**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**
**AT MERU**
**Misc. Appli. 26 of 2000**

**REPUBLIC …… APPLICANT**

**VERSUS**

**KITHELE M'MUNORU …….. 1ST RESPONDENT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT**

**OFFICER- MERU NORTH DISTRICT …… 2ND RESPONDENT**

**PROVINCIAL LAND ADJUDICATION & SETTLEMENT OFFICER –**

**EASTERN PROVINCE …….. 3RD RESPONDENT**

**EX-PARTE APPLICANT …….. MWIRICHIA KAUMBUTHU**

**RULING OF THE COURT**

By his application dated 7.3.2000, which was filed in court on 14.3.2000, ex-parte the applicant herein applied for orders of certiorari to quash the decision, ruling or orders of the 2nd respondent or his agents dated 30.10.98 in objection umber 18 of Kangeta Adjudication Section and declare null and void any transactions carried out pursuant thereto. The applicant also applied for an order of mandamus to compel the 2nd respondent by himself or through his agents to implement the decision ruling or order of the 2nd respondent dated 22.5.95 in objection number 18 relating to land parcel numbers 3016 and 2941 within the Kangeta Adjudication Section. The application was brought under the provisions of Order 53 rule 3 of the Civil Procedure Rules. The applicants also sought an order canceling the 1st respondent's registration of land parcel number 6706 measuring 0.40 acres which was said to have been excised from the applicant's parcel of land No. 3016.

The application was based on three grounds on the face of the application, namely that:-

1. By the decision dated 30.10.98, the 2nd respondent by himself or through his agents purported to sit on appeal of his own decision dated 22.5.95 in respect of objection No. 1 contrary to the rules of natural justice and all know (sic) legal procedures.

2. By the letter dated 3.2.2000 the 3rd respondent purported to overturn or quash his own earlier and correct decision dated 19.1.99
3. No application for revision has ever been filed against the decision dated 22.5.95 as by law required in the event of dissatisfaction; and the same stands todate.
4. In the intervening period on 5.2.2000 the respondents have excised 0.40 acres from the applicants' land No. 3016 and renamed it to parcel No. 6706 in the name of the 1st respondent.

The application was also based on the applicant's supporting affidavit sworn on 7.3.2000, the statement of facts also dated 7.3.2000. Though the notice to the registrar, dated 22.2.2000 was received in the civil registry on the same date, it does not however contain the stamp of the Registrar signifying that the same was served upon him.

From the statement of facts, the applicant avers that he is the owner and proprietor of land parcel No. 3016 measuring 0.60 acres. The 1st respondent owns parcel No. 2400 which measures 0.99 acres in the same Kangeta Adjudication Section. The two parcels of land were situated near Kangeta Primary School and Rumira Hill respectively.

On 6.11.92, the 1st respondent lodged an objection to the District Land Adjudication Officer Meru North District seeking to have the demarcation of the two portions of land swapped one with the other. On 22.5.95, the objection was dismissed by one Mr. Mbuka, LAA II. The objection was reheard on 30.10.98. The decision of the 30.10.98 hearing was at variance with the decision reached on 22.5.95.

Upon delivery of the second decision on 30.10.98, the applicant filed a complaint alleging irregularity with the Provincial Land Adjudication and Settlement Officer. The Provincial Land Adjudication Officer, by his letter dated 19.1.1999 revoked the decision dated 30.10.98 which meant that the portions of land would remain near Kangeta Primary School and Rumira Hills respectively.

The applicant also averred that when the 2nd respondent summoned the parties on 30.10.98, he did not hint to them that he was rehearing objection No. 18 but only informed them that he was enquiring into the dispute. The applicant alleges he was thus lured into participating in the proceedings of 30.10.98, which meeting the applicant would not have attended if the 2nd respondent had made full disclosure of the purpose of the meeting. Hence this application.

Annexed to the supporting affidavit were various documents in support of his claim against the respondents.

The 1st respondent filed a replying affidavit on 6.4.2000 in which he depones that the ex-parte applicant was a committee member of the Kangeta Land Adjudication Committee. That by virtue of that position, the ex-parte applicant allocated himself land where the 1st respondent's land stood. When the 1st respondent discovered the anomaly, he filed an objection which was fixed for hearing on 24.5.95 but on the 24.5.95, the 1st respondent discovered that the objection had been heard on 22.5.95.

Upon the 1st respondent's complaint to the District Land Adjudication and Settlement Officer, the objection was heard afresh. The verdict on rehearing of the objection was in the 1st respondents favour. The exparte applicant filed his complaint with the Provincial Adjudication Officer. The whole dispute was then heard afresh by the Provincial Land Adjudication and Settlement Officer on 3.2.2000. The 1st respondent urged the court to find that the ex-parte applicant's application is incompetent, misconceived and time barred. He also urged the court to find that the application is an abuse of the due process of the court.

During the hearing of the application, Mr. Mithega for the ex-parte applicant contended that the ex-parte applicant obtained leave to file the proceedings out of time. He contended further that one cannot fault the ex-parte applicant for any delay because the dispute was a continuing dispute that culminated in the ruling made on 3.2.2000.

Regarding the validity of the various decisions made on 22.5.95, 30.10.98 and 3.2.2000, Mr. Mithega contended that the decisions made on 30.10.98 and 3.2.2000 should be quashed since the 2nd and 3rd respondents had no jurisdiction to make the awards that they purported to make. He referred the court to section 26(3) of the Land Adjudication Act, Chapter 283, Laws of Kenya. The whole of section 26 of Cap 283 deals with objections to Adjudication Register. Sub section (1) thereof provides for the lodging of objections after publication of Adjudication Register. Such objection is to be filed within sixty (60) days of the publication of the register. The objector is required to state the grounds of his objection which shall then be considered by the Land Adjudication Officer together with the committee and to deal with the objection as thereunder provided.

