



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLN. NO. 1 OF 2007

CHARLES MUTUA MULIAPPLICANT

VERSUS

THE MINISTER FOR LANDS1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

AND

NTHENGE UVYUINTERESTED PARTY

RULING

1. On 8th January, 2007, the Applicant sought for leave to apply for orders of certiorari to quash the finding and Judgment of the Minister dated 19th September, 2006.
2. The Interested Party has filed a Preliminary Objection dated 20th February, 2012 in which he has averred that the Judgment sought to be quashed was delivered on 3rd May, 2005; that the Application for leave to commence Judicial Review proceedings to quash the Minister's decision was filed long after the lapse of six (6) months and that the proposed Interested Party, Nthenge Uvyu is deceased.
3. It is the Interested Party's case that the proceedings herein are incompetent and bad in law.
4. The parties argued the Preliminary Objection by way of written submissions.
5. The Interested Party's advocate submitted that the Application for prerogative orders have a limitation period; that Section 9(3) of the Law Reform Act and Order 53 of the Civil Procedure Rules provides for a limitation period of six (6) months and that by the time the Application seeking the leave of the court to commence Judicial Review proceedings for an order of certiorari was made, six (6) months had lapsed.
6. The Applicant's counsel submitted that it took long for the proceedings that are being challenged to be obtained; that it was impossible for the Applicant to file the Application for leave to institute proceedings in the nature of Judicial Review immediately and that Article 159 of the Constitution mandates courts to exercise judicial authority without regard to procedural technicalities.
7. Counsel submitted that under Article 47 of the Constitution, every person has the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
8. The Ex-parte Applicant submitted that this court should find that time started to run once the

proceedings were obtained.

9. It is not in dispute that on 3rd May, 2006, the District Commissioner of Machakos District, on behalf of the Minister, delivered his decision in Appeal Case No. 215 of 2002 involving the Ex-parte Applicant and the Interested Party (*deceased*).

10. The order of the Minister shows that both the Ex-parte Applicant and the Respondent were present when the Minister made the decision on 3rd May, 2006.

11. Being not satisfied with the said decision, the Ex-parte Applicant filed the Chamber Summons dated 28th December, 2006 on 8th January, 2007 seeking for leave to apply for orders of certiorari to quash the said decision.

12. Section 9(3) of the Law Reform Act and Order 53 of the Civil Procedure Rules stipulates that an Application for leave for an order of certiorari to remove any Judgment, order, decree or other proceedings for the purpose of it being quashed must be filed within six (6) months after the date of the Judgment, order or proceedings.

13. By the time the Applicant filed the Application for leave, a period of six (6) months had lapsed from the date when the Minister made his decision.

14. Considering that the law is clear on when such an Application should have been filed, a party who does not comply with those provisions cannot be allowed to rely on Articles 159 and 47 of the Constitution.

15. Indeed, Article 159 (2) (d) of the Constitution cannot come to the aid of a party who does not comply with the provisions of the law.

16. Likewise, Article 47 only comes into play where a party files his claim within the time limits set out in the law.

17. Having not complied with the provisions of Section 9(3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules, I find the Ex-parte Applicant's suit to be incompetent and bad in law.

18. The Applicant's suit is therefore struck out with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29TH DAY OF SEPTEMBER, 2017.

O.A. ANGOTE

JUDGE