



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO. 121 OF 2010**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS IN THE  
NATURE OF CERTIORARI & PROHIBITION**

**AND**

**IN THE MATTER OF THE LANDS DISPUTE TRIBUNAL ACT NO.18 OF 1990**

**AND**

**IN THE MATTER OF BAHATI LAND DISPUTES TRIBUNAL CLAIM NO.80 OF 2006**

**AND**

**IN THE NAKURU CHIEF MAGISTRATE'S COURT LAND DISPUTE NO.13 OF 2008**

**BETWEEN**

**(RUTH NJOKI WAWERU –VERSUS- STEPHEN KIBOWEN)**

**AND**

**IN THE MATTER OF A COURT ORDER ISSUED ON 5<sup>TH</sup> AUGUST, 2010 BY THE  
HONOURABLE CHIEF MAGISTRATE AT NAKURU**

**AND**

**IN THE MATTER OF AN APPLICATION BY**

**REPUBLIC.....APPLICANT**

**AGAINST**

**THE CHIEF MAGISTRATE'S COURT, NAKURU.....1<sup>ST</sup> RESPONDENT**

**THE BAHATI LAND DISPUTE TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**RUTH NJOKI WAWERU.....INTERESTED PARTY**

**STEPHEN KIBOWEN.....SUBJECT**

## RULING

A dispute between the applicant, Stephen Kibowen and the interested party Ruth Njoki Waweru over the ownership of parcel of land known as DUNDORI/MUGWATHI BLOCK 2/32, ended up before the Bahati Land Dispute Tribunal which rendered its decision thus:

**“Bahati Land Dispute Tribunal has ruled in favour of Ruth Njoki Waweru. Bahati Land Dispute order (sic) that the title deed which was issued in the name of Stephen Kibowen be cancelled and a fresh one be issued in the name of Ruth Njoki Waweru, land reference DUNDORI/MUGWATHI BLOCK 2/32 which she bought from Mr. Kiptuya Tarmason in 1980 according to the sale agreement. The director, Rift Valley Kalenjin Enterprises Limited is ordered to allocate Mr. Stephen Kibowen with a plot which has no dispute because he is a member.”**

This decision was made on 16<sup>th</sup> April, 2008. The applicant has brought the instant application to quash that decision by the an order of *certiorari* and further that the respondents and the interested party be stopped by an order of prohibition from executing the order issued on 5<sup>th</sup> August, 2010 and the Decree given on 9<sup>th</sup> September, 2008 (should be 16<sup>th</sup> April, 2008). Order of 5<sup>th</sup> August, 2010 authorized the Executive Officer of the Court to execute transfer documents pursuant to the decree on 9<sup>th</sup> September, 2008.

I do not wish to go into the merit of the decision of the tribunal for the reasons that will become clear shortly. I reiterate that the impugned decision was made on 16<sup>th</sup> April, 2008 and this application brought on 24<sup>th</sup> December, 2010, some 2½ years later. Both the **Law Reform Act** and **Civil Procedure Rules** prescribe that leave to apply for an order of *certiorari* shall not be granted unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any Act (see **Section 9(3)** of the **Law Reform Act and Order 53 rule 2** of the **Civil Procedure Rules**). Although leave was granted before this motion was instituted, it is a nullity as the decision being challenged was made more than six months before the present application.

It matters not that the tribunal may have acted without or in excess of jurisdiction. The court itself had no jurisdiction to entertain the application for leave. Not even the overriding objective principle can come to the aid of the applicant. The overriding objectives cannot override the express provision of the law.

The application is incompetent, for the reasons stated. It is dismissed with costs.

**Dated, Signed and Delivered at Nakuru this 25<sup>th</sup> day of November, 2011.**

**W. OUKO**  
**JUDGE**