Subsection (3) of section 26 provides as follows:-

"3. No appeal shall lie against any decision by the Adjudication Officer to dismiss an objection or order rectification or to award compensation in lieu of rectification, as the case may be, but the minister or any person to whom compensation has been awarded and who is dissatisfied with the amount awarded by the Adjudication Officer may apply to a subordinate court held by a Resident Magistrate for its revision in such a manner as may be prescribed."

Ordinarily speaking therefore, the decision of 22.5.95 was not subject to appeal unless either the Minister or a party to whom compensation was paid appealed against it. There is not on record any indication that any compensation was paid to any party in this case. Mr. Mithega submitted that since the Minister did not file any appeal, then the decision made on 22.5.95 is the only valid decision which was in favour of the ex-parte applicant. Mr. Mithega also referred to annexture "MK4" to the statement of facts which was a letter dated 19.1.99. The content of the letter are the findings of an investigation carried out on objection 18 regarding parcel Nos. 3016 and 2941 Kangeta Adjudication Section. The facts of that investigation were that:-

1. The objection No. 18 was heard and decided by Mr. Mbaka LAA II on 22nd May 1995, and the same decision was duly implemented by the then demarcation committee.

2. On 24.9.97, you (i.e. The District Land Adjudication Officer – Meru North District) altered the decision as seen on the proceedings indicating that the objection was partly heard and you further directed a LAO to complete the incomplete part.

3. On 30th October 1998 Mr. Nderitu, a LLA II reheard to (sic) objection in two parts: that is objection 18A P/No. 3016 and objection 18B P/No. 2941 and his decision changed the one made by LAA II Mr. Mbaka on 22nd May 1995.

In view of the above findings, the Acting Provincial Land Adjudication and Settlement Officer, one Jones Kieti directed that the decision made by Mr. Nderitu on 30.10.98 was null and void as the same was not based on any legal provisions. Mr. Kieti directed that the decision of 22.5.95 should remain in force unless otherwise ordered by a superior court. Mr. Kieti also directed the District Land Adjudication Officer to advise the 1st respondent to file a case in court against the decision of 22.5.95. In Mr. Mithega's view, the decision of 22.5.95 is the only valid decision since the 1st respondent did not file for orders from the court.

Mr. B.G. Kariuki who appeared for the 1st respondent submitted that the applicant's application was time barred under the provisions of Order 53 of the Civil Procedure Rules. An application for an order of certiorari must be filed within six (6) months of the date of proceedings. He submitted further that the leave granted to the ex-parte applicant on the 22.2.2000 was null and void. He cited the persuasive decision in the case of **Joseph Njeru Kombo & 80 Others – Vs – District Commissioner Mbeere & Others – Misc. Application No. 5 of 2001** in the High Court of Kenya at Embu.

Mr. Kariuki also took issue with Mr. Mithega's reference to the opinions dated 30.10.98 and 3.2.2000 as decisions. It was on the basis of these submissions that Mr. Kariuki urged the court to dismiss the application with costs to the 1st respondent.

The first issue that arises here is whether the leave granted to the exparte applicant to bring these proceedings was properly issued to the ex-parte applicant. Mr. Mithega contended that the court should consider the transaction from 1995 to 2000 as being a single transaction which then affords the ex-parte applicant an opportunity to take cover under the leave granted to him on 22.2.2000. In order to properly determine this issue, the court has to first of all look at the decision that the ex-parte applicant is aggrieved by.

To my mind, and from the letter dated 19.1.99 from the Provincial Land Adjudication and Settlement Officer to the District Land Adjudication Settlement Officer, Meru North District, the decision that the ex-parte applicant was aggrieved by is the one dated 30.10.98. That decision was to the effect that the 1st respondent (plaintiff therein) would be moved with 40 points while the ex-parte applicant (defendant therein) would be moved to where the 1st respondent was allocated land No. 2400 with the same points so under objection 18 the 1st respondent was to be left with 59 points twenty and 39 points of the objection 18B at the hill where land parcel No. 24 was located.

With the above rulings in mind the ex-parte applicant, if he was so aggrieved was to file his application for leave under Order 53 of the CPR within six (6) months i.e. on or before 30.4.1999. He only sought leave on 22.2.2000 and though the leave was granted, the same was null and void since the application for the leave was filed way beyond the six months period. That delay is not excusable as Mr. Mithega would want to have the court believe so. Rule 2 of Order 53 is couched in mandatory terms as to the period within which the application for leave to apply for an order of certiorari can be made. It is either within six months or such shorter period as may be prescribed by any Act. Mr. Mithega has not cited any other Act making provision for the filing of the application for leave granted to the ex-parte applicant on 22.2.2000.

Applying the persuasive authority cited to this court by Mr. Kariuki for the 1st respondent, I have no doubt in my mind that the exparte applicant cannot take cover under the leave granted to him on 22.2.2000 enlarging the time within which to file this present application to court.

It is to be noted and appreciated that judicial review proceedings are a special kind of proceeding governed only by the provisions of Order 53 of the C.P.R. and the provisions of the Law Reform Act Cap 26 and in particular sections 8 and 9 thereof.

In the circumstances, this application cannot stand. The ex-parte applicant has no locus standi because the leave granted to him on 22.2.2000 is, in the eyes of Order 53 rule 2 of the C.P.R. a nullity. In the result, the application is dismissed with costs to the 1st respondent.

Orders accordingly.

Dated and delivered at Meru this 17th day of November 2005.

RUTH N. SITATI

JUDGE

**17.11.2005**