



**REPUBLIC OF KENYA**

**High Court at Busia**

**Judicial Review 11 of 2012**

**REPUBLIC.....APPLICANT**

**VERSUS**

**1. CHAIRMAN CHAKOL LAND DISPUTES**

**TRIBUNAL..... 1ST RESPONDENT.**

**2. THE HON. ATTORNEY GENERAL.....2ND DEFENDANT**

**R U L I N G.**

The interested party **DAVID MASIKA MAFUMBO** filed the notice of preliminary objection dated 19.9.2012 on a point of law through his advocates M/S. A.W. Kituyi Advocates to the applicant **LONGINUS ORONI MURUNGA** application dated 14.03.2012.

The Exparte Applicant filed a reply to the notice of preliminary objection through the advocate M/S. A.G. A. Etyang & co. Advocate dated 12.11.2012.

During the hearing, Mr. Kituyi and Mr. Etyang advocates appeared for the interested party and Exparte Applicant respectively. From the reply to the notice of preliminary objection and the counsel submissions it is clear that:-

- (a) Leave to file the substantive notice of motion was granted on 29.02.2012 in Busia H.C. Misc. App.No.13 of 2012.
- (b) That the substantive motion was to be filed within 21 days.
- (c) That the substantive motion was filed on 28.03.2012

Counsel for the interested party has submitted that by the time the substantive motion was filed the duration of 21 days granted had expired and therefore the motion was filed outside the time and hence defective and should be struck out with costs.

Counsel for Exparte Applicant disagrees and submitted that the public holidays and weekend days in the period should not be counted and that the 21 days were expiring on the 28.3.2012 when the substantive motion was filed. He submits the motion was filed within time.

I have carefully considered the submissions by both counsel. I have also perused the provision of order 50

of the Civil Procedure Rules that deals with time. I notice rule 2 excludes Sundays and public holidays are excluded when computing the time for anything to be done within a period of less than six days. Rule 4 provides for the period between 21st December to 13th January which should not be included in the computation of time. Notice of these rules have any effect to the period in this case as it was from February, 29th and the time was 21 days which is more than six days. The rule that has relevance in the computation of days in this matter is rule 8 which states;

***" 8. In any case in which any particular number of days not expressed to be clear days is prescribed under these rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day."***

In computing the time in this case the court will leave out the 29.2.2012 which is the day the leave was granted and start counting from the following day which was 01.03.2012. By the time the substantive notice of motion on 28.3.2012 was filed 27 days had passed and it was filed on the 28th day. Even if the Sundays were left out for the sake of argument only four days would be removed and still the Exparte Applicant would have taken more than 21 days to file the application. There is nothing to show that the period had been extended in accordance with the provisions of the law. I therefore find the interested party preliminary objection is meritevious and as submitted by counsel when he drew the court's attention to Article 159 of the constitution 2010, I find the notice of motion dated 14.03.2012 and filed on 28.03.2012 was filed outside the 21 days

granted in Busia High Court Misc. Application No. 13 of 2012.

The notice of motion is therefore struck out with costs to the party.

**S. KIBUNJA.**

**JUDGE,**

**23/4/2013.**