



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

JUDICIAL REVIEW NO. 1 OF 2019

REPUBLIC.....APPLICANT

-VERSUS-

1. ATTORNEY GENERAL

2. CABINET SECRETARY OF LANDS & PHYSICAL PLANNING

3. DIRECTOR OF LAND ADJUDICATION

4. THE CHIEF LAND REGISTRAR

5. THE LAND REGISTRAR-NAROK NORTH SUB COUNTY

6. THE LAND SURVEYOR-NAROK NORTH SUB COUNTY.....RESPONDENTS

AND

OLKEDENYI OLE KOIKAI.....INTERESTED PARTY

NDALAMA OLE MASIKONDE.....EX PARTE APPLICANT

RULING

By a Notice of Preliminary Objection on points of law dated 4th March, 2019 the Interested Party contends that the exparte Applicant seeks to enforce a decree or award of Land Appeal Tribunal and Dispute Tribunal in Land Appeal Case No. 99 of 1980 and that under section 4 (1) of the Limitations of Actions Act, an action for enforcement of an award may not be brought after expiry of 6 years.

The Interested Party also took issues raised on the provisions of Section 4 (4) of the Limitations of Actions Act in which an act for enforcement of a judgement may not be brought after expiry of 12 years and for the above reasons, the Interested Party contends that the action and the application is time barred and the same be struck out.

The Preliminary Objection raised by the Interested party was opposed by the Exparte Applicant in which he contends that the Preliminary Objection raised does not meet the threshold of Preliminary Points of law and that the same is an abuse of the process of the court.

I have read the Application before me and the submissions filed by the parties. It is now settled in what constitutes a Preliminary Objection on points of law as held in the case of **MUKISA BISCUITS MANUFACTURERS LTD –VERSUS- WEST END DISTRIBUTORS LTD (1969)EA :-**

“A preliminary Objection consists of pure points of law which have been pleaded, or which arise by clear implications out of pleadings and which if argued may dispose off the suit.”

From the Preliminary Objection raised the threshold that one must meet is that the points raised must be pure points of law that are devoid of facts that need to be proved, that if the Preliminary Objection is argued then it will dispose off the suit. The Interested Party’s objections on the points of law are all based on the Provisions of the Limitations of Actions Act and more particularly section 4 (1) (C) and 4(4). It is the interested party’s contention that the instant suit is time barred by the dint of the above provisions.

The Application that as indicated earlier relates to enforcement of an award that was made in 1980 by the Land Dispute Tribunals. The Applicant has not shown what he has been doing all this time and what prevented him from enforcement of his award. It is the Applicant's contention that the Preliminary Objection does not meet the threshold that consists a Preliminary Objection. I find that the Applicant can't escape the reality of the day and I also find that the same is time barred and thus I strike out the Judicial Review with costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAROK ON THIS 16TH DAY OF DECEMBER, 2019

Mohammed Kullow

Judge

16/12/19

In the presence of:

CA:Chuma/Kimiriny

Mr Kajo for the exparte applicant

N/A for the respondent

Mr Langat for Githui for the interested party

Mohammed Kullow

Judge

16/12/19