



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**Miscellaneous Application 267 of 2010**

**IN THE MATTER OF KAJIADO LAND DISPUTES TRIBUNAL CASE NO. TC 473/08/2008**

**AND**

**IN THE MATTER OF SENIOR MAGISTRATES COURT AT KAJIADO LAND DISPUTE CASE  
NO. 19 OF 2009**

**NDEGWA KAMAU.....PLAINTIFF**

**V E R S U S**

**JAMES OSHOMU NANAPU.....INTERESTED PARTY**

**R U L I N G**

1. This is an application (by notice of motion dated 1<sup>st</sup> December 2010) for extension of time to apply for judicial review, the orders to be sought being **mandamus**, **certiorari** and **prohibition**.
2. The intended judicial review application is in respect to **land parcel L.R. KAJIADO/KITENGELA/20368** measuring approximately 11.5 acres. The Applicant, NDEGWA KAMAU, has deponed in his affidavit sworn in support of the application that by a sale agreement dated 13<sup>th</sup> October 2004 he purchased the said parcel of land from its previous owner, JAMES OSHOMU NANAPU, for a consideration of KShs 2,415,000/00 which he paid in full; that on 18<sup>th</sup> July 2005 the same James Oshomu Nanapu duly transferred the land to him; that after the transfer the Applicant subdivided the land into **plots numbers L.R. KAJIADO/KITENGELA/23158 to 23231** and the original title was thereby closed; that in October 2010 he learnt with surprise at the Land Registry, Kajiado, that some of the plots were in the process of being transferred to third parties purportedly pursuant to a decree issued by the **Senior Resident Magistrate's Court, Kajiado** in its **Land Dispute Case No. 19 of 2009**; and that on following up the matter the Applicant learnt with shock that James Oshomu Nanapu had filed proceedings against him with the **Kajiado Land Disputes Tribunal** in **Case No. TC 473/08/2008**.
3. The Applicant has further deponed that he was never served with any claim filed with the said tribunal to enable him to respond, and he was unaware of the said proceedings; that he was never served with the determination of the tribunal which he learnt was made on 27<sup>th</sup> November 2008; and that he was never served with any notice of the determination by the tribunal; and that he was also never served with any application for adoption of the award of the tribunal as judgment of the court. He was thus unaware of the subsequent decree.
4. It is the Applicant's further case that on learning all this he urgently applied to the Senior Resident Magistrate's Court, Kajiado for, and obtained, stay of execution of decree, but that in early November

2010 he discovered that the District land Registrar, Kajiado was “busy transferring surreptitiously” his parcels of land to third parties.

5. The Applicant therefore wishes to challenge the decision of the tribunal and the subsequent decree of the court by way of judicial review upon various grounds, including the ground that the tribunal acted *ultra vires* by purporting to rectify the register of the suit land.

6. The present application was brought under **Order XLIX, rule 5** of the old **Civil Procedure Rules** (the **Rules**). That rule is now **Order 50, rule 6** of new Rules. **Sections 95, 1A and 1B** of the **Civil Procedure Act** (the **Act**) have also been cited.

7. The Interested Party was duly served with the application and hearing notice. He neither filed papers in response nor attended court at the hearing.

8. I have given due consideration to the submissions of the learned counsel for the Applicant. No authorities were cited.

9. **Order 50, rule 6** of the **Rules** provides as follows-

**“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:**

**Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”**

10. The time for applying for leave to seek judicial review where an order of *certiorari* is sought is limited by **Order 53, rule 2** of the **Rules**. It is therefore a limited time fixed under the Rules and thus amenable to enlargement by order of the court. Besides, **Article 40** (part of the Bill of Rights) of the **Constitution of Kenya** protects the right to property. It appears to be the Applicant’s case that his property has been taken away from him without due process.

11. **Article 48** (again part of the Bill of Rights) of the **Constitution** demands that all persons shall have access to justice. All the Applicant seeks in the present application is access to justice, which he says he was denied by failure (deliberate or otherwise) to serve him with process in the proceedings before the Land Disputes Tribunal and the Senior Resident Magistrate’s Court.

12. In the circumstances, the justice of this matter demands that I allow the application by notice of motion dated 1<sup>st</sup> December 2010, which I hereby do. The Applicant shall file his application for leave within thirty (30) days of delivery of this ruling. Costs of the application shall be in such application for leave.

13. The delay in preparation of this ruling was caused by my poor state of health the last few years and is deeply regretted. But I thank God that I have now regained my full health.

**DATED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2012**

**H.P.G. WAWERU**  
**JUDGE**

**COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2012**

**ASIKE-MAKHANDIA**  
**JUDGE**