



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

MERU JUDICIAL REVIEW NO. 7 OF 2012

JOSEPH M'ING'ALA (deceased) represented by

JACOB ATELA M'ING'ALA.....EX-PARTE APPLICANT

VERSUS

DISTRICT LAND ADJUDICATION OFFICER

TIGANIA EAST DISTRICT.....RESPONDENT

JULIUS MURIUKI KILIRU.....INTERESTED PARTY

RULING

1. This application is dated **24.10.2017**. The applicant states that the application has been brought to court pursuant to Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. The application seeks the following orders:

1. That the honourable court be pleased to clarify on the judgment delivered in this matter on **30th November, 2016** and further indicate that the dispute should be remitted back to the District Land Adjudication Officer, Tigania East District for hearing and determination in accordance with the law.

2. That costs be provided for.

2. The application is supported by the affidavit of **Julius Muriuki Kiliru** sworn on **24.10.2017** and has the following grounds:

a) The exparte applicant herein brought this matter challenging objection **No. 692** whose decision is dated **1.3.2012**.

b) By way of judgment delivered in this matter on **30th November, 2016**, the honourable court agreed with the exparte applicant and proceeded to issue orders of certiorari and prohibition.

c) The honourable court however did not clarify that the matter ought to be remitted back to the District Land Adjudication & Settlement officer (DLASO) Tigania East District for hearing and determination in accordance with the law.

d) The orders sought are necessary to enable parties move forward in the determination of their rights and interests over the subject land.

3. The application was canvassed by way of written submissions.

4. The applicant states that this appeal is spawned by the judgment of the ELC Court in Judicial Review No. **7 of 2012** at Meru which judgment was delivered on **30th November, 2016**. He submits that the effect of the judgment in quashing the apposite decision should be construed that the parties' position reverted to square one. As such, the applicant feels that the matter should be remitted to the District Land Adjudication Settlement Officer (DLASO) for re-hearing. In support of this assertion, the appellant proffers the case of **GIRADO MAHAJA (APPELLANT) AND KHUTWALO AND ANOTHER (RESPONDENT) KISUMU CIVIL APPEAL NO. 19 OF 1983 [1983] eKLR**

5. The Exparte applicant submits that in arriving at its judgment, the court found that the apposite objection was heard beyond the period of 60 days provided for under the governing Act. He also states the court had correctly pointed out that the Respondent had failed to show that the relevant committee through its Chairman had issued a Notice of Completion of Existing Rights as required. He also pointed out that the objection had proceeded against a deceased person. He goes onto say that the court had found that there was lack of jurisdiction by the decision maker and that statutory provisions had been breached. He asserts that the court had rightly quashed the DLASO's decision and

prohibited implementation of his decision.

6. The ex parte applicant submits that it is the duty of the DLASO to guide the process of land adjudication in his area of jurisdiction and as such he cannot be directed by the court to discharge his statutory duties but rather, it is upon him to peruse his records and decide the next course of action in view of the orders granted by the court. I do not wholly agree with this assertion. Where a DLASO or any public body or officer refuses or fails to perform specific statutory duties, an order of mandamus can be issued to compel him to perform the apposite duties. In this application, however, the applicant does not claim that the DLASO has failed to perform any statutory duties. I will say no more regarding this issue as doing so would be veritably superfluous.

7. The ex parte applicant submits that in appropriate circumstances, a court of law may direct parties on what to do at the time of delivery of judgment or when moved by the parties. He, however, opines that in this matter this is not a case that has such circumstances. He asserts that the law germane to land adjudication is explicit regarding the process of ascertainment of the rights of land owners in adjudication areas. He says that it is that process that the DLASO should follow in addressing any germane claims.

8. Although the Respondent (DLASO) did not file written submissions, the application was opposed through a Replying Affidavit sworn on **14th December, 2014** by **JACOB ATELA INGALA** who states that he is the respondent. He submits that in granting its orders, the court was guided by the reliefs sought in the main motion and laconically asserts that the judgment evinced no ambiguity. As such, he categorically states that the orders issued by the court in its judgment are final and, therefore, cannot be revisited. He opines that the applicant's intention is to procrastinate litigation over the suit land for no good reasons. He urges the court to dismiss the application with costs.

9. I have carefully considered the pleadings and the submissions proffered by the parties in support of their assertions. I have also considered the one authority proffered by the applicant in support of his case in this application.

10. I do find that the circumstances evinced by the case of **GIRADO MAHAJA (APPELLANT) AND KHUTWALO AND ANOTHER (RESPONDENTS) (op.cit)** are not similar to the circumstances of this case. In this case the applicant did not appeal the judgment of the ELC Court delivered on **30th November, 2016**. In addition to quashing the DLASO's decision and prohibiting its implementation, the court in this case did find, among other findings, that the apposite objection had been heard beyond the period of 60 days provided for by section 17 of the Land Consolidation Act.

11. Allowing this application would amount to allowing the applicant to circumvent specific and pellucid provisions of the law. Courts of law cannot countenance such a scenario. Indeed, courts of law cannot contrive to bypass clear statutory provisions. They cannot cure the indolence of the parties in not filing matters within statutorily stipulated timelines. These statutory timelines are legal requirements and do not amount to procedural technicalities.

12. By dint of section 8 of the Law Reform Act, orders issued in the judgment of the ELC Court at Meru on **30th November, 2016** are final only subject to appeal to the Court of Appeal. I find no intimation that an appeal against the apposite judgment was filed.

13. Having perused the apposite judgment of the ELC Court, I do agree with the respondent vide his replying affidavit that the court was guided by the reliefs sought in the main motion and that the apposite judgment evinces no ambiguity. As such, I find that I have nothing to clarify.

14. In the circumstances, I do not find this application meritorious.

15. This application is dismissed.

16. Costs will follow the event and are awarded to the Ex parte Applicant and the Respondent.

17. It is so ordered.

Delivered in open court at Chuka this 14th day of May, 2018 in the presence of:

CA: Ndegwa

Kiongo present for the Respondent

Mokua h/b Gatari Ringera for Ex parte Applicant

P. M. NJOROGE

JUDGE