



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISCELLANEOUS APPLICATION CASE NO. 57 OF 2009

IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION BY MARTIN NABANGI MULONGO FOR

ORDERS OF JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990

AND

REPUBLIC

VERSUS

THE CHAIRMAN KANDUYI LDTRESPONDENT

VERSUS

PIUS NABANGI SIKWEMBE.....INTERESTED PARTY

RULING

This is an application for review of the court's ruling made on 9th October 2012. The application is brought under Sec. 80 of the Civil Procedure Act and Order 45 Rule 1 & 2 of the Civil Procedure Rules.

The application is supported with the grounds on the face of the record *inter alia*; there is an error apparent on the record and there is sufficient reason obtaining for this court to exercise its discretion. The application is further supported by the affidavit sworn by Martin Nabangi Mulongo.

The application is opposed. The interested party has sworn an affidavit filed in court on 15th May 2013. He avers the application is untenable in law and it should collapse. He also stated the application lacks merit and only dictates the delay to end. He annexed copy of the judgment/ruling of the court.

I have read the ruling/judgment sought to be reviewed. The trial judge dismissed the substantive motion for the reason that it was based on leave that was granted out of time hence both leave and the substantive motion was anullity. The award sought to be quashed was dated 23.1.2001 however it was

filed in court from the proceedings in 2008.

It got adopted on 9th January 2009. The application for leave was filed on 5th March 2009.

This court therefore seeks to answer the question if the grounds for review as set out under section 80 and order 45 have been met to allow me question when does time begin to run. This then will determine whether the application for leave was filed in time or outside the six months.

The award was dated 23rd January 2001, it does not indicate whether it was read out to the parties before it was forwarded to the Magistrates court for adoption. In the last line of the ruling, these were the words of the Tribunal ***“The objector meets the costs of the case. The aggrieved party to appeal after 30 days from the date of adoption.”***

I have read through decisions of over the same subject when time runs whether from the date of **decision** of the Tribunal or from the **date of adoption** of the award.

Justice Isaac Lenaola in ***R. Vs. Chairman Meru Land Disputes Tribunal vs. 2 others exparte Stephen Mukuru [2006]eKLR*** held that time starts running from the date of decision of the Tribunal and not when it was adopted as an order of the court.

In case of ***Joseph Amuyeka & another vs. Philip Mwachi Otinga [2006] eKLR***, Justice G.B.M. Kariuki stated that the law expects the date of the award or the decision to be the date it is pronounced. He further said that where the date of award is not pronounced at the conclusion of the proceedings, the Tribunal must then notify the parties in writing of the place and date where the award/decision will be pronounced. He held that the date of decision was when it was read to the parties.

The ruling I am asked to review was reached on the basis of the same school of thought as did Justice I. Lenaola on the cited case. Although I am of the view that time starts running from date of adoption of the award in court which in my view is the date of its pronouncement to the parties given the matter was reached by a judge of concurrent jurisdiction, setting it aside amounts to asking me to sit on an appeal and declare its school of thought as wrong. ***In the case of David Ombee Ombee vs Isaac Oluoch Opi, Ksm HCC 115 of 2000*** (unreported) see Odungas Digest on Civil case law & Procedure, Justice Tanui (as he then was) where a party attacks the court's misconstruing the law is not a ground for review but a ground for appeal.

In the instant case, the question is not error apparent on record but determination when time begins to run. Neither would it fall under sufficient reason for the court to review. The proper court to give guidance on this matter would be the court of appeal. The applicant ought to pursue the matter for interpretation on when time started running from the higher court not by way of review. I would have reached a different decision if the matter had not been previously dealt with being cognisant of the holding in ***R vs Judicial Commission of inquiry into Goldenberg Exparte Mwalulu & 8 others (2004) eKLR***.

For these reasons stated above, I dismiss the application with an order that each party to meet its own costs of this application.

RULING DATED, SIGNED, READ AND DELIVERED in open court this 18th day of June 2013.

• **OMOLLO**

JUDGE.