



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Civil Application 64 of 2002

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW (CERTIORARI)
MANDAMUS & PROHIBITION BY KIMANI KAMAU JOHN**

AND

IN THE MATTER OF: THE REGISTERED LAND ACT CAP. 300 OF THE LAWS OF KENYA

AND

**IN THE MATTER OF: THE CIVIL PROCEDURE ACT AND THE CIVIL PROCEDURE
RULES CAP 21 LAWS OF KENYA**

AND

IN THE MATTER OF: THE ELDORET CMCC AWARD NO. 9 OF 2002

AND

IN THE MATTER OF: THE ELDORET CMCC AWARD NO.9 OF 2001

IN THE MATTER OF: THE UASIN GISHU/LESSERU FARM/226

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

LAND DISPUTES TRIBUNAL TURBO DIVISION.....RESPONDENT

SIMON KIPKOLUM.....INTERESTED PARTY

EX-PARTE: KIMANI KAMAU JOHN

RULING

By a Notice of Preliminary Objection dated 16.7.2002, counsel For the Interested Party objects to the judicial review application on the grounds that the decision of the Land Disputes Tribunal the applicant is challenging was delivered on the 8.5.2001. He argues that under Section 9 (3) of the Law Reform Act Cap. 26, an application for leave should have been filed within 6 months thus the final date for filing such application was on the 8.11.2001. That the application for leave in the instant case was filed on the 20.2.2002 and is out of time. That the date of the decision of the tribunal is not the same as the date of adoption by the Court on the 21.8.2001 when a decree was issued.

He submits that the court should strike out the application with costs. In support learned counsel for the interested party cited 2 authorities.

In the case of **RE AN APPLICATION BY GIDEON WAWERU GATHUNGURI Miscellaneous Criminal Application No. 2 of 1962 (1962) EA** the supreme Court at that time held Section 9 of the Law Reform Act imposes strict and absolute period of limitation in the case of an application for an order of certiorari to quash any judgment, ruling or decision and no leave should be granted if the application is made later than six months after the date of such judgment, order, decree, conviction or other proceeding.

Counsel for the Ex-parte applicant objected to the preliminary application. He argued that under the Land Disputes Act the decision of the tribunal is dated the decision of the tribunal is sent to the lower court for reading. That the decision of the Tribunal was not read until the 24.8.2001 and it's upon this date that the provision of section 8 of the Land Disputes Act come into force. That leave to commence these proceedings was sought within time. That the applicant is also challenging the adoption of the award. That the Tribunal sent the award to the court and typing was done late. That it is the Chairman of the Tribunal who read the award in court and the parties were given 30 days to go to the Provincial Appeals Committee.

Counsel further argued that if there is limitation it only affects the order of certiorari and it does not affect mandamus and prohibition proceedings. Counsel submits that the preliminary objection has no merit.

I have considered the Preliminary objection and the submissions by counsel.

What calls for determination the effective date for of the decision of the tribunal.

Section 7 (1) of the Land Disputes Tribunal Act (Repealed) provides:

“The chairman of the tribunal shall cause the decision of the tribunal to be filed in the Magistrates Court together with any dispositions or documents which have been taken or proved before the Tribunal”

Under subsection 2 the court will enter judgment in accordance with the decision of the tribunal and upon judgment being entered as decree shall issue and shall be enforceable in the manner provided under the Civil Procedure Act.

Section 9 (2) of the Law Reform Act is very clear in its terms. It provides, inter alia, that:-

(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribed that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.

(3) In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court of judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

These provisions are mandatory.

It is my view that the decision to be moved or quashed by the Order of Certiorari is the award of or decision of the Tribunal reached on 8th May 2001. Time would run from the said date. Any application

for review had to be made within six (6) months of this decision. ie. by 8.11.2001. The proceedings and decision of the Tribunal are judicial proceedings. The reading and adoption of the Tribunal's Award before the Magistrate's Court is a mere formality for purposes of execution. It is not the judgment, award decision of the Tribunal. There can be no challenge of the Adoption on its merits in the Magistrate's Court. The true decision subject matter of judicial review proceeding is the Award of the Tribunal. The Magistrate's Court's action is not to take over the proceedings of the Tribunal. The latter were concluded by the Award. It is my view that the parties cannot re-litigate or open up any issue before the Magistrate' Court. It's process is a mere formality or routine.

As a result, I agree with the Counsel for the Interested Party and do hereby uphold the Preliminary Objection. I do hereby strike out the Notice of Motion dated 5th March, 2002 with costs to the Interested Party

Dated AND signed at Nairobi on this 21st day of august, 2012

M. K. Ibrahim
Judge

DATED AND Delivered at Eldoret on this 31st day of october 2012.

F. Azangalala
.....
Judge

In the presence of : Ms. Inguti h/b for Mr. Momanyi for Applicant

Mr. Ngumbi for Respondent

Ms Khaya for the Interested Party