



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION 8 OF 2010

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
AND

IN THE MATTER OF THE TIRIKI LAND DISPUTES TRIBUNAL CASE NO. 18 OF 2009

AND

IN THE MATTER OF LAND PARCEL NO. TIRIKI/SENEDE/3

AND

IN THE MATTER OF THE HAMISI R.M.C. MISC. APPLICATION NO. 12 OF 2009

BETWEEN
REPUBLIC

THROUGH JOSEPH AJEVI INYIMILI APPLICANT

VERSUS

THE CHAIRMAN, TIRIKI EAST LAND DISPUTES TRIBUNAL RESPONDENT

AND

MARK IMBAYI SAVA INTERESTED PARTY

R U L I N G

The application by way of Notice of Motion dated 17.3.2010 seeks orders that the applicant, **JOSEPH AJEVI INYIMILI** be granted an order of certiorari to remove into this court and quash forthwith the decision of the TIRIKI EAST Land Disputes Tribunal No. 18 of 2009 and all consequential orders thereto in Hamisi RMCC Misc. Award No. 18 of 2009 in respect of land parcel No. **TIRIKI/SENEDE/3**.

The thrust of the applicant's supporting affidavit is that the Tribunal acted in excess of jurisdiction when

it ruled on cancellation of title to land.

The application is opposed to as per the replying affidavit of MARK IMBAYI, the Interested Party sworn on 6.7.10. According to the applicant, the award was adopted as a judgment of the court by Hamisi SRM's court and was therefore no longer amenable to the Judicial Review process. That the applicant was granted leave in Misc. Application No. 123 of 2002 to apply for Judicial Review but sat on the orders until they lapsed then sought leave again for the 2nd time on 16.3.10 but did not file the substantive motion until about three months later on 11.6.2010.

Mr. Elung'ata advocate appeared for the applicant while Mr. Musiega appeared for the respondent. The parties filed written submissions. I have duly considered the pleadings and the submissions.

The Tribunal made a decision on title to land. This was in excess of its jurisdiction. Section 3 (1) of the Land Disputes Tribunal stipulates as follows:-

“Subject to this Act, all cases of a civil nature involving a dispute as to –

- (a) The division of, or the determination of boundaies to land, including land held in common;***
- (b) A claim to occupy or work land; or***
- (c) Trespass to land.***

Shall be heard and determined by a Tribunal established under section 4.”

The Senior Resident Magistrate's Court is named as a party to the proceedings herein. The adoption of the award by the SRM's Court does not make the same to cease to exist as argued by Mr. Musiega for the respondent.

In the case of ASMAN MALOBA WEPUKHULU & ANOTHER VS FRANCIS WAKWABUBI BIKESHI CA KSM 157/01, it was observed as follows:-

“..... All the proceedings and orders made by the SRM's court and the tribunal are a nullity and were correctly quashed and vacated.....”

However, leave herein was obtained on 16.3.2010. The Notice of Motion was filed on 11.6.10 which is almost three months thereafter. Order 53 (3) (1) provides in mandatory terms for the application should be made within 21 days after leave has been obtained.

There are no comments from the applicant's side in respect to failure to file the Notice of Motion within time.

The applicant was on 12.11.09 granted leave to apply for Judicial Review (see annexure MIS 2A) which lapsed before the filing of the Notice herein.

No extension of time was sought by the applicant. The applicant seems to have disregarded the rules of procedure without any explanation of any kind. Although these are procedural regulations, the application is rendered invalid and an abuse of the court process. Consequently, the application fails with costs to the respondent.

Delivered, dated and signed at Kakamega this 28th day of June, 2012

B. THURANINA JADEN

JUDGE