



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISC. JUDICIAL REVIEW APPL. NO. 4 OF 2019

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OUT OF TIME BY
PETER MWIKA M'MAINGI FOR THE ORDER OF CERTIORARI**

AND

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

AND IN THE MATTER OF LAND PARCEL NO. 1570, 1549 AND 5730 KARAMA ADJUDICATION SECTION

AND

THE HONORABLE ATTORNEY GENERAL.....RESPONDENT

AND

IN THE MATTER OF TIGANIA EAST OBJECTION NO. 2442 OF 2011

PETER MWIKA M'MAINGI 1ST APPLICANT

ANICIETA NKUNU..... 2ND APPLICANT

VERSUS

SILAS MUGAMBI.....1ST INTERESTED PARTY

JOSPEH NTOMBURA.....2ND INTERESTED PARTY

RULING

1. This matter emanates from an application by way of chamber summons dated 5th March 2019 brought under **Order 53 Rule 1 of the Civil Procedure Rules**. The applicant seeks leave to file out of time an application to apply for an order of certiorari to remove the decision of the Karama Adjudication Tigania East, District Land Adjudication Officer's award dated 22nd November 2016 and quash the same and other orders made therein.

2. The grounds upon which the application is made are set out in the statement of facts and verifying affidavit of Peter Mwika M'Maingi sworn on 5th March 2019. It is contended that **land parcel Nos. 1570, 1549 and 5730 Karama Adjudication section** originally belonged to Stanley M'Imaingi (deceased). In the year 1968 during the era of gathering, the said Stanley gathered 4.12 Acres while Silas Mugambi gathered 3.35 Acres. However, Silas was given all the land including the one that belonged to Stanley totaling to 7.47 Acres.

3. Stanley objected in Tigania East Adjudication Objection No. 2442 where the tribunal decided that applicant's share be measured and 5.12 Acres be taken out and awarded to the Interested Parties. The applicant is aggrieved by the decision which is in the process of being implemented. The applicant avers that he did not have an advocate to apply for leave to apply for judicial review within time.

4. The application has been opposed by Joseph Ntombura through his replying affidavit sworn on 23rd April 2019. He deponed that the applicant is not truthful and that his application ought to be dismissed for lack of merits. The respondent contends that leave to apply for orders of certiorari does not create any room for filing an application outside the six month period. Furthermore, no grounds have been

established to warrant grant of the orders sought neither has evidence been adduced.

5. The issue for determination is whether to grant leave to the applicant to file for an order of certiorari in view of the fact that the decision sought to be impugned was given way back on 22.11.2016.

6. The timeline within which an application for certiorari ought to be made is stipulated under **Section 9 (3) of the Law Reform Act** which is 6 months from date of decision. The said time lines are again captured in **Order 53 Rule 2 of the Civil Procedure Rules**.

7. In Nairobi **Judicial Review Case No. 102 of 2018 R vs. Stanley Mambo Amuti ,Ex-parte Applicant and Kenya revenue authority, Respondent**, the court while allowing an application filed outside the 6 months period stated as follows;

“All law must conform to the constitutional edifice. It follows that the provisions of sections 8 and 9 of the Law Reform Act[38] and Order 53 of the Civil Procedure Rules must conform to the Constitution or be construed with such adaptations, alterations, modifications so as to conform with the Constitution”.

8. The court went on to state that:

“Discretion vested in the court is dependent upon various circumstances, which the court has to consider among them the need to do real and substantial justice to the parties to the suit. Discretion must be exercised in accordance with sound and reasonable judicial principles”

9. In the present matter, applicant seeks an order of certiorari in respect of a decision which was delivered on 22nd November 2016. This application has been filed way past the six months timeline. Applicant averred that he had no advocate. However, looking at the record the applicant is acting in person to date.

10. I believe that the applicant means that he did not have the significant legal advice to guide him on the filing of the application within the 6 months period. Adopting the emerging jurisprudence on this issue, I am inclined to allow the application dated 5.3.2019 on the following terms;

1. The Substantive Judicial Review Motion is to be filed and served upon all the parties herein within 21 days from date of delivery of this ruling failure to which, the orders granted herein shall lapse.

2. The applicants are to bear the costs of this application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF SEPTEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Both applicants present

Miss Kinoti holding brief for Mutembei for the 2nd interested party

HON. LUCY. N. MBUGUA

ELC JUDGE