



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC. CIVIL APPLICATION NO.588 OF 2007**

IN THE MATTER OF AN APPLICATION BY STANLEY THUO MURUNYU FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE RUIRU DIVISION LAND DISPUTES TRIBUNAL AWARD  
DELIVERED ON THE 14<sup>TH</sup> AUGUST, 2006

AND

IN THE MATTER OF LAND DISPUTES ACT NO.18 OF 1990 AND THE REGISTERED LANDS  
ACT, CHAPTER 300, LAWS OF KENYA

REPUBLIC.....APPLICANT

***-VERSUS-***

THE CHAIRMAN, RUIRU DIVISION LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT

THE CHIEF MAGISTRATE THIKA LAW COURTS.....2<sup>ND</sup> RESPONDENT

AND

BEATRICE MUHUHI MWANGI.....INTERESTED PARTY

***EX-PARTE***

STANLEY THUO MURUNYU

**RULING**

The *ex-parte* applicant herein was aggrieved by the decision given by the Ruiru Division Land Disputes Tribunal. He therefore moved the court for leave to file an application for orders of Judicial Review in the form of certiorari and prohibition.

The said leave was granted and substantive application filed under Order LIII Rule 1 of Civil Procedure Rules. The dispute revolves around a parcel of land No. Ruiru East/ Block 1/302. The said Tribunal award was adopted by the Chief Magistrate's Court at Thika on 21<sup>st</sup> November, 2006. The application for leave was made on 13<sup>th</sup> October, 2008. This was about 2 years from the date the ruling was adopted by the court. Order LIII Rule 2 of the Civil Procedure Rules Provides as follows;

**“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.”**

It is clear to me that the application by way of Notice of Motion dated 3<sup>rd</sup> December, 2008 was hopelessly out of time. The proceedings of 21<sup>st</sup> November, 2008 which led to the granting of the leave are sketchy and lacking in detail.

With profound respect, the leave so granted should not to have been granted in the first place. My next question is, if leave should not have been granted do I have jurisdiction to address the matter before me on merit? The provision cited above is couched in mandatory terms. Non-compliance therewith is fatal and having said so, I cannot address the issues before me. I must therefore lay down my tools and find that the application is incompetent and dismissed with costs to the respondents and the interested party.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 3<sup>rd</sup> day of November, 2010.***

**A. MBOGHOLI MSAGHA  
JUDGE**