



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L JUDICIAL REVIEW NO. 1 OF 2014

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT COMMISSIONER, KEIYO.....1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION SETTLEMENT,

ADJUDICATION SECTION.....2ND RESPONDENT

THE DISTRICT LAND REGISTRAR,

ELGEYO MARAKWET.....3RD RESPONDENT

AND

PETER KIPRONO CHIRCHIR.....INTERESTED PARTY

EXPARTE ROBERT KIPSIGIRIO LOTIANG.....EXPARTE APPLICANT

JUDGMENT

The exparte applicant **Robert Kipsigirio Lotiang** has commenced this Judicial Review proceedings through the Republic of Kenya against the District Commissioner, Keiyo, the Director of Land Adjudication and Settlement and the District Land Registrar, Elgeyo Marakwet. The interested party is Peter Kiprono Chirchir.

The exparte applicant seeks for an order of certiorari to quash the proceedings, ruling, judgment and decisions of the 1st respondent given on 19.9.2006 in Elgeyo Marakwet Lower Kabito Minister Appeal No. 249 of 2005 and the directive of the 2nd respondent dated 26.6.2014 and any other decision and orders giving ownership and/or possession of Plot No. 395 with Lower Kabito Adjudication Section to the interested party, Peter Kiprono Chirchir.

He further seeks an order of prohibition directed at the 3rd respondent and the interested party from implementing or executing the judgment/ruling for the 1st and 2nd respondent dated 19th September, 2006 in Elgeyo Marakwet Lower Kabito Minister Appeal No. 249 of 2005 and 26th June, 2014 respectively and any other decision or orders giving ownership and/or possession of Plot No. 395 within Lower Kabito Adjudication Section to the interested party.

The application is based on the grounds that the applicant is the lawful owner of Plot No. 395 within Lower Kabito Adjudication section and has been in occupation with his family since 1955 to date. That the applicant is settled on the land all his life from time immemorial.

The applicant claims that in 1984 or thereabout, the adjudication process was done wherein the suit land herein was demarcated and plot No. 395 was entered in the register in the names of the applicant having been identified as the rightful owner.

That however, on 23/3/1990, the interested party herein filed an objection before the land Adjudication Officer and that in its decision, the Land Adjudication Officer dismissed the objection and awarded the suit land to the applicant herein.

However, aggrieved by the above decision, the interested party made an appeal to the Minister. Under the powers delegated by the Minister, the appeal was heard by the District Commissioner, Keiyo District the 1st respondent herein on 19.9.2006, more than 15 years later after the decision of the Land Adjudication Officer, in complete violation of the provisions of Section 29 of the adjudication Act which requires

appeals to the Minister to be lodged within 60 days from the date of the decision of the Adjudication Officer.

The ex parte applicant contends that the appeal to Minister No. 249 of 2005 arising out of 1990 objection was filed out of time and, therefore, the decision of the 1st respondent who entertained the said appeal was ultra vires as the appeal ought to have been filed within 60 days from the time the decision was made i.e. 15.8.1990. That numerous letters and visits by the applicant to the Ministry of Lands and 1st respondent premises inquiring about the position of the appeal to the minister were never responded to.

That on 11th September 2014, the applicant went to the Minister's office but he was directed to the office of the Director of Land Adjudication and settlement section and was surprised to find a decision made by the 1st and 2nd respondents without any notice to him.

Therefore, the 1st respondent acted in breach of law and in total disregard of the principles of natural justice when he failed to summon or notify the applicant of the hearing of the appeal before making its decision. The 1st respondent intentionally and unreasonably denied the applicant an opportunity to participate in the appeal proceedings and oppose it.

The transfer of ownership of the suit land there to the interested party contravenes Articles 39 (3) and 40 of the constitution and Section 7 of the limitation of Actions Act. The applicant in the foregoing was condemned unheard by the 1st respondent who acted against the rules of natural justice. The conduct of the 1st respondent amounts to acting unreasonably, unfairly and it is tainted with procedural impropriety.

According to the ex parte applicant, the respondents are duty bound to comply with the law and the aforementioned actions by respondents exposes the respondents to judicial review es.

That in overall, the respondent's decision was unlawful and ultra vires and should therefore be quashed.

The interested party was served through substituted service but failed to respond.

It is not in dispute that in 1984 or thereabout, the adjudication process was done in Lower Kabito Adjudication Section with Elgeyo-Marakwet County wherein plot No. 395 was demarcated and the same was entered in the register in the name of the ex parte applicant having been identified as the rightful owner as demonstrated in the supporting of the ex parte applicant.

On 23.3.1990, the interested party herein filed an objection before the Land Adjudication Officer but the same was dismissed and the suit land awarded to the ex part applicant.

The interested party was aggrieved by the decision of the Land Adjudication Officer and appealed to the Minister in 2006, approximately 15 years after the decision of the Land Adjudication Officer.

This court after considering the applicant's application for leave, granted the same despite it being alleged that the leave was sought out of time.

The respondents challenge this application on the basis of time thus that the application is being sought out of the 6 months stipulated by the law.

The respondents argue that the application offends the provision of Order 53 of the Civil Procedure Rules, 2010 to the extent that it was commenced outside the mandatory period of 6 months and that the respondents complied with the provision of the Land Adjudication Act, Cap. 284, Laws of Kenya.

I have considered the submissions on record and do find that the decision of the Minister given through the District Commissioner Keiyo on 19.9.2006 in Elgeyo Marakwet Lower Kabito Appeal No. 249 of 2005 was based on an appeal that was filed out of time and therefore, there was no appeal before the Minister. The decision was based on a null and void appeal.

Order 53 rule 2 does not envisage null and void proceedings and therefore, does not apply to such proceedings. This court finds that there is no time limit for applying for certiorari to quash null proceedings because nullities can be quashed at any time prosecuted to court.

This court further finds that the 1st respondent had no jurisdiction to entertain an appeal filed out of time without the extension of the period of appeal.

Ultimately, the ex parte applicant succeeds in the notice of motion dated 14.10.2014 thus an order of certiorari is hereby issued quashing the proceedings, ruling, judgment and decisions of the 1st respondent given on 19.9.2006 in Elgeyo Marakwet Lower Kabito Minister Appeal No. 249 of 2005 and the directive of the 2nd respondent dated 26.6.2014 and any other decision and orders giving ownership and/or possession of Plot No. 395 with Lower Kabito Adjudication Section to the interested party, Peter Kiprono Chirchir. Having issued prayer 1, this court finds prayer 2 superfluous. Costs of the application to the ex parte applicant. Orders accordingly.

Dated and delivered at Eldoret this 18th day of December, 2018.

A. OMBWAYO

JUDGE