



REPUBLIC OF KENYA

IN THE HIGH COURT

AT ELDORET

Judicial Review 36 of 2010

**IN THE MATTER OF AN APPLICATION BY JOHN SANG FOR LEAVE TO APPLY FOR
ORDER OF CERTIORARI AND PROHIBITION**

AND

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

AND

IN THE MATTER OF THE REGISTERED LANDS ACT CHAPTER 300 LAWS OF KENYA

AND

IN THE MATTER BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN

LESSOS DIVISION LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE KAPSABET.....3RD RESPONDENT

NELSON KORIR.....EX-PARTE APPLICANT

RULING:

This is an application for Judicial Review brought by the Ex-Parte Applicant seeking for orders for Certiorari and Prohibition under the provisions of Order 53 Rules 3 (1), 4 and 7(2) of the Civil Procedure Rules.

The brief facts of the case are that the Ex-parte Applicant is the registered owner of all that piece of parcel of land known as NANDI/CHEPKONYUK/80 and 81.

The Ex-parte Applicant lodged a complaint with the Land Dispute Tribunal Lessos Division, which is the 1st Respondent herein, seeking redress as against the Interested Party, herein.

The Interested Party – Nelson Korir claimed to have purchased the land from the Applicant at the consideration of Kshs 348,000/=. The Interested Party states that he had lived in the suit premises for a period of Ten(10) years without interruption and had also developed the same. He was awaiting Title to be transferred to him by the Ex-parte Applicant.

The Land Disputes Tribunal made an award in favour of the Interested Party on the 21st December 2009 and the same was adopted by Kapsabe Principal Magistrates Court on the 20th May, 2010.

The Ex-parte Applicant being aggrieved with the decision moved to the High Court and sought leave which was granted on the 27th day October, 2010. The Applicant thereafter filed this substantive application which is dated the 19th November 2010.

Counsel for both the Applicant and Interested Party opted to argue the application by way of Written Submissions.

After reading the Written Submissions of both the Applicant and Interested Party, the court finds that there are two issues for determination, which are as follows;

(1) Limitation.

(2) jurisdiction.

On the first issue, the Interested Party contends that leave was granted after six (6) months had lapsed.

Counsel for the Interested Party argued that the decision of the Tribunal was made on the 21st December, 2009. It is the submission of Counsel that time starts running from the date of the decision sought to be quashed and that time did not start running from the date the award was adopted by the Kapsabet Court.

Therefore a period of Eleven months had lapsed from the date the decision was made by the Land Disputes Tribunal. The court was referred to the persuasive authority of Hon. Justice Mwilu J in **REPUBLIC –VS- CHAIRMAN AND MEMBERS OF KAPSABET DIVISION LAND DISPUTE TRIBUNAL & 2 OTHERS.** Where it was held that;

“.....it was a serious misapprehension of law to state that the six (6) months period starts to run from the date the award is adopted by court.....”

It was submitted that the leave granted was unlawful as the same as sought after the stipulated six (6) month period and that the law does not provide for extension of time.

Counsel submitted that the substantive application before the court was therefore incurably defective and ought to be dismissed with costs to the Interested party.

Counsel for the Applicant opposed the Preliminary Objection and argued that time starts to run

from the date of adoption of the award and not from the date the proceedings of the Tribunal come to an end.

Counsel referred the court to the decision of **WILFRED KAREGA KOINANGE –VS- COMMISSION OF INQUIRY INTO THE GOLDEN BERG AFFAIR (2001) KLR.**

It was Counsels submission that time starts running from the date of adoption of the award by a court of law.

This court is confronted with decisions for and against. On one hand there is an authority which states that time starts running from the date the decision of the tribunal is made and the other is in support of time running from the adoption of the award by a court of law. Both decisions are made by courts of concurrent jurisdiction to this court which therefore means that they are persuasive and not binding.

Upon reflection, this court is of the humble opinion that time would start to run from the date the award of the tribunal is adopted by a court. I therefore find that the leave granted herein was lawful and that the substantive application is properly before this court.

On the second issue relating to jurisdiction of the Land Disputes Tribunal Lessos Division. The Ex-parte applicant is the registered proprietor of the parcels of land known as NANDI/CHEPKONYUK/80 and 81.

The said properties are registered under the Registered Land Act. The dispute arose from a claim relating to title. The Interested Party is claiming a purchasers interest arising from a sale.

Only the High Court and the Resident Magistrates Court have jurisdiction to hear and determine disputes relating to Title and rights of ownership.

I find that the Land Disputes Tribunal Lessos Division under Section 3 (1) did not have the mandate nor jurisdiction to determine the rights of parties under contract (or otherwise) nor to determine issues affecting rights affecting title to land.

I find that the 2nd Respondent acted ultra vires and declare that the Order made by the 2nd Respondent to be a nullity.

In conclusion the Preliminary Objection stands dismissed. I find that the Application filed herein has merit.

An order for Certiorari shall hereby issue forthwith to bring and remove into the High Court and quash the decision of the Lessos Division Land Disputes Tribunal made on the 21st December, 2009 and adopted by the Kapsabet Principal Magistrate's court LDT No. 1 of 2010. Nelson Korir –vs- John Sang in respect of land parcel Nos. NANDI/CHEPKONYUK/80 and 81.

An order for Prohibition shall also issue prohibiting the Kapsabet Principal Magistrates Court from executing the transfer documents in favour of the Interested Party in respect of the orders made in Kapsabet Principal Magistrates Court LDT No. 1 of 2010 Nelson Korir –vs- John Sang.

Each party to bear their own costs.

Dated and delivered at Eldoret this 8th day of June 2012.

**AMSHILA
JUDGE**

Coram:

Before Hon. A Mshila J

CC: Andrew

Counsel for State Karuga holding brief for Ngumbi

Kiplimo for Interested Party

Lagat - holding brief for Kathili for Exparte Applicant.

A.MSHILA

JUDGE