



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 60 OF 2017

(Formerly Machakos Misc Civil Application No. 62 of 2012)

IN THE MATTER OF: LAW REFORM ACT CAP. 26 OF THE LAWS OF KENYA

IN THE MATTER OF: LAND DISPUTES TRIBUNAL CAP.18 OF THE LAWS OF KENYA

IN THE MATTER: AN APPLICATION BY SIMEON KINYUA OLE LEKASI FOR LEAVE TO APPLY FOR JUDICIAL REVIEW TO PROCEED AGAINST (1) SENIOR RESIDENT MAGISTRATE KAJIADO (2) KAJIADO CENTRAL LAND DISPUTE TRIBUNAL (3) KAJIADO DISTRICT LAND SURVEYOR BY WAY OF CERTIORARI AND PROHIBITION

SIMEON KINYUA OLE LEKASI.....APPLICANT

VERSUS

SENIOR RESIDENT MAGISTRATE KAJIADO.....1ST RESPONDENT

KAJIADO CENTRAL LAND DISPUTE TRIBUNAL.....2ND RESPONDENT

DISTRICT LAND SURVEYOR KAJIADO.....3RD RESPONDENT

AND

NDERI OLE KAMAU MAHINDA.....1ST INTERESTED PARTY

NCHINJIRIAN MUSARA.....2ND INTERESTED PARTY

IN THE MATTER OF APPLICATION FOR ENLARGEMENT OF TIME TO FILE JUDICIAL REVIEW ORDER DATED THE 19TH DECEMBER, 2017

RULING

What is before court for determination is the Applicant's Notice of Motion dated the 29th January, 2018 which seeks the following orders:

A. That leave be granted for filing Judicial Review dated 29th January, 2018 out of time.

B. That costs of this application be provided for.

The application is supported by the affidavit of JOHN MASESE, the Advocate for the Applicant who avers that the ruling on the application dated the 27th March 2012 was made on the 19th December, 2017 which directed that further proceedings be filed within 21days. He states that the application for copy of Ruling was made on the same date. He explains that the 19th December, 2017 was the last day of the term before the court closed for Christmas and New Year Holidays. He confirms that typed and certified copies of the Ruling were made on the 8th January, 2018. He contends that the delay in filing the application was precipitated by the intervening long holidays, and delayed typing and printing hitches.

The application is opposed by the 2nd Interested Party who filed Grounds of Opposition dated the 5th April, 2018 where he stated as follows:

1. The Applicant's Application seeks orders that are in contravention of the mandatory provisions of sections 8 and 9 of the Law

Reform Act and Order 53 Rule 3 of the Civil Procedure Rules.

2. The Honourable Court has neither jurisdiction nor discretion to extend time nor to grant any leave to file a substantive Notice of Motion out of the mandatory 21 days after granting leave at the Leave Stage.
3. The Application lacks merit.
4. The Applicant is abusing the process of the court.

The 2nd Interested Party prayed that the application be dismissed with costs.

On 18th June, 2018 both the Applicant and the 2nd Interested Party's Counsel submitted on the application. The Applicant's Counsel submitted that they had prepared the substantive judicial review application and was ready to file it on 2nd February, 2018 but were informed by the Court that they have to seek leave first. He contended that December, 2017 was not a good month as the Court had closed for recess and that the Court has inherent jurisdiction to enlarge the period to lodge the application. He stated that pursuant to Article 159(2) (d) of the Constitution, the Court is supposed to dispense justice without undue regard to procedural technicalities. Further, Order 50 rule 6 of the Civil Procedure Rules gives authority to the Court to order for enlargement of time. He reiterated that the all the pleadings are ready and they will waste no time in filing the application.

The 2nd Interested Party's Counsel submitted that the Court has no jurisdiction to extend time nor discretion to enlarge time to file judicial review. She referred to a similar matter in the Court of Appeal to wit: **Republic Vs Chairman Amagoro Land Disputes Tribunal & Another, Ex parte Paul Mafwabi Wanyama (2014) eKLR** where the Court of Appeal held on 14th December, 2014 that judicial review are a special procedure and the Learned Judge should not have relied on the provisions of the Civil Procedure Act and Rules. In relation to Article 159(2) (d) of the Constitution, she submitted that this cannot confer a Court with power that it does not have. She insisted that enlargement of time is a special jurisdiction and referred to the case of **Republic Vs Kahindi Nyafula & Another Ex parte Kilifi Farmers Cooperative (2014) eKLR** where Justice Angote on 8th May, 2014 to support this argument.

The Counsel for the Applicant in rejoinder submitted that the Constitution is supreme to legislative or judicial decisions and urged the Court to exercise discretion to allow application.

Analysis and Determination

Upon perusal of the Notice of Motion dated the 29th January, 2018 including the supporting affidavit, Grounds of Opposition and submissions from the Counsel of Applicant and 2nd Interested Party, the only issue for determination is whether the Court has the jurisdiction to enlarge time to enable the Applicant file the substantive motion for judicial review.

It is not in dispute that the Applicant was granted leave of 21 days from the 19th December, 2017 to file a substantive motion on judicial review. I note the Applicant delayed in filing the substantive motion within the stipulated time and that is the essence for the instant application which was opposed by the 2nd Interested Party.

Order 53 Rule 3 (1) of the Civil Procedure Rules provides that: **' When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.'**

I note from these provisions, it does not provide for enlargement of time once leave to institute judicial review proceedings had been granted. In the case of **Republic Vs Chairman Amagoro Land Disputes Tribunal & Another, Ex parte Paul Mafwabi Wanyama (2014) eKLR**, the Court of Appeal held that: **' The judicial review proceedings before the learned judge, which have given rise to this appeal were therefore special in nature and the learned judge erred in importing provisions of the Civil Procedure Rules to proceedings governed by the said provisions of the Law Reform Act and Order 53 of the Civil Procedure Rules. We agreed with the learned Counsel for the appellant that the learned judge erred in extending time which he had no jurisdiction to do. This appeal is therefore allowed allowed with the consequence that the Order extending time for filing judicial proceedings is hereby set aside.'**

In relying on the above cited judicial authority and as well as the legal provisions cited above citing the circumstances at hand, I find that this Court has no jurisdiction to enlarge time to file the substantive judicial review motion.

It is against the foregoing that I find the instant Notice of Motion unmerited and dismiss it with costs.

Dated, Signed and Delivered in Kajiado this 26th day of July, 2018

CHRISTINE OCHIENG

JUDGE