



M’Thiringi (Suing as the legal representative of the Estate of M’Thiringi M’Anampiu (Deceased) v District Land Adjudication and Settlement Officer Karama Adjudication Section & another; Munya & 3 others (Interested Parties) (Environment and Land Case Judicial Review Application E007 of 2023) [2024] KEELC 4601 (KLR) (29 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E007 OF 2023**

**CK NZILI, J
MAY 29, 2024**

BETWEEN

MAIQUETA NKROYAI M’THIRINGI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF M’THIRINGI M’ANAMPIU (DECEASED) APPLICANT

AND

DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER KARAMA ADJUDICATION SECTION 1ST RESPONDENT

THE OFFICE OF THE ATTORNEY GENERAL 2ND RESPONDENT

AND

KOBIA STEPHEN MUNYA INTERESTED PARTY

ANDREW GITIRIME INTERESTED PARTY

SHADRACK GUANTAI INTERESTED PARTY

NKUBITU LICHUNGI INTERESTED PARTY

RULING

1. By an application dated 13.2.2024, the court is asked to set aside the judgment entered on 7.2.2024 and Judicial Review Application No. E007 of 2023 be consolidated with Judicial Review No. E004 of 2023. The grounds are set on the face of the application and in an undated supporting affidavit sworn by Mariqueta Nkoyai M’Thiringi.
2. The applicant avers that after the leave to institute judicial review was granted, her substantive notice of motion was under-assessed and filed erroneously as Judicial Review No. E004 of 2023, on 15.8.2023.



3. The applicant avers that upon learning of the error, she filed an application to arrest the judgment to rectify the errors but the same was not placed before the court file by the time that the judgment was delivered.
4. The applicant avers that she filed the notice on time, save that it was filed in the wrong file and underpayment made following an assessment of her filing fees. The applicant has attached the notice of motion as annexure MR 1 (a), (b), (c), (d) & (e) and copies of an application dated 5.2.2024 as MR 2 (a) & (b).
5. By a ruling dated 26.7.2023, this court granted the applicant leave to institute judicial review proceedings to quash a decision made on 6.12.2022 by the 1st respondent in Objection No's. 3084, 3085 & 3094 regarding Parcel No's 11136, 7770, 11478, and 3866 Karama Adjudication Section.
6. The notice of motion was to be filed and served within 21 days when the matter was mentioned on 28.9.2023 when counsel for the exparte applicant told the court that there was a notice of motion filed on 16.8.2023 and served upon the respondents. The court directed that the respondents and the two interested parties file and serve their responses within 21 days and that the notice of motion be canvassed by way of written submissions to be filed by 15.11.2022.
7. The matter was mentioned on 21.11.2023 and a judgment date was given for 7.2.2024. The court could not trace the notice of motion referred to in the replying affidavits in the court file nor in the e-filing and e-payment system for any date after leave was granted. The exparte applicant did not also share with the court the original or a copy of the matter filed on 16.8.2023. The court, in the absence of proof of compliance, proceeded to dismiss the proceedings with costs.
8. The applicant now says there was no error on her part, and although she filed the notice of motion on time, it was filed in a new file. She also admits that the notice of motion filed was under-assessed and she paid less court filing fees than what is required in law.
9. Leave in this matter was granted in Judicial Review No. E007 of 2023 that was opened on 28.4.2023 and where the exparte appellant was aware of. All the other respondents and interested parties filed their documents in the correct court file.
10. The exparte applicant also filed written submissions dated 28.10.2023 in this file and not any other file. The exparte applicant was asked to supply the notice of motion when it became apparent that it was not in the court file and could not be traced. How and why a new number bearing Judicial Review No. E004 of 2023 would be opened after Judicial Review No. E007 of 2023 remains a mystery to this court. The error has not been owned up by the exparte applicant counsel on record who must have been the one who filed the notice of motion and the executive officer or the receiving clerk for that matter. Receipt marked MM (e) for account number E2JU6XF9 received on 16.8.2023 is for an application for leave to file judicial review charged at Kshs.1,500/= and not a notice of motion which ideally would attract more filing fees than the stated amount.
11. The applicant's file was assigned a Judicial Review No. E007 of 2023. The applicant knew the file number, and if at all the assigned number was No. JR E004/2023, nothing was stopping the applicant from requesting that her documents be inserted in the correct file.
12. Whereas the court has the discretion to set aside its judgment, there must be reasonable grounds. The application filed in JR E004 of 2023 was for leave and not a notice of motion. Explanation has not been sought by the applicant from the registry confirming the alleged error. The applicant is silent on why, assuming the notice of motion was intended for this file, she was undercharged, and she proceeded to pay less. Be that as it may, I note that these are mistakes of counsel which should not be visited upon



the innocent applicant. I shall review the orders made on 7.2.2024. I direct the notice of motion to be properly filed within 3 days to be considered on merits. There will be no order as to costs. Mention on 20.6.2024.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 29TH DAY OF MAY, 2024**

In presence of

C.A Kananu

Kaimenyi for 1st, 2nd & 3rd interested parties

Maina for Aketch for exparte applicant

HON. C K NZILI

JUDGE

