



IN THE ENVIRONMENT AND LANDS COURT OF KENYA AT ELDORET

E&L MISC. APPLICATION NO. 20 OF 2014

**IN THE MATTER OF LEAVE TO INSTITUTE JUDICIAL REVIEW OUT OF TIME
IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW**

AND

**IN THE MATTER OF LOWER KABITO ADJUDICATION SECTION IN ELGEYO
MARAKWET DISTRICT**

AND

IN THE MATTER OF PLOT NO. 395

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CETIORARI AND PROHIBITION**

AGAINST

- 1. THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER, ELGEYO
MARAKWET DISTRICT**
- 2. DISTRICT COMMISSIONER – KEIYO**
- 3. ELGEYO MARAKWET DISTRICT LAND REGISTRAR**

IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF LAND APPEAL CASE NO. 249 OF 2005

TO THE MINISTER FOR LANDS

AND IN THE MATTER OF THE LAND ADJUDICATION ACT, 284

BETWEEN

REPUBLIC.....APPLICANT

AGAINST

THE DISTRICT COMMISSIONER – KEIYO

**DIRECTOR OF LAND ADJUDICATION SETTLEMENT ADJUDICATION SECTION
DISTRICT LAND REGISTRATION ELGEYO MARAKWET.....RESPONDENTS**

AND

PETER KIPRONO CHIRCHIR.....INTERESTED PARTY

AND

ROBERT KIPSIRIRIO LOTIANG.....EX-PARTE APPLICANT

(Application to file judicial review out of time; whether such application can be allowed; no legal provision to support such application; on the facts not clear if application is out of time or within time; benefit of doubt given to applicant; leave granted).

RULING

The application before me is that dated 18 September 2014 and filed on the same day. It seeks the following orders :-

- 1. That this matter be certified as urgent and be dispensed with in the first instance.*
- 2. That leave be and is hereby granted to the ex parte applicant to institute and commence judicial review out of time.*
- 3. That leave be and is hereby granted to the ex parte applicant to apply for an order of certiorari to bring into the High Court for purpose of 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.*
- 4. That leave sought do operate as a stay of registration of plot no.395 in favour of interested party and any intended actions of the respondents.*
- 5. That leave do issue to the ex-parte applicant to apply for an order of prohibition directed at the 3rd respondent and interested party from implementing or executing the ruling/judgment for the 1st and 2nd respondents dated 19/9/2006 in Elgeyo Marakwet Lower Kabito Minister Appeal NO.249 of 2005 and 26/6/2014 respectively and any other decision on orders giving ownership and/or possession of plot no.395 within Lower Kabito Adjudication Section to the interested party.*

The grounds upon which the application is based include the reasons that the statutory time within which to lodge the suit has lapsed and that the applicant is the lawful owner of the Plot No. 395 and that he has been in occupation of the same since the year 1955.

In his application and supporting affidavit, the applicant has averred that in the year 1984, the adjudication process was done and the applicant was entered as owner of the suit land. However, on 23 March 1990, the interested party filed an objection before the Land Adjudication Officer (LAO). The LAO dismissed the objection and awarded the suit land to the applicant. Aggrieved by this decision, the interested party appealed to the Minister, and under delegated powers, the appeal was heard by the District Commissioner, Keiyo District, on 19 September 2006. This is said to be in violation of Section 29 of the Land Adjudication Act which requires appeals to be lodged by the Minister within 60 days of the decision of the LAO. It is the applicant's position that the said appeal was out of time and therefore ultra

vires. The applicant has averred that he wrote numerous letters and made numerous visits to inquire about the position of the appeal but got no response. He has annexed various copies of letters. He has further averred that it is on 11 September 2014 that he went to the Minister's Office at Ardhi House and he was directed to the office of the Director of Land Adjudication and Settlement. It is then that he was surprised to find a decision made by the 1st and 2nd respondents without notice. He has annexed copies of what he has called "the judgment by the 1st respondent" and what he has termed a "directive by the 2nd respondent" dated 26 June 2014. He has also stated that the 1st respondent acted in disregard of the principles of natural justice when he failed to summon him or notify him of the hearing of the appeal before making his decision. It is for these reasons that he has sought the orders herein.

I have considered the application. It will be seen that one of the orders sought is for leave to apply for judicial review out of time. This is not a prayer that can be granted. It was held in the case of **Rosaline Tubei & 8 Others vs Patrick K. Cheruiyot & 3 Others (2014) eKLR** that the Law Reform Act, has no provision for allowing applications for judicial review out of the 6 month limitation period. I am therefore unable to grant the prayer that leave be granted to file judicial review out of time.

That said, I am not too certain that the application herein has been filed out of time. I have seen that the decision of the Minister sought to be quashed was made on 19 September 2006. However it is said that the said decision was never communicated to the parties until 26 June 2014. If this is the position, it is debatable, and I would not want to make a concrete decision given the limited material before me, whether the application for judicial review is within, or is outside, the limitation period of 6 months. It is difficult to decide with finality, at this stage of the proceedings, given that the sole material presented is that of the applicant, that the Minister only communicated his decision on 26 June 2014. The other question that arises is whether the date of the Minister's decision should be deemed to be the date that the decision was made (which is said to be 19 September 2006) or the date that the communication was made (which is said to be 26 June 2014).

I am unable to make a final decision on these points, because as I have said, I only have limited material by the applicant. I will give the applicant the benefit of doubt, as to whether the proposed suit is within time. The issue of time can still be revisited by the respondents who are free to argue that the application was brought out of time.

I will therefore grant leave to the applicant to commence the proposed judicial review application. I direct that the main motion be filed and be served on all parties within 14 days. However, the application for stay, will be heard after the main motion has been filed and served and directions on a date will be given in the file. Costs of this application will abide the main motion.

For the avoidance of doubt, it should not be deemed that I have allowed the prayer seeking leave to file judicial review out of time, for as I have earlier held, I am not of the view that this is a prayer that the law allows me to grant. Neither have I held that the application is within time. There is doubt as to whether the application is within time, or outside time, and I have allowed the applicant leave to commence judicial review proceedings because it may be that this application for leave was filed within time, an issue which, as I have said before, can be revisited by the respondents.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 7TH DAY OF OCTOBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Delivered in the presence of:

P.K. Kibii present for the ex-parte applicant.