



REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 42 of 2010

REPUBLIC

EX-PARTE

TIMOTHY BUKACHI WAMUGUTI APPLICANT

VERSUS

1. THE CHAIRMAN, LUANDA DIVISION LAND

DISPUTES TRIBUNAL

2. THE VIHIGA SNR. RESIDENT MAGISTRATE'S COURT.....RESPONDENTS

AND

JAMES OTWORO OLINJOINTERESTED PARTY

R U L I N G

A Preliminary Objection was raised by Nyanga & Co. Advocates, for the interested party, seeking orders to strike out the pleadings herein on the ground that the application was filed out of time.

The firm of Murigori, Ondieki & Co. Advocates appeared for the ex-parte applicant.

The Preliminary Objection proceeded to hearing on 5.7.12 and the parties relied on their written submissions.

The Chamber Summons application that sought leave to apply for an order of certiorari to bring into the High Court Luanda Division Land Disputes Tribunal dated 1.11.2010 was filed on 2.11.2010. The decision of the Tribunal was made on 28.5.09. The decision of the Tribunal was adopted by the SRM's court, Vihiga on 13.7.2010.

According to counsel for the interested party, time started running on the date the Tribunal made its decision, and not on the date of the adoption of the Tribunal's ruling by the court.

The counsel for the interested Party relied on the following cases:-

MAHAJA VS KHUTWALO CA [1983] KLR 553

R. VS GITHUNGURI LDT & ANO. Misc. Appl. 229 of 2003

In the **Mahaja case** (supra) the court considered, *inter alia* the question of extension of time in applications for Judicial Review.

In the **Githunguri Land Disputes Tribunal** case (supra) the application for leave was made in the month of April 2003 while the order of the magistrate was made in April 2002.

The two cited authorities are therefore distinguishable from the case at hand.

From the date of the adoption of the tribunal's decision to the date of the application seeking to seek leave herein is a period of less than six months. **Section 7 (2)** of the Land Disputes Tribunal Act No. 18 of 1990 provides as follows:-

“The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”

Bearing the above provision in mind, I agree with the persuasive authority in **R. vs Chairman, Land Disputes Tribunal, Kirinyaga District & Ano. ex-parte Kariuki 2005 (KLR) 10** where justice Khamoni held as follows:-

“where a decision of the Land Disputes Tribunal has been adopted by a magistrate's court in accordance with the provision of the Land Disputes Tribunal Act, that adoption makes the decision of the tribunal or decision of the Appeals Committee, be a decision of the magistrate's court. Consequently, the decision of the tribunal or Appeals Committee, in law, ceases to exist as an independent decision challengeable separately in an appeal or judicial review.”

With the foregoing, I find the application was filed within time. Consequently, the Preliminary Objection is hereby dismissed with costs to the ex-parte applicant.

Delivered, dated and signed at Kakamega this 29th day of November, 2012

**B. THURANIRA JADEN
J U D G E**