



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC MISC. CIVIL . APP. NO. 6 OF 2015 (JR)

IN THE MATTER OF: APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW.

AND

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF:

REPUBLIC.....APPLICANT

VERUS

PROVINCIAL LAND DISPUE TRIBUNAL MOMBASA

THE SENIOR RESIDENT MAGISTRATE'S

(MALINDI AND LAMU)

THE LAND REGISTRAR, KILIFI.....RESPONDENTS

AND

**REHEMA KHOJA MUHAMBI.....EXPARTE
APPLICANT**

**KAINGU NGONYO HINZANO.....INTERESTED
PARTY**

J U D G M E N T

Introduction:

1. In her Notice of Motion dated 25th July, 2012, the Ex parte Applicant is seeking for the following Judicial Review orders:-

(a) THAT an order of Certiorari do issue, to remove and bring to this Honourable Court for the purpose of quashing the decision/judgment of the Provincial Land Dispute (Appeals committee) Tribunal in Land Dispute Appeal Case No. 21 of 2007 where the Applicant was REHEMA KHOJA MUHAMBI.

(b) THAT an Order of prohibition do issue directed at Magistrates court sitting in Malindi and/or Lamu for purposes of prohibiting the said Resident Magistrate Court sitting in Malindi or Lamu from reading, confirming and/or adopting the award of the Provincial Land Dispute (Appeal Committee) Tribunal in terms of decision made in the aforesaid Land dispute No.21 of 2007.

(c) THAT an Order of Prohibition do issue directed at the Land Registrar prohibiting the Land Registrar Kilifi, his assigns, agents, or associates from revoking and cancelling Title No. Ngomeni/Squatters/Settlement Scheme/1780 issued to and held by the ex-parte Applicant herein (Rehema Khoja Muhambi) and the Land Registrar Kilifi be prohibited for issuing a fresh Title to Plot No. Ngomeni/Squatters/Settlement Scheme/1780 to Kaingu Ngonyo Hinzano his assigns, associates, heirs or successors.

The Ex-parte Applicant's case:

2. According to the Applicant's Affidavit, she was at all material times the registered proprietor of parcel of land known as Ngomeni Squatter Settlement Scheme/1780 (the suit property); that she bought the suit land from Mashoho Nyaki and that in the year 2007, the interested party lodged a complaint before the Magarini Land Dispute Tribunal case number 16th July of 2007 claiming ownership of the suit property.

3. It is the Applicant's case that she appealed against the decision of the Tribunal in Appeal case number 21 of 2007 but on 13th July, 2011, the Appeal was dismissed.

4. According to the Applicant, it is only the High Court and the Land Registrar who have the exclusive jurisdiction to determine claims relating to titles to land; that the Tribunal's proceedings are ultra-vires and that the actions of the Tribunal are contrary to law.

The Respondent's case:

5. The Respondents, through the Attorney General, filed Grounds of Opposition in which they averred that the Respondents' decision was proper and well within their powers; that no rules of natural justice were breached and that the orders that were made by the Respondents were not ultra vires.

The Interested Party's case:

6. The Interested Party's brother, Kitsao Ngonyo, filed an Affidavit in which he deponed that the Interested Party died on 5th March, 2009 and that no one had taken out letters of administration.

7. The Interested Party's advocate also field a Notice of Preliminary Objection in which he averred that the court cannot proceed on judicial review of a body which is no longer in existence; that this court lacks jurisdiction and that the matter can only proceed as an appeal.

Submissions:

8. The Applicant's counsel submitted that the decision of the 1st Respondent ordering the cancellation of the Applicant's title was null and void; that the Tribunal did not have the powers to revoke the Applicant's Title Deed and that an order of certiorari should issue.

9. The Interested party;s advocate submitted that the Applicant had a right of appeal to the High Court within 60 days from the date of the Judgment of the Appeal Committee; that the right to bring Judicial

Review proceedings expired on 13th September, 2011 and that this Application is a non-starter having being filed on 26th July 2012.

10. Counsel submitted that the orders being sought cannot issue because the 1st Respondent no longer exists.

11. In response to the Interested Party's submission, the Applicant's counsel submitted that the Application seeking the leave of the court to commence judicial proceedings was filed within time and that the substantive notice of motion was filed within 21 days.

12. Counsel submitted that the Applicant instructed advocate to commence these proceedings in good time and that the mistake of counsel should not be visited on a litigant.

Analysis and findings:-

13. The issues for determination in the Application before me are whether:-

(a) The suit was filed within the requisite time;

(b) The orders of judicial review being sought can be granted in respect of a body which no longer exists and;

(c) The Application is meritorious;

14. It is trite that under the provisions of Section 9(3) of the Law Reform Act and Order 53(2) of the Civil Procedure Rules, an Application for an order of certiorari must be filed not later than six months after the date of the proceedings.

15. The ex-parte Applicant is challenging the decision of the Provincial Land Dispute (Appeals Committee) which was made on 13th July, 2011.

16. The Application seeking the leave of court to commence judicial review proceedings was filed by the Applicant on 11th April, 2012.

17. It is therefore obvious that by 11th April, 2012, six months had lapsed from the date when the Appeals Committee made its decision and the order of certiorari cannot issue. It does not matter that indeed the court granted to the Applicant leave to commence the proceedings for an order of certiorari.

18. It is trite that an order of prohibition can only be granted in respect to a decision that has not been made.

19. The order of prohibition cannot be granted in the circumstances of this case, considering that both the Land Disputes Tribunal and the Provincial Appeals Committee have already made their respective decisions.

20. Indeed, under the provisions of the Land Disputes Tribunal Act (repealed) there was no requirement that the decision of the Appeals Committee was to be adopted by the Magistrates Court.

21. In any event, if the intention of the Applicant was to appeal against the decision of the Provincial Appeals Committee on a matter of law, the repealed Act required that she does so within 60 days from the date of the decision.

22. The Applicant failed to comply with the requirements of the repealed Act in filing an appeal within the requisite 60 days.

23. It is for these reasons that I find the Application dated 25th July, 2012 to be unmeritorious and I dismiss it with costs.

Dated, signed and delivered in Malindi this **16th** day of **September**, 2016.

O. A. Angote

Judge