



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Judicial Review 93 of 2009

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI AND PROHIBITION**

BETWEEN

HENRY MURIUNGI 1ST APPLICANT
JOSPHAT MURANGIRI KIRINYA 2ND APPLICANT
ROBERT KITHINJI KIRIMA 3RD APPLICANT
MURIUNGI M'RINGERA 4TH APPLICANT
EDWARD MUTWIRI 5TH APPLICANT

VERSUS

MATIRI MBOROKI 1ST RESPONDENT
GLADYS M'INANGA 2ND RESPONDENT
CHARITY NKOROI 3RD RESPONDENT
CHAIRMAN – LAND DISPUTES TRIBUNAL
MERU CENTRAL 4TH RESPONDENT

RULING

The applicants have filed an *ex parte* chamber summons dated 30th November 2009. By that application, they seek leave to apply for Judicial Review orders of *certiorari* and prohibition against orders made by the Chief Magistrate Meru in LDT No. 44 of 2008. When the matter first came before me on 3rd December 2009, I declined to entertain it because the applicants had not annexed the impugned order. Leave was granted to the applicants to file a further affidavit annexing that order. The applicants filed the further affidavit and annexed the proceedings of the tribunal case No. 19 of 2008 Meru Central District. That ruling is dated 31st July 2008. It is that ruling that took away the applicant's parcels of land and awarded the same to other persons. The applicants were not party to those proceedings. That ruling was brought to the Chief Magistrate's Court Meru and was confirmed as the judgment of the court in LDT No. 44 of 2008. It was confirmed as judgment of the court on 31st October 2008. Looking at the dates of both the tribunal ruling and of entry of judgment by the Chief magistrate, it becomes clear that the *ex parte* Chamber Summons filed in court on 30th November 2009 was filed beyond the 6 months period provided under LIII Rule 2 of the Civil Procedure Rules. That rule provides as follows:-

“2. Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal

is determined or the time for appealing has expired.”

Those provisions make it clear that for an application for leave to apply for orders of *certiorari* it has to have been filed within 6 months of the order sought to be quashed. Section 9 (3) of the Law of Reform Act provides as follows:-

“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.....”

The Court of Appeal considered the issue whether there can be extension of time to file for leave to seek *certiorari* in the case of Wilson

Osolo Vs. John Ojiambo Ochola Civil Appeal No. 6 of 1995 and stated thus:-

“It can readily be seen that Order 53 Rule 2 (as it then stood) is derived verbatim from S. 9(3) of the Law Reform Act. Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil Procedure Rules that procedure cannot be availed for the extension of time limited by statute, in this case, the Law Reform. There is no provision for extension of time to apply for such leave in the Limitations of Actions Act (Cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a Limitation Period. But this Act has no relevance here. It therefore is apparent that the extension of time granted by Platt J. was a nullity. Any steps taken thereafter are therefore of no consequence.”

I think what I have stated in this ruling clearly shows that the applicants cannot obtain leave they seek to file for judicial review orders of *certiorari* since the order to be quashed was issued some 16 months prior to the application for leave. I sympathize with the applicants since their explanation was that they were unaware of those proceedings because they had not been joined as parties. However, the law is as stated above. I have however considered the *ex parte* Chamber Summons and I find that there is merit in granting leave to file for prohibition. I therefore grant the following orders:-

- 1. Leave is hereby granted to the applicants to file for judicial review orders of prohibition as sought in the Chamber Summons dated 30th November 2009.***
- 2. The costs of that Chamber Summons shall be in the cause.***

Dated and delivered at Meru this 28th day of May 2010.

MARY KASANGO
JUDGE