



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO 23 OF 2014**

**KIBICHII MOGOTIO .....1<sup>ST</sup> PLAINTIFF**

**WILFRED CHEBON RONO .....2<sup>ND</sup> PLAINTIFF**

**KIPCHUMBA KIPNGOK .....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**DISTRICT LAND REGISTRAR, BARINGO.....DEFENDANT**

**RULING**

***(Application to commence judicial review proceedings; application rejected)***

1. I am not very sure what is before me, but I will construe it as an application for leave to commence judicial review proceedings against the District Land Surveyor, Baringo, for purposes of quashing what is said to be his decision to create a reflection road in the land parcels Lembus/Kilombe/148, 149 and 150.

2. I have probably, with my above introduction, oversimplified the matter, for there is a history to it, which I think it necessary to set out at this preliminary stage.

3. The applicants in this matter are three persons, namely Kibichii Mogotio, Kipchumba Kipngok, and Wilfred Chebon Rono. The three, through an application dated 9 July 2014, filed an application for leave to commence judicial review proceedings against the District Land Registrar, Baringo (not the District Land Surveyor as in the present application). They wanted leave to commence judicial review proceedings for an order of certiorari to quash the decision of the said Baringo District Land Registrar, to create a reflection road in land title numbers Lembus/Kilombe/148, 149 and 150. The three applicants are the proprietors of the three land parcels, and in their said application, they stated that the decision of the District Land Registrar, Baringo, was based on irrelevant considerations, bad faith, and contrary to legitimate expectation and the law. It was also averred that the applicants were not consulted prior to this decision being made.

4. The applicant's counsel, Mr. Cheruiyot, appeared before my predecessor, Lady Justice Waithaka, on 10 July 2014 with the application for leave and stay of the decision. The applicants were ordered to serve the application and appear on 22 July 2014 to canvass the same inter partes. From the record, it appears to me that leave was granted on that day, and the respondent given 21 days to reply to the application, with a further direction that a hearing date for the application be taken in the registry.

5. It is then on 18 August 2014 that this application was filed. It is probably a misdescription to call it an application, for what was filed is actually an amended statement of facts, which now purports to bring in the District Land Surveyor, Baringo, as the respondent in place of the District Land Registrar, Baringo. This is what was presented to me on 21 April 2015.

6. The only conclusion I can reach with the material before me, is that the applicants want to have the proceedings herein to be against the District Land Surveyor, Baringo, rather than against the District Land Registrar, Baringo. Mr. Kirui of the State Law Office, actually thought that it is an application for leave, and did not object to it. But there are serious complications to such application.

7. First, leave was already granted to commence judicial review proceedings against the District Land Registrar, Baringo. Once leave is granted, the applicant had 21 days within which to file the main motion. This is brought out by the provisions of Order 53 Rule 3(1) of the Civil Procedure Rules. Leave having been granted on 22 July 2014, the substantial motion needed to be filed latest on 12 August 2014. No such application was filed. If the applicants thought that there was an error in the application for leave, and they needed to have that sorted out before filing the main motion, in my opinion, they needed to have that rectified within this 21 days period, unless they had an extension of time. Anything filed outside the 21 days period, without there being an extension of time, is outside the time frame contemplated by Order 53 Rule 3(1).

8. The other alternative was for the applicants to forget the leave granted to commence proceedings against the District Land Registrar, and file a fresh application for leave, now against the District Land Surveyor. None has been filed.

9. But even if I am to construe what is before me as a fresh application for leave to commence judicial review proceedings against the District Land Surveyor, the applicants cannot get help for I will reject the application for leave. The decision sought to be quashed is said to have been made on 24 January 2012. Assuming that this is the application for leave, it was filed on 18 August 2014, more than one and a half years after the said decision. Applications for judicial review are supposed to be made within 6 months of the decision as required by Order 53 Rule 2 of the Civil Procedure Rules. It follows that in so far as the applicants want to commence judicial review proceedings against the District Land Surveyor, that application is already late.

10. From the above, it will be noted that the applicants did not file the main motion against the District Land Registrar, within the 6 months, and in so far as the applicants want to file judicial review proceedings against the District Land Surveyor, they are already out of time.

11. The conclusion of the above is that the applicants now cannot file judicial review proceedings against either the District Land Registrar, Baringo, or the District Land Surveyor Baringo. They can however seek remedies under other alternative procedure.

12. It is so ordered and/or directed.

**Dated, signed and delivered in open court at Nakuru this 14<sup>th</sup> day of May 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**

Mr Cheruiyot C. K for ex-parte/applicant

Court Assistant: Janet.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**