



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

JUDICIAL REVIEW APPLICATION NO. 32 OF 2015

(FORMERLY KERUGOYA ELC JR. NO. 3 OF 2013)

REPUBLIC.....APPLICANT

VERSUS

MINISTRY OF LANDS AND SETTLEMENT.....1ST RESPONDENT

DISTRICT COMMISSIONER MBEERE NORTH.....2ND RESPONDENT

JOHN NGARE MWANIKI.....3RD RESPONDENT

D. EUTON NJUKI.....4TH RESPONDENT

KAHARERI BURI KARUGU.....EX-PARTE APPLICANT

AND

EFUREITH IRIMA MUGO.....INTERESTED PARTY/APPLICANT

RULING

1. By a notice of motion dated 31st January 2019 brought under **Article 159 of the Constitution of Kenya, 2010** and **all enabling provisions of the Law**, the intended interested party (hereinafter *the Applicant*) sought the following reliefs;

- a. *That the Application herein be certified urgent and the same be heard ex parte in the first instance.*
- b. *That the Applicant Efureith Irima Mugo be enjoined as an interested party in this suit.*
- c. *That there be a stay of execution of the judgement of the court delivered on 17th January, 2019 as appertains Minister's Appeal Case No. 206 of 1999 pending hearing and determination of the Application herein inter parties.*
- d. *That the court be pleased to review and set aside its orders quashing the award of the Minister in Appeal case No. 206 of 1999.*
- e. *That costs of the Application be provided for.*

2. The said application was based upon the grounds set out on the face of the motion. The Applicant contended that she was the administrator of the estate of late Jeremiah Ngiri (hereinafter *the deceased*) and was the sole beneficiary of his estate. It was further contended that the deceased was the previous registered owner of *Title No. Mbeere/Kirima/733* (hereinafter *Parcel No. 733*) which was later sub-divided into *Title Nos. Mbeere/Kirima/4878-4901* (hereinafter *the suit properties*). It was further contended that parcel 733 was one of the properties the subject of the appeal to the Minister which appeal precipitated the instant application for judicial review which was heard and concluded in her absence.

3. The said application was supported by an affidavit sworn by the Applicant on 31st January 2019 and a further affidavit sworn on 22nd February 2019. Those two affidavits expounded upon the grounds set out on the face of the motion and also responded to the contents of the replying affidavit in opposition to the application.

4. The *ex parte* Applicant filed a replying affidavit sworn on 5th February 2019 in opposition to the said application. It was contended that

the Applicant was represented by the 4th Respondent both before the minister in *Appeal Case No. 206 of 1999* and in the instant application for judicial review. It was further contended that the succession court had stayed the orders pursuant to which the Applicant was registered as proprietor of the suit properties. It was also contended that the Applicant had not satisfied the conditions for either a stay of execution or review of the judgement of this court.

5. When the said application was listed for hearing on 7th February 2019, the parties present consented to canvass it through written submissions. The Applicant was granted 14 days within which to file and serve written submissions whereas the *ex parte* Applicant and the Respondents were granted 14 days upon service to do the needful.

6. The record shows that the Applicant filed her submissions on 22nd February 2019 whereas the Advocate for the 1st and 2nd Respondents filed submissions and grounds of opposition on 13th March 2019. There is no indication of the other Respondents having filed any responses or submissions.

7. The court has considered the Applicant's said notice of motion, the supplementary affidavit in support thereof, and the replying affidavit in opposition thereto. The court has also considered the submissions and grounds of opposition on record. The court is of the opinion that the following two issues arise for determination;

- a. Whether the Applicant has made out a case for joinder as an interested party.
- b. Whether the Applicant has made out a case for review of the judgement dated 17th January 2019.

8. It was held in the case of **Kenya Medical Laboratory Technicians & Technologists Board & 5 Others Vs The Attorney General & Others [2017]eKLR** that an applicant for joinder as an Interested Party must demonstrate that he has;

- a. an identifiable stake
- b. or a legal interest
- c. or a duty in the proceedings

9. The Hon. Justice John M. Mativo made the following pronouncement in the said case:

“The test is not whether the joinder of the person proposed to be added as an interested party would be according to or against the wishes of the petitioner or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the petitioner. It is whether the intended interested party has *an identifiable stake, or a legal interest or duty in the proceedings.*”

A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights ...”

10. Similarly, in the case of **Trusted Society of Human Rights Vs Mumo Matemo & 5 Others [2014]eKLR** the court held, *inter alia*, that;

“... an interested party is one who has a stake in the proceedings though he or she was not a party to the cause *ab initio*. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

11. The court is satisfied from the material on record that the Applicant has demonstrated her stake in the proceedings. It is, in fact, in the nature of a legal interest to property. There is evidence on record that she acquired parcel 733 from the deceased through succession proceedings. The court is further satisfied that her legal interest may be affected by the judgement of this court.

12. The court is further of the view that the *ex parte* Applicant ought to have joined the Applicant as an Interested Party to the Judicial review application in the first instance. Under the provisions of Order 53 Rule 3 of the Civil Procedure Rules, an applicant for judicial review is obligated to serve all persons who may be affected by the orders being sought and file an affidavit of service. The *Ex- parte* Applicant cannot abdicate that responsibility by claiming that the Applicant was being represented by the 4th Respondents in proceedings before the Minister.

13. Whereas the Applicant or his father may have been represented by other persons before the Minister and other inferior tribunals, there was no written authority filed before this court authorizing the 4th Respondent or any other person to represent either the estate of the deceased or the Applicant. The *Ex-parte* applicant was, therefore, bound to follow the provisions of Order 53 Rule 3 of the Civil Procedure Rules on service upon all affected or interested persons. Consequently, the court is satisfied that the Applicant has made out a good case for joinder as an Interested Party.

14. The second issue is whether the Applicant has made out a case for review or setting aside of the judgement dated 19th January 2019. The court is satisfied that the Applicant has demonstrated sufficient cause for review within the meaning of Order 45 of the Civil Procedure Rules. There is no evidence on record to demonstrate that the personal representative of the deceased was served with the substantive application for judicial review as required by law. Even if it were to be accepted that the 4th Respondent initially represented the deceased

before other administrative fora, such authority must have terminated upon his death. Henceforth, only a personal representative appointed under the **Law of Succession Act (Cap. 160)** could validly give authority.

15. The upshot of the foregoing is that the court finds merit in the Applicant's notice of motion dated 31st January 2019 and the same is allowed in terms of prayer Nos 2 and 4 thereof. Consequently, the judgement of this court dated 19th January 2019 is hereby set aside. The application for judicial review shall be heard *de novo*. Costs of the application shall be in the cause.

16. It is so decided.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **16TH** day of **MAY, 2019**.

In the presence of Mr. Ombachi for Exparte Applicant; Ms. Rose Njeru for the Interested Party; Mr. Siro for the 1st & 2nd Respondents and in the absence of the 3rd & 4th Respondents.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

16.05.19