



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC JUDICIAL REVIEW CASE NO. 06 OF 2019

**IN THE MATTER OF AN APPLICATION OF SAMUEL GAICHU RINJEU FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW OUT OF MANDATORY PERIOD OF 6 MONTHS**

FOR AN ORDER OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE LAW REFORM ACT (CAP 26)

SECTIONS 8 & 9 AND IN THE MATTER OF THE FAIR

ADMINISTRATIVE ACTION ACT SECTIONS 4, 7 & 9

AND

IN THE MATTER OF THE APPEAL FROM THE RULING AND DECISION OF THE

MINISTER DATED 12TH DAY OF MARCH, 2018 IN THARAKA NORTH

SUB-COUNTY APPEAL TO THE MINISTER CASE NO. 176/2017

BETWEEN

SAMUEL GAICHU RINJEU.....APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

MINISTER FOR LANDS HOUSING & DEVELOPMENT.....2ND RESPONDENT

MITAMBO MANGARA.....INTERESTED PARTY

RULING

1. This application reads as follows:

EXPARTE ORIGINATING SUMMONS

(under order 37 rule 6, section 3A of the Civil Procedure Act & all enabling provisions of the law)

Take notice the honorable court will be moved on the 27th day of November, 2019 at 9.00 O'clock in the forenoon or so soon thereafter as counsel for the applicant may be heard on an application for orders:-

1. That the applicant be granted leave to commence judicial review proceedings against the respondents out of the stipulated time.
2. That the costs of this application be provided for.

On the grounds:

1. That the time within which to institute judicial review proceedings has lapsed.
2. The applicant has a good case and wishes to quash an unlawful decision of the respondents.

Which application is supported by the annexed affidavit of Samuel Gaichu Rinjeu and other reasons to be adduced at the hearing thereof.

Dated at Nairobi this 11th day of november, 2019

.....

Celestine Mwenda Munene

Applicant

2. The application is supported by the affidavit of Celestine Mwenda Munene which states:

I, Celestine Mwenda Munene is an adult resident within Nairobi County of the Republic of Kenya; and do make oath and state as follows:

1. That I am conversant with the facts arising in this matter and as the applicant herein competent to swear this affidavit.
2. That I am eldest son of Samuel Gaichu Rinjeu.
3. That I have legitimate and undeniable rights and interests in the matter in that my family live on the land.
4. That I have power of attorney to represent Samuel Gaichu Rinjeu in this matter.
5. That the minister refused and or failed to take into account the objections raised by the applicant both at the district level and during the hearing of appeal to the minister.
6. That the minister failed and or refused to appreciate the fact that the matter was first heard and decided in favour of the applicant by a D.O in 1983 and that the interested party did not raise any objections until 2007 when his right to lodge an appeal was already extinguished and or time barred.
7. That the minister failed and or refused take into account the fact that the matter proceeded at the district level without the applicant being notified of the hearing dates or in time thus resulting into miscarriage of justice.
8. That the minister failed to address the dispute by purporting that the applicant appeared to have lodged an appeal against his own parcel of land when the dispute resolved around the disputed creation of parcel No. 2298 within parcel No. 396 which was another parcel of land.
9. That the minister erred in fact and law by failing and or refusing to address the illegality; irregularity and unscrupulousness in curving out parcel No. 2298 from parcel NO. 396 using a ruler in the office long after the appeal to the minister had been lodged with the minister.
10. That the minister erred in fact and law in finding that the applicant had been locked out of appealing to the minister yet the applicant was not aware of the newly created parcel No. 2298.
11. That the minister failed and or refused to take reasonance (sic) of the letter dated 2nd May, 2012 by District Land Adjudication and Settlement Officer to applicant confirming that issuance of the instruments of the title will be restricted pending the hearing of the dispute.
12. That the minister erred in fact and law by failing and or refusing to consider that the parcel No. 2298 was unscrupulously curved by the same officer who went ahead to cause fraudulent issuance of the title deed.
13. That I swear this affidavit in support of the prayers being sought in the application filed herein.
14. That all that averred to herein is true to the best of my knowledge, information and belief.
15. That I annex hereto a bundle of supporting documents.

3. Although the application seeks enlargement of time to file Judicial Review Proceedings, nowhere in the application or in the supporting affidavit does the applicant explain why he could not file Judicial Review Proceedings in time. For this reason, this application lacks merit.
4. It is noted that when this application was slated to be heard on 27th November, 2019, the applicant was not in court.
5. Order 53 Rule 2 of the Civil Procedure Rules states as follows:

2. Time for applying for certiorari in certain cases [Order 53, rule 2.]

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

6. Order 53 Rule 2 employs the word “*shall*” therefore making it mandatory that leave cannot be granted if six months have elapsed since the making of the impugned decision. It is, therefore, doubtful that this court has power to enlarge time as sought by the applicant.
7. In the circumstances, this application is dismissed.
8. Orders accordingly.

Delivered in open Court at Chuka his 9th day of December, 2019 in the presence of:

CA: Ndegwa

Applicant not present

P. M. NJOROGE,

JUDGE.