



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

J U D G E M E N T

1. By a notice of motion dated 3rd October 2012 brought under **Order 53 Rule 3 of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act (Cap 26)** the *ex-parte* Applicant (hereinafter the *Applicant*) sought the following orders;

a. That the honourable court be pleased to issue to the Applicant an order of certiorari to quash proceedings and decision of the Minister and/or District Commissioner – Mbeere North in Appeal Case Nos. 206/99, 228/04 Kirima Adjudication Section all dated 20th December 2012.

b. That costs of this application be provided for.

2. The said application for judicial review was based on the grounds that the 1st and 2nd Respondents had entertained an appeal which was filed out of time and that the 2nd Respondent had relied upon inconsistent evidence in consequence of which the resultant decision was based on factual errors.

3. The said application was supported by the statutory statement and affidavit sworn by the Applicant during the leave stage. The gist of the Applicant's case was that the 3rd and 4th Respondents had filed their respective appeals in the *Minister's Appeal Case Nos. 206 of 1999 and 228 of 2004* outside the period of 60 days prescribed by **section 29 of the Land Adjudication Act**. It was contended that they were filed 15 and 17 years respectively after the decisions of the Land Adjudication Officer. It was also contended that the 2nd Respondent's decision in the said appeals was based on inconsistent evidence hence the application for judicial review.

4. The 1st and 2nd Respondents did not contest the said application for judicial review. Instead, the Attorney General, who appeared for them filed written submissions conceding the application. The 1st and 2nd Respondents conceded that their decisions in the two appeal cases were made *ultra vires* since the right of appeal had abated under relevant law.

5. There is no evidence on record of the 3rd Respondent having filed a replying affidavit in response to the application for judicial review. However, he filed written submissions on 14th June 2018 in opposition to the said application.

6. The 4th Respondent filed a replying affidavit sworn on 30th May 2012 in opposition to the said application. It was denied that his appeal was filed out of time as contended by the Applicant. He stated that his appeal was filed in the year 1989 and attached a copy of a certificate of payment of appeal and tracing fees. He, therefore, urged the court to dismiss the application with costs.

7. The material on record indicates that the application for Judicial Review was fully canvassed and judgement delivered on 17.01.2019 allowing the same on the basis that the appeals to the Minister were filed out of time. However, vide a notice of motion dated 31.01.2019 the Interested Party sought to be joined in the proceedings and for the judgement dated 17.01.2019 to be set aside. The record further shows that vide a ruling dated 16.05.2019 the court allowed her joinder and also set aside the judgement. The Interested Party was granted leave to file her response to the application. It was also directed that the application for Judicial Review be heard *de novo*.

8. Subsequently, the Interested Party filed a replying affidavit sworn on 24.06.2019 in response to the application for Judicial Review. She denied that Appeal No. 206 of 1999 was filed out of time. The gist of her response was that the appeal was filed on 18.09.1989 when payment for tracing and appeal fees was made. It was further stated that the designation of the appeal as Appeal case No. 206 of 1999 did not mean that it was filed in 1999 since the designation was an internal matter within the Ministry of Lands. She also exhibited a copy of the appeals register from the Ministry of Lands indicating that Appeal No. 206 of 1999 was filed on 18.09.1989.

9. When the court gave directions on the hearing of the said application *de novo* on 16.05.2019 it was directed that the same be canvassed through written submissions. The parties were given timelines within which to file their respective submissions. The matter was then fixed for highlighting of the submissions on 24.07.2019. On the said date, only the advocates for the Applicant, the 1st and 2nd Respondents, and the Interested Party highlighted their submissions. The 3rd and 4th Respondents were not represented.

10. The court has considered the application for Judicial Review, the affidavits in response thereto, and the submissions on record in this matter. The only question for determination is whether or not Appeal Case No. 206 of 1999 was filed within or outside the statutory period of 60 days. The court is of the opinion that no issue arises with respect to Appeal Case No. 228 of 2004 since that appeal was dismissed by the Minister anyway.

11. The Applicant contended that the appeal was filed on 5.04.1999 because that is the date the written statement of appeal was lodged with the Minister under **section 29 of the Land Adjudication Act (Cap 284)**. The Attorney General for the 1st and 2nd Respondents also contended that the appeal was filed outside the statutory period of 60 days hence statute-barred. The Interested Party contended that an appeal is deemed to have been filed the moment a person pays for tracing and appeal fees and is issued with a certificate to that effect. The tracing fee in this case was paid on 18.09.1989. The Interested Party also relied on the register of appeals which indicated 18.09.1989 as the date the appeal was filed.

12. The material provisions of **Section 29 (1) of the Land Adjudication Act (Cap 284)** stipulate 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”.

13. It is evident that Section 29 specifies the manner in which the appeal to the Minister is to be lodged. The appeal must be in writing and must specify the grounds of appeal. Neither the certificate of payment of appeal and tracing fees nor receipt No. AL 641922 dated 18.09.1989 indicates any grounds of appeal within the intendment of the law. The Interested Party must have construed them as such and that is why a proper appeal dated 5.04.1999 was lodged with the Minister on 5.04.1999 enumerating six (6) grounds of appeal. That appeal was filed specifically pursuant to **Section 29 of the Land Adjudication Act**.

14. The court, therefore, does not accept the Interested party’s submission that the appeal was filed within time. The evidence on record demonstrates that the appeal was filed on 5.04.1999 several months after the decision of the Land Adjudication Officer. The court does not accept that the appeal could be deemed to have been filed on 18.09.1989 simply because the appeals register states so. The entries in the said register are in contravention of the clear provisions of Section 29 of the relevant Act.

15. The upshot of the foregoing is that despite the Interested Party having joined the proceedings and tendered some evidence on the appeal in question, the court still finds that the appeal was filed out of time. The appeal was statute-barred hence the Minister had no jurisdiction to entertain it. Accordingly, the court finds merit in the Applicant’s notice of motion dated 3 October 2012 and the same is hereby allowed in the following terms:-

a) An order of Certiorari be and is hereby issued to remove into this court and quash the proceedings and decision of the Minister in Minister’s Appeal Case No. 206 of 1999 dated 20th December 2012.

b) Each party shall bear his own costs.

16. It is so decided.

Judgement dated, signed and delivered in open court this 19th day of December 2019.

In the presence of

Mr. Ombachi for the Applicant, Mr. Siro for the 1st and 2nd Respondents, Mr. Njagi for the 3rd Respondent, Mr. Maina holding brief for Ms. Rose Njeru for Interested Party and in the absence of 4th Respondent.

Court Assistant – Mr. Muinde.

Y.M. ANGIMA

JUDGE. – 19.12.19.