



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L MISC APPL 33 OF 2013

CHAPTER 26 AND ORDER 53 RULES 1 AND 2 OF THE CIVIL PROCEDURE

RULES 2010 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE INTERNALLY DISPLACED PERSONS

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE JUDICIAL REVIEW WRIT OF
CERTIORARI, MANDAMUS AND PROHIBITION

AND IN THE MATTER OF THE PROFILED LIST OF THE INTERNALLY DISPLACED PERSONS
TO WIT KIPKURERE FOREST EVICTEES

BETWEEN

REPUBLIC.....APPLICANT

VS

MINISTRY OF DEVOLUTION AND PLANNING.....1ST RESPONDENT

THE HON ATTORNEY GENERAL.....2ND RESPONDENT

AND JACKSON AGUI AND 1818 OTHERS.....EXPARTE APPLICANTS

RULING

Before me is an application seeking leave to institute judicial review proceedings for orders of certiorari and mandamus. The application is curiously worded, because as drafted, it seeks the following orders :-

1. *That this application be certified as urgent and its service be dispensed with.*
2. *That the applicants be granted leave to file a motion on judicial review for the orders of certiorari and mandamus removing into this court for the DEVOLUTION AND PLANNING to the settle evictees basing on a list marred with irregularities (sic).*
3. *That upon such leave being granted, the same do operate as stay pending the hearing and determination of the main motion herein.*

The application is based on the following grounds :-

- (a) That the list of forest evictees profiled by the respondents is marred with irregularities.*
- (b) That the list of the evictees is not exhaustive as it does not contain names of genuine evictees.*
- (c) That the applicants were forcefully evicted and should now be resettled.*
- (d) That the individuals listed have been asked by the 1st respondent to open accounts and could be paid anytime now.*
- (e) That the list forwarded was done in secret to the other evictees.*
- (f) That no prejudice will be suffered if the said list is quashed by this Honourable Court.*

The application is supported by the affidavit of Jackson Agui who has sworn the affidavit on behalf of all the other applicants who number 1,818. There is also annexed the statutory statement which has been spelt out by the same Jackson Agui.

Although not very well drafted, I think the case of the ex-parte applicants, is that the Ministry of Devolution and Planning has prepared a list of forest evictees who are to be compensated and that the applicants are probably not in that list. In the supporting affidavit, Jackson Agui, has annexed two types of list. One, marked JA-2, is what he terms as the list of genuine forest evictees. That list actually contains about eight different lists. The other, marked JA-4, is what he refers to as the Ministry list which, according to the applicants, is not a genuine list. Both lists are not dated, and it is not clear where they emanate from, because they are not signed, save for a couple of the lists in JA-2.

Mr. E.K. Melly, for the applicants, when urging me to grant leave, stated that the genuine list is that in JA-2, and not JA-4. He stated that the evictees wrote to the Ministry but the Ministry rejected their list. No letter was annexed showing any indication that the applicants wrote to the Ministry to alert them that the list they have is not genuine, and no letter was annexed, to show that the Ministry rejected the list of the applicants. Neither was any decision displayed by the applicants, showing that their list has been rejected, or that the list annexed as JA-4, is the list that the Government intends to use, as the genuine list of evictees. JA-4 is neither signed nor dated, and it is difficult for me to tell that, that is the list the Government intends to use, and if so, when a decision was made to use that list. Indeed, there is no demonstration of any decision that may be the subject of orders of certiorari. Neither has it been explained when such decision, if it exists, was ever made, to determine whether the application has been brought within 6 months. Time is important as set out in Rule 2 of Order 53, which deals with applications for judicial review. The same provides as follows :-

Rule 2 : Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

It is imperative for one to demonstrate, that the decision intended to be quashed was made within 6 months of the application, before the court can be inclined to grant leave to file the substantive motion. None has been provided in this case.

Under Rule 1 of Order 53, leave must be obtained before the substantive motion for judicial review is filed. I think the purpose of this provision is to weed out frivolous suits or claims that do not meet the threshold required to would enable one commence proceedings for judicial review.

I am afraid, that without the decision to be quashed being demonstrated, and without there being any

indication of when such decision was made, I am unable to grant leave to commence judicial review proceedings. The material before me

is not sufficient to enable me grant leave. In the premises, this application must fail and is dismissed. I however make no orders as to costs.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF OCTOBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Mr. P.K. Komen holding brief for Mr. Melly for the ex-parte applicants