant had failed to prove its claim. It did not, in its impugned decision, make any determination of title to or ownership of any registered land. It neither purported to cancel any title nor to order that any person be registered as proprietor of any registered land.

16. In view of the foregoing, the applicant has failed to demonstrate any nullity that would take the matter outside the six months limitation. The applicant having filed the present application on 9th June 2020, it is over 9 years late and violates both **Section 9 (3)** of the **Law Reform Act** and **Order 53 rule 2** of the **Civil Procedure Rules**.

17. As **Odunga J** stated in *Lady Justice Joyce Khaminwa vs Judicial Service Commission & another [2014] eKLR* :

The rationale for the requirement that leave be sought and obtained is to exclude frivolous vexatious or applications which prima facie appear to be abuse of the process of the court or those applications which are statute barred. However, leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case. Leave stage is therefore a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralyzed for months because of pending court action which might turn out to be unmeritorious.

18. I note that over the last 9 years when the 1st respondent's impugned decision reigned, several developments have taken place including orders being made on 29th March 2011 in Nakuru High Court Miscellaneous Application No. 342 of 2011 that the parcels of land known as Dundori/Mugwathi/Block 2/227 and Dundori/Mugwathi/Block 2/228 be transferred to Alexandra Theresa Hughes and the 3rd respondent respectively. Equally, the applicant has itself annexed a copy of a judgment delivered on 13th February 2020 in Nakuru ELC No. 547 of 2016 in which the court struck out the present applicant's claim for a declaration that it is the owner of the parcels of land known as Dundori/Mugwathi Block 2/227 and Dundori/Mugwathi Block 2/228 and for cancellation of the 3rd respondent's title in respect of the said properties. Needless to state, none of those two decisions can be reversed by this court through judicial review proceedings. These proceedings would be futile in view of the decisions.

19. In the result, the applicant has not demonstrated a case to warrant exercising discretion of granting it the leave sought. I therefore dismiss Chamber Summons dated 2nd June 2020 with costs to the 3rd respondent. I do not award any costs to the 1st and 2nd respondents since they did not participate in the hearing of the application.

Dated, signed and delivered at Nakuru this 10th day of December 2020.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Omae for the applicant

Mr Weche for the 1st and 2nd respondents

Mrs Mbeche for the 3rd respondent

Court Assistants: B. Jelimo & J. Lotkomoi