



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI
JR APPLICATION NO. ELC 12 OF 2016
(Formerly JR CIVIL APPL. NO. 18 OF 2012)
IN THE MATTER OF AN APPLICATION FOR
AN ORDER OF CERTIORARI

REPUBLIC.....APPLICANT

-VERSUS-

THE CHAIRMAN, LAMURIA LAND DISPUTES TRIBUNAL

SENIOR PRINCIPAL MAGISTRATE'S COURT NANYUKI...RESPONDENTS

AND

JEREMIA GATHIANGA MUTITU

JECINTA WANJIRU

JOHN NDIRANGU KANYARI.....INTERESTED PARTIES

RULING

1. The notice of motion dated **25th January, 2016** *inter alia* seeks to set aside and/or review the order of this court made on **29th June, 2016** dismissing the applicant's notice of motion dated 16th August, 2012.
2. The application is premised on the ground that there is an error apparent on the court's record.
3. In support of the application, the applicant's advocate, **Mugo Kamau** has, *inter alia*, deposed that the court properly directed itself on the time within which the application for judicial review ought to have been made that is, from the time the decision of the Tribunal was adopted as a judgment of the lower court but miscalculated the time between when the award was adopted and the time when leave was granted to apply for certiorari as 6 months and 24 days when in actual fact it was 5 months and 24 days.
4. Pointing out that the court had framed three issues for determination and determined two of them in favour of the applicant, the applicant's advocate contends that had it not been for the said miscalculation

of the time which led to the court finding that the application was time barred, the court would have entered judgment in favour of the applicant.

Analysis and determination:

5. This being an application for review or setting aside of orders of this court, the principles that guide the court are now settled. For instance in the case of **National Bank of Kenya Limited v. Ndungu Njau (Civil Appeal No. 211 of 1996 (unreported))** it was held:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established.... It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. More can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be ground for review.”

6. Based on the foregoing principles, I have reviewed the judgment of this court with a view of determining whether there is an error apparent on the judgment under reference. In that regard, I have established that indeed there is an error apparent on the face of the court concerning the period of time between 8th February, 2013 (when the decision of the Tribunal was adopted as a judgment of the lower court and 31st July, 2012 when leave to apply for certiorari was granted). Whereas the court found that period to be 6 months and 24 days, the period is in actual fact 5 months and 24 days.

7. Based on the said error, the court set aside the leave granted to the *ex parte* applicant to apply for certiorari. The main motion was also dismissed with costs on the ground that it was time barred.

8. Having reviewed the entire judgment of the court, I agree with the applicant’s advocate that were it not for the said error, the court would have entered judgment in favour of the applicant. In this regard see the judgment of the court which, at the relevant parts, is as follows:

“By a notice of motion dated 16th August 2012, the subject applicant is seeking an order of certiorari to issue to remove to the High Court and to be quashed the proceedings and award in Lamuria Dispute Tribunal dated August, 2011 in Tribunal Case Number 006 of 2009 between subject applicant and the interested party and the proceedings, judgment and decree of Nanyuki Senior Principal Magistrate in Land Case No.6 of 2011 issued on 8th February 2012.....

Determination

In view of the foregoing the issues for determination are as follows:

- 1. Whether the Tribunal had jurisdiction over the suit land?**
- 2. Whether the instant application (notice of motion) is fatally defective?**
- 3. Whether the instant application is time barred? (whether it was filed out of time?) and whether the honourable court may quash the decision of the tribunal after being adopted by the Chief Magistrate’s Court?**

Whether the tribunal had jurisdiction over the suit land herein?

...In view of the foregoing holdings, it is apparently clear that the Land Dispute Tribunal lacked jurisdiction over the registered land herein.

Whether the instant application (notice of motion) is fatally defective?

...the instant notice of motion ought to be upheld

Whether the instant application is time barred? (whether it was filed out of time?) and whether the honourable court may quash the decision of the Tribunal after being adopted by the Chief Magistrate's Court?

...In the plethora of authorities herein, it is apparently clear that the decision of the tribunal is only ripe for the challenge in court of law by way of Judicial Review after it has been adopted by the magistrate's court. ...it follows therefore that the decision of the tribunal having been adopted by the Senior Principal Magistrate's Court at Nanyuki, on 8th February 2012, it was due for challenge on 8th July, 2012. The leave herein was sought on 31st day of July 2012, apparently 24 days after the expiry date....It is apparently clear that the instant Judicial Review proceedings commenced after expiry of six months. The honourable court is bound to follow the law, and hence it is my view that the same ought to be dismissed. Leave ought not to have been given in the first instant but since the said *ex parte* leave has been challenged, it ought to be set aside and the notice of motion dated 16th August 2012 be dismissed and is hereby dismissed with costs....”

9. From the issues framed for the court's determination, it is clear that the court returned a negative verdict on the first two. With regard to the third issue, the court returned a positive verdict based on the finding that the application for leave had been brought 6 months and 24 days from the time the impugned decision was made.

10. As pointed out herein above, had the court properly calculated the time between 8th February, 2012 when the decision of the Tribunal was adopted as the judgement of the lower court and 31st July, 2012 when leave was granted, which is 5 months and 24 days, the court would not have dismissed the motion on the alleged time bar.

11. As an order of certiorari will issue where the decision sought to be quashed was made by a body without jurisdiction, I find and hold that had the court not miscalculated the time between when the award was adopted as a decision of the lower court and when leave was granted to apply for certiorari, it would have allowed the applicant's motion.

12. For the reasons stated above, I find the application herein merited and accordingly set aside the orders setting aside the leave granted to apply for *certiorari* and dismissing the subject/applicant's notice of motion dated 16th August, 2012.

13. I also award the applicant the costs of this application and those of the motion dated 16th August, 2012.

Orders accordingly.

Dated, signed and delivered at Nyeri this 27th day of March, 2017

L N WAITHAKA

JUDGE

In the presence of:

N/A for the applicant

N/A for the respondent

N/A for the interested party

Court clerk - Esther