



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Civil Miscellaneous Application 264 of 2006

IN THE MATTER OF DAVID MUSTISYA MULANDI, SON OF THE LATE MULANDI KAVITA WHO DIED ON 10.8.1995

AND

IN THE MATTER OF THE DISTRICT LAND DISPUTES TRIBUNAL, MAKUENI

AND

IN THE MATTER OF THE EASTERN PROVINCIAL APPEALS COMMITTEE APPEAL

LAND CASES NUMBERS 201, 202, AND 207 OF 2003

BETWEEN

DAVID MUTISYA MULANDI.....EX-PARTE APPLICANT

AND

**CHAIRMAN, PROVINCIAL LAND DISPTUES
APPEALS COMMITTEE
MINSTER FOR LANDS..... RESPONEDENTS**

AND

MUTEITI NZIOKA..... INTERESTED PARTY

J U D G E M E N T

This is an application (**notice of motion dated 19.12.2006**) for judicial review. Leave was obtained on 15.12.2006 (Sitati, J). The reliefs sought are:-

1. An order of *certiorari* directing that the proceedings of the Provincial Land Disputes Tribunal and the award made by the Provincial Appeals Committee in Appeal Cases Nos. 201, 202 and 207/03 be removed to this court for purposes of being quashed.
2. An order of prohibition to restrain the said tribunal from in any manner implementing the said decision in relation to land parcel numbers 232, 1789 and 1790 in **UVETE ADJUDICATION SECTION**, in Makueni District.

I have read the statement of facts filed with the application for leave. I have also read the many affidavits filed in support of and in opposition to the application. Finally, I have considered the written submissions filed on behalf of the parties.

This is not the first time that this matter has been before this court. The Applicant originally applied for judicial review in similar terms and in respect to the same decisions vide this Court's **Misc. Civil Application No. 153 of 2005**. Leave therein was obtained on

26.5.2005 (Wendoh, J). The substantive application was filed by **notice of motion dated 15.6.2005**.

That application was heard inter-parties by Lesiit, J. In a considered ruling dated and delivered on 22.6.2006, the learned judge struck out the application upon various grounds. One of those grounds was that leave had not been properly obtained. The learned judge further stated

“(The applicant) may consider filling the matter afresh subject to court’s ruling as to leave”

The applicant subsequently sought leave in the present matter and obtained the same on 15.12.2006 as already stated. He then filed the present application. That leave has been challenged in the submissions filed on behalf of the Respondents upon the main ground that it was not sought within six (6) months of the date of the decisions challenged as required by **Order 53, rule 2 of the Civil Procedure Rules (the Rules)**.

There is a further complication. It turns out that the appeal cases numbers **201, 202, and 207/2003** whose decisions are challenged in this judicial review were in fact not before the Provincial Appeals Committee as established by the Land Disputes Tribunals Act, but before the Minister for Lands under **section 29 of the Land Adjudication Act, Cap 284**. Upon realising that fact, the Applicant filed herein an amended statement of facts to disclose that fact.

Leave was obtained in respect to **Eastern Provincial Appeals Committee Appeal Case Numbers 201, 202 and 207 of 2003**. Leave was not obtained in respect to any appeals decided by the Minister for Lands under **section 29 of Cap 284** aforesaid. This means, therefore, that the present application as amended by the amended statement of facts is not properly before the court for want of leave.

Even assuming that leave was obtained in respect to appeals before the Minister for Lands, the main impediment is that no leave could properly have been granted on account of more than six (6) months having elapsed since the challenged decisions were made. Those decisions were made by the Minister on 26.1.2005. The leave granted by Sitati, J was sought by **chamber summons dated 28th** and filed on **29th November 2006**. That was more than one (1) year and ten (10) months since the date of the decisions challenged.

As far as I am aware, the limitation of six (6) months within which to seek leave to apply for an order of *certiorari* is derived from provisions in the **Law Reform Act, Cap 26**, and the court has no jurisdiction to extend that period.

The leave granted herein on 15.12.2006 has thus been successfully challenged by the Respondents. That being the case, the notice of motion dated 19.12.2006 is not properly before the court and must be struck out. It is hereby struck out with costs to the Respondents and the Interested Party.

I need not consider the merits of the application. Litigation must come to an end. It is not open to litigants to open up matters as they deem fit without due regard to procedural law.

DATED AND DELIVERED AT MACHAKOS THIS 23RD DAY OF APRIL 2010.

H.P.G WAWERU
JUDGE

