



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPL NO. 77 OF 2017

REPUBLICAPPLICANT

VERSUS

THE SPECIAL DISTRICT COMMISSIONER, KITUIRESPONDENT

AND

MUTHUI KITUNGUUINTERESTED PARTY

CHARLES NGUNGU KYALEEX-PARTE APPLICANT

RULING

1. On 6th October, 2009, Lenaola J (*as he was then*) directed that the Applicant files submissions in respect to the Application dated 23rd September, 2009, which is Ex-parte in nature. It was not until 17th November, 2017 that the Applicant's counsel filed those submissions. In the said Application, the Applicant is seeking for the following orders:

a. That leave do issue to the Applicant for Prerogative Orders of certiorari and mandamus to be issued against the Judgment of the District Commissioner, Kitui delivered on 5th May, 2009 sitting as Special District Commissioner on behalf of the Minister for Lands and Settlement under powers conferred by Section 29(4) of the Land Adjudication Act, vide Legal Notice Number 73 dated 28th April, 1978, and which judgment was made contrary to the Rules of Natural Justice and without analyzing and/or considering the earlier proceedings by the Land Adjudication Officer and which finding is bad in law and amounted to miscarriage of justice, and had all the grounds and the overriding objective considered, the case analyzed and reasons given, the decision would have been different, and which decision would if allowed to stand, the same would prejudice the Applicant's rights and interest over the disputed property.

b. That leave granted do operate as a stay of execution of decree in appeal to the Minister Number 225 of 1981 Charles Ngungu Kyale & Another verses Muthui Kitunguu in respect to the said parcel of land, pending the hearing and determination of the main Notice of Motion.

c. That the costs of this Application be provided for.

2. The Application has been supported by the Applicant's statement of facts in which he has averred that the Special District Commissioner failed to note that the appeal before him was competent, having been admitted for hearing by the Minister; that he misdirected himself by excluding certain days in the computation of time in reaching his decision and that he acted in breach of the laws of natural justice and

was openly biased.

3. The Applicant's counsel submitted that the Tribunal's decision was delivered on 11th December, 1980 and the right of appeal was allowed within sixty (60) days; that the appeal was filed on 12th February, 1981 and was therefore filed within time.

4. According to counsel, the District Commissioner ought to have taken into consideration the Public Holidays in the months of December and January of every year and also Sundays in computation of time. Counsel relied on the provisions of Order 50 of the repealed Civil Procedure Rules.

5. It is not in dispute that pursuant to the provisions of the Land Adjudication Act, the Applicant was required to file his Appeal to the Minister against the decision of the Land Adjudication Officer within sixty (60) days.

6. It is also not in dispute that the Land Adjudication Officer made his decision on 11th December, 1980 and the Appellant lodged the appeal with the Minister on 12th February, 1981, which was beyond the sixty (60) days allowed by statute.

7. The Appellant's counsel has argued that the Minister should not have summarily dismissed the Appeal on account that the appeal was filed out of time and that while computing time, the Minister should have been guided by the provisions of the Civil Procedure Rules. Order 50 of the Civil Procedure Rules provides as follows:

“Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December, in any year and the sixth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act.”

8. The above provision of the law only deals with limitation of time provided under the Rules or the order of the court, and not where a statute expressly provides for limitation of time. The relevant statute that deals with how time should be computed in respect to a particular law is provided for under Section 57 of the Interpretation and General Provisions Act which provides as follows:

“In computing time for the purposes of a written law, unless the contrary intention appears –

(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time.”

9. The Act has defined “excluded” days to mean Sundays and Public Holidays.

10. It is therefore obvious that the issue of excluding Sundays and Public Holidays in a situation where an Act of Parliament provides for limitation of time is only applicable where an act should be done within six days. The Land Adjudication Act stipulates that a party has to file an Appeal to the Minister within sixty (60) days.

11. Therefore, the computation of time under the Land Adjudication Act on when a person should lodge an appeal includes Sundays and Public Holidays.

12. Consequently, the Minister did not err when he summarily dismissed the Ex-parte Applicant's appeal for having been filed out of time.

13. For those reasons, I find that the Application dated 23rd September, 2009 is unmeritorious and the same is dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE