



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. APPLICATION NO. 134 OF 2008

**REPUBLIC OF KENYA.....
.....APPLICANT**

VERSUS

**THE CHAIRMAN MACHAKOS DISTRICT LAND DISPUTES TRIBUNAL.....
.....1ST RESPONDENT**

**MACHAKOS CHIEF MAGISTRATE.....2ND
RESPONDENT**

AND

**MWANZWII KIMUYU KISANI.....
INTERESTED PARTY**

AND

KIMUYU MAVULUTI

NTHIWA

**JOSEPH KYAMBI MUTHUNGU.....
.....EXPARTE APPLICANTS**

RULING

1. The applicant filed an application dated **2nd July, 2008** pursuant to the then provisions of **Order LIII Rule 1** and **2** of the **Civil Procedure Rules** seeking leave to apply for orders of certiorari to remove and/or quash the findings and the award of **Machakos District Disputes Tribunal** dated **27th June, 2002** in **Criminal Case No. 139 of 2001** and read to the interested parties and the applicant in **Chief Magistrate's Court** on the **13th June, 2006** in **Miscellaneous Application No. 51 of 2006** and that the leave do operate as stay of execution.
2. Subsequently, the applicants filed another application dated the **9th September, 2008** seeking an order to be allowed to prosecute the application. The latter application was listed for hearing thrice before **Lenaola J.** in the year 2009. It was, however, not heard.
3. On the **17th October, 2012**, **Mutinda D. M.** for the applicant and **A. B. Makau** holding brief for **Mr. Kimeu** for the interested party appeared before **Dulu J.** who gave directions that parties do file written submissions. Pursuant to the order Parties herein filed submissions.
4. Consequently written submissions filed by both the applicant and interested party were in respect

- of the application dated **2nd July, 2008**. I have duly considered the same.
5. **Order LIII rule (1) (2)** of the then **Civil Procedure Rules** provides thus:

“[1] No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

[2] An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on. The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit.”

6. The application filed herein is premised on grounds that: The Machakos District tribunal sitting in its case **No. 139 of 2001** acted in excess of its powers; lots of errors and mistakes were made by the tribunal and there was misconduct during hearing.
7. The application is accompanied by a statement of facts which sets out the relief sought and the grounds upon which the relief is founded. Also filed is an affidavit verifying facts and a supporting affidavit where it is averred by the 1st applicant that he did not file the application within time because of **Legal Notice No. 3000 of 2006** which was challenged in court. Subsequently it was degazetted paving way for several review applications being filed in court.
8. In his submission **D. M. Mutinda** counsel for the applicant states that the tribunal exceeded its jurisdiction; all claims concerning title to land are within exclusive jurisdiction of the High Court; the minister’s judgment should have been final. Therefore, there was need for the court to issue prohibition orders against the Land Registrar from executing and/or in any way implementing the award.
9. Procedurally the application seeking leave is made ex parte to a judge in chambers. Per the order dated **17th September, 2009** of **Lenaola J.**, it is the application dated **9th September, 2008** that ought to have been served but not the chamber application dated **2nd July, 2008**. That notwithstanding leave herein is being sought two (2) years after the award of the tribunal was read to the parties and adopted as judgment thereof. No appeal was filed which would require the court to adjourn any application as envisaged by **Section 9 (3)** of the **Law Reform Act**.
10. In an endeavor to explain why there was a delay in filing of the application the 1st applicant states in his affidavit that he did not file his application due to the **Legal Notice No. 3000 of 2006** which was subsequently degazetted. He was duty bound to divulge the information on the Legal Notice when it was degazetted.
11. From the foregoing it is apparent that the application for leave was filed out of time. The applicant failed to comply with the mandatory requirement of **Order LIII rule 2** of the **Civil Procedure Rules**. In the premises the application fails. Accordingly, it is dismissed.

DATED, SIGNED and DELIVERED at MACHAKOS this 23RD day of APRIL, 2015.

L.N MUTENDE

JUDGE