



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC MISC. APPL. NO. 17 OF 2019

MUSA TAPEM (Suing as the Administrator of the Estate of the late DANGER TABIM).....APPLICANT

VERSUS

THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMEN.....1ST RESPONDENT

SAMSON KEDIKUO RWATANYANG.....2ND RESPONDENT

RULING

1. This is a ruling on the issue of whether the leave granted upon the presentation of the application dated **1/7/2019** and filed in court on the same date should operate as a stay. On **3/7/2019** the court ordered that the question of leave operating as a stay be canvassed on **18/7/2019** and that brief submissions be filed before that date for highlighting by the parties. On the **18/7/2019** Mr. Bisonga indicated that the submissions had been filed and sought a ruling date while Mr. Wabwire adopted the grounds filed by 2nd respondent in the matter.

2. Leave was granted to the applicant on **3/7/2019** to apply for an order of certiorari to remove into this court and quash the proceedings, directions and decisions of the **Cabinet Secretary in Case No. 164 of 1995 LR. No. 461 Chepareria Adjudication Section Ariworen Ruatanyang.**

3. The grounds on which the leave application was premised were that the 1st respondent has no jurisdiction over the suit land as the owner was deceased, which fact ought to have been within the knowledge of the 1st respondent; that the applicant is the administrator of the estate of the deceased in whose name the land is registered and in whose favour the dispute before the Land Adjudication Committee Chepareria Adjudication Section had been decided twice; that the dispute before the 1st respondent had been filed out of time and was determined without the applicant's knowledge yet the 1st respondent heard it and issued directions in implementation of the decision in favour of the 2nd respondent who had no *locus standi*. The 2nd respondent is said to have obtained a title in respect of the suit land.

4. In his opposition to the application, the 2nd respondent filed grounds of opposition dated **18/7/2019**. He stated that the instant application is misconceived, fatally defective, scandalous vexatious, made in bad faith and an abuse of the court process and the same should be dismissed with costs as in his view, there are no proceedings in respect of **Tribunal in Appeal No. 164 of 1995** as prayed by the applicant, the decision of the **Tribunal in Appeal No. 164 of 1995** having already been implemented and concluded; that the 2nd respondent already has been issued with the title deed to land Title No. **West Pokot/Chepareria/461** in his name and the same can only be subject to challenge as provided for by law; that the instant application is couched in a manner to delay as much as possible the expeditious disposal of **Kitale ELC No. 100 of 2015 - Musa Tapem -vs- Samson Ariworeng & 5 Others** contrary to **Section 1A (a), 1B(1) of the Civil Procedure Act and Article 159 (2) (b)** of the Constitution; that the applicant is on a fishing expedition and what he intends to achieve through the current application can still be achieved through the land case which he filed being **Kitale ELC No. 100 of 2015 - Musa Tapem -vs- Samson Ariworeng & 5 Others** and that it is clear that there has been inexcusable inordinate delay in the part of the applicant hence the application dated **1/7/2019** should be dismissed with costs.

5. The applicant filed submissions on **4/7/2019**. The respondents never filed any submissions.

6. Whatever the grounds are, it is clear that this court considered favourably the application for leave. The decision of the Minister gave rise to the registration of the suit land in the 2nd respondent's name. Quashing of that decision as sought by the applicant would affect the title held by the 2nd respondent. The grounds relied on by the applicant are weighty. It remains to be seen whether those grounds will be proved at the hearing of the main judicial review notice of motion.

7. However prayer No. 3 in the application dated **1/7/2019** does not state what is sought to be stayed. In view of the conclusion of the proceedings before the Minister and the implementation of his decision in **Case No. 164 of 1995 LR. No. 461 Chepareria Adjudication**

Section Ariworen Ruatanyang, and having regard to the prayers in the application and also the contents of the supporting affidavit, I find that there is nothing sought to be stayed. It is merely all a matter of draftsmanship and not merits of the application. I therefore dismiss prayer **No. (3)** in the application dated **1/7/2019**. There shall be no orders as to costs of this application.

Dated, signed and delivered at Kitale on this 30th day of September, 2019.

MWANGI NJOROGE

JUDGE

30/9/2019

Coram:

Before: Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bororio for Applicant

Mr. Kuria for 1st Respondent

Mr. Teti for 2nd Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

30/9/2019