



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

CIVIL MISC. NO. 131 OF 2015

**IN THE MATTER OF APPLICATION BY WAMBUA MULI AND SAMUEL NZIOKA MULI BY
WAY OF JUDICIAL REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 OF THE LAWS OF KENYA

AND

**IN THE MATTER OF AN APPEAL TO THE MINISTER FOR LANDS AND SETTLEMENT IN
RESPECT TO LAND PARCEL NO. 2385**

BETWEEN

REPUBLIC

VERSUS

THE MINISTER FOR LANDS AND SETTLEMENT.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL2ND RESPONDENT

AND

JONATHAN MUNGUTIINTERESTED PARTY

EX-PARATE

WAMBUA MULI1ST APPLICANT

SAMUEL NZIOKA2ND APPLICANT

JUDGMENT

1. In the Notice of Motion dated 3rd November, 2016, the Ex-parte Applicants are seeking for the following reliefs:

a. That an order of certiorari do issue to remove to this Honourable Court and quash the decision and/or findings of the Minister for Lands and Settlement in Minister's Appeal Case No. 25 of 1997 in respect of land parcel No. 2385 at Mitaboni Adjudication Section in Machakos

County between Wambua Muli and Samuel Nzioka Muli versus Jonathan Munguti awarding a portion of the disputed land to the Interested Party.

2. The Application is premised on the grounds that the Interested Party had no *locus standi* to be awarded the suit land since he is not a member of the Applicants' family; that the process adopted by the Minister through the Sub-County Commissioner was flawed and that the Minister failed to give reasons for his decision.

3. The Applicants have further averred in their statements that the decision of the Minister was informed by irrelevant considerations; that the Minister failed to consider relevant matters; that the Minister acted *ultra vires* and that the suit land was legally owned by the Applicants as an inheritance from their forefathers.

4. Although the Respondents and the Interested Party were served with the Applications, they never entered appearance nor filed their Replying Affidavits.

5. The Applicants' counsel submitted that there was no basis for the Minister to have ordered that the suit land be divided into two portions; that the suit land belongs to the family; that the procedure of calling witnesses by the Minister was contrary to the law and that the Minister was only required to review the evidence as recorded by the Adjudication Officer.

6. The evidence before this court shows that on 12th March, 2015, the Minister, through his agent, summoned the Applicants and the Interested Party to appear before him on 25th March, 2015 in respect to Appeal case number 25 of 1997.

7. The record shows that the hearing of the Appeal by the Minister commenced on 9th November, 2011, on which day the Appellants (*the 1st and 2nd Applicants*) were heard and were cross-examined by the Respondent (*the Interested Party herein*).

8. The Minister also heard the evidence of the Respondent (*the Interested Party*) on the same day. The Appellants (*the Applicants herein*) were allowed to cross-examine the Respondent.

9. On 5th November, 2011, the Minister made a site visit and on 24th April, 2012, he delivered his decision.

10. The record before this court shows that the Ex-parte Applicants filed their Application seeking for leave to apply for orders of certiorari to quash the decision of the Minister "dated 24th April, 2012 and given to the Applicants on 25th March, 2015."

11. It is not clear to this court why a decision dated 24th April, 2012 had to wait until 25th March, 2015 to be delivered.

12. Indeed, there is no evidence before the court to show that the decision of the Minister was delivered on 25th March, 2015 and not 24th April, 2012.

13. The letter dated 12th March, 2015 by then Deputy County Commissioner summoning the Applicants and the Interested Party does not indicate that they were being summoned for the purpose of delivering the decision of 24th April, 2012.

14. In my view, the effective date of the decision of the Minister is 24th April, 2012 as indicated on the body of the typed decision and not otherwise.

15. Consequently, and considering that the Applicants filed the Application for leave to commence Judicial Review proceedings on 18th June, 2015, the Application was filed out of the requisite period of

six (6) months.

16. Having been filed after the expiry of six (6) months, the Applicants' Applications, both for leave to commence Judicial Review proceedings for an order of certiorari and the substantive Notice of Motion dated 3rd November, 2016 are a nullity *ab initio*.

17. For those reasons, the Applicants' Notice of Motion dated 3rd November, 2016 is struck out with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE