



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Miscellaneous Application 54 of 2008

REPUBLIC.....APPLICANT

VERSUS

MURANG'A DISTRICT LAND DISPUTES TRIBUNAL.....1st RESPONDENT
THE PRINCIPAL MAGISTRATE, MURANG'A.....2nd RESPONDENT

JAMES KAMAU KIHUNGI.....INTERESTED PARTY

EXPARTE: RAHAB WANGARI GATUNA

RULING

RAHAB WANGARE GATUNA, the *Exparte* applicant herein, took out the Motion dated 29th April 2008 in which she applied for the following orders:

1. *That an order of certiorari do issue to remove the proceedings and award of the Murang'a District Land disputes Tribunal in case No. LDT 23 of 2008 in respect of land parcel No. Loc. 8/Matharite/Kiaheho/574 into this Honourable Court for the purpose of their being quashed and an order that the proceedings be quashed forthwith on their removal into this court.*
2. *That an order of prohibition do issue prohibiting the Principal Magistrate's court at Murang'a from proceeding with or entering judgment in terms of the award dated 28th February 2008.*
3. *That the costs of this application be borne by James Kamau Kihungi.*

The Motion is verified by the affidavit sworn by the *Exparte* applicant. JAMES KAMAU KIHUNGI, the 1st Respondent herein, filed a Repling Affidavit to oppose the motion.

It is the submission of the *Exparte* Applicant that the tribunal had no jurisdiction to hear and determine a dispute relating to property of a deceased person. It is also argued that the tribunal had no jurisdiction to hear and determine a dispute based on contract nor a dispute relating to title to land. It is also said that the dispute was time barred.

The 1st Respondent beseeched this court to dismiss the motion on the basis that the application for certiorari was filed out of time. Secondly that the prayer for prohibition was in respect of other proceedings dated 28th February 2008 which are not related to those before this court hence the motion is premature.

Having considered the rival submissions, I am enjoined at this stage to consider the preliminary issue raised by the 1st Respondent.

It is argued that the order for leave to take out judicial review orders of certiorari was obtained after six months had lapsed hence there is no competent motion. There is no doubt that leave to take out judicial review order of certiorari was given on 22nd April 2008 vide the summons dated 13th March 2008. In the aforesaid summons the *Exparte* applicant intentionally failed to indicate the date when the Land Disputes Tribunal made its decision. I have carefully perused the copy of the proceedings of Kahuro Land Disputes Tribunal and it is clear that the decision was made on 23rd May 2007. The 1st Respondent has clearly deponed in his Replying Affidavit that the Tribunal delivered its decision on 23rd May 2007. The *Exparte* applicant did not attempt to controvert the aforesaid fact. She was bound to counter such a serious assertion but she chose to keep quiet. The record shows that when Mr. Mbutia, learned advocate for the *Exparte* Applicant, appeared before Lady Justice Kasango, on 22nd April 2008, he represented to the honourable judge that the award was made on 28th February 2008. He was obviously wrong. Learned advocate chose to mislead the court. The correct date when the decision was made is 23rd May 2007. The application for leave was therefore filed nine (9) months after the decision sought to be quashed was made. Under *Order LIII rule 1 (2)* of the Civil Procedure Rules, leave to apply for judicial review order of certiorari can only be made not more than six months from the date of the decision. The order for leave was given on the basis of misrepresented facts. The order for leave is categorized as a provisional order hence amenable to be set aside at any stage thereafter. I am convinced the preliminary point is well founded. It is upheld. The order of leave is set aside. Since there is no challenge against the award, the order seeking to prohibit its adoption is not tenable. In the end the motion is hereby ordered struck out and dismissed with costs to the 1st Respondent.

Dated and delivered at Nyeri this 14th day of May 2010.

J. K. SERGON

JUDGE