



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 5 OF 2016

**IN THE MATTER OF APPLICATION BY NAMAN MWOITHA MURUYU FOR ORDERS OF
CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF LAND CONSOLIDATION ACT CAP 283

AND

**IN THE MATTER OF LAND PARCEL NO. 1658 ANKAMIA LAND ADJUDICATION IN
SECTION.**

AND

**IN THE MATTER OF FINDINGS, DECISION AND ORDER OF IMPLEMENTATION IN
OBJECTION OF THE LAND ADJUDICATION AND SETTLEMENT OFFICER, TIGANIA IN
OBJECTION NO. 1059 DATED 04.11.2015**

J U D G M E N T

1. On 23.02.16, Ex –Applicant obtained leave to apply for orders of certiorari to quash the proceedings, findings decision and prohibit the implementation of the Respondent order in Objection Case No. 1059 dated 04:11:15 affecting Parcel No. 1658 in Ankamia Land Adjudication Section. The substantive motion was filed thereafter on 21:03 16.
2. The Motion has been opposed by the Interested Party vide a Replying Affidavit filed on 07:04 16.
3. The Respondent has however not filed any response to the Judicial Review motion, despite having been given a chance to do so by the Court way back on 3.4.17.
4. The Court also gave directions that the motion be canvassed by way of Written Submission where both the Exparte Applicant and the Interested Party have filed their Submissions.

5. CASE FOR EXPARTE APPLICANT

The Exparte Applicant has filed statements of facts and a Verifying Affidavit.

6. Exparte Applicant claims that in 2005 -2006 members of the Public had agreed to have a Tea Factory set up and as such about 10 acres of Land was set aside. Consequently, people who were at the proposed side of the factory were displaced and moved to the neighborhood where by Applicants portion of 0.6 acres was relocated on the land of Exparte Applicant.

7. Applicant avers that the Respondent then colluded with the Interested Party whereby Applicant lost his land unfairly in Objection Case No. 886.

8. Ex Applicant also claims that the Respondent did not sit with a committee as required by the law.

9. CASE FOR THE INTERESTED PARTY

The Replying Affidavit of the Interested Party contains a general denial of the Exparte Applicant's claim. It has been submitted for the Interested Party that that no grounds have been advanced in support of the suit and that the Affidavit of the Exparte Applicants does not contain any evidential value.

10. The Interested Party also claims that the suit is time barred as it was filed beyond the period provided. Leave was obtained on 23:02:16 and the substantive Notice of Motion was filed on 21:03:16.

11. DETERMINATION

I find it necessary to determine the issue as to whether this Motion is properly before me before embarking on other issues. Order 53 rule 3 of the Civil Procedure rules provided that:-

“When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within 21 days.....”

12. When the Ex parte Applicant was approaching the Court on 23.02.16, he was aware of the requirements of the law. The substantive Notice of Motion was filed after about 26 days. The delay was short. Nevertheless, the law was flouted and no plausible or any explanation at all has been advanced as to why the Judicial Review Motion was filed outside the period provided by the law. There was no attempt to apply for extension. Even in his submissions, Ex-parte applicant has given this issue a black out.

13. Section 1 (A), (3) of this Civil Procedure Act provides that:-

“A party to Civil Proceedings or an advocate for such a party is under duty to assist the Court to further the overriding objective of the Act and to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”.

14. I am therefore in agreement with the Interested Party's contention and submissions that the motion is time barred.

15. In the circumstances, I need not interrogate the issues raised in the suit.

16. The Judicial Review Motion is hereby dismissed with costs to the Interested Party.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 26th JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Rimita H/B for Ngunjiri for Interested Party present

Mburugu for exparte all absent

Attorney General for Respondent absent

Exparte Applicant present

HON. L. N. MBUGUA

ELC JUDGE