



**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**AND**

**LIMITATION OF ACT [CAP 22] LAWS OF KENYA**

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

**IN THE MATTER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND**

**REPUBLIC OF KENYA.....APPELLANT**

**VERSUS**

**APPEALS COMMITTEE, COAST PROVINCE.....1<sup>ST</sup> RESPONDENT**

**PETER HEINRICH KOENECKE.....2<sup>ND</sup> RESPONDENT**

**KARISA KADENGE JEFWA.....EX-PARTE .....APPLICANT**

**RULING**

By an ex-parte chamber summons pursuant to Rule 3(1) and (2) of the High Court Practice and Procedure Rules of the Judicature Act Cap 8 [Laws of Kenya], Order LIII r. 1, 2, 3, and 4 of the Civil Procedure Rules and Section 8(2), 4 and 9 of Law Reform Act (Cap 26) Laws of Kenya, the applicant seeks orders;

1. The honourable court be pleased in the first instance to certify this application as urgent and to be heard during the current Christmas vacation.
2. The ex-parte applicant be granted leave to apply for orders of certiorari and prohibition directed to the respondents herein jointly and severally to quash or nullify a decision made on 20<sup>th</sup> December 2007 by the 1<sup>st</sup> respondent in favour of the 2<sup>nd</sup> respondent to the detriment of the ex-parte applicant and further to restrain the respondents from further hearing appeal case no. 75 of 2007 on 28<sup>th</sup> January 2008 or any other date thereafter.
3. Such leave once granted to operate as a stay, restrain the respondents, any of them or their agents or anybody whosoever and whatsoever from further implementing or executing their decision dated 20<sup>th</sup> December 2007 so as to await the institution, hearing and determination of the prospective application for orders of certiorari and prohibition.
4. Costs of this application be in the main application.

The application is based on the grounds;

- (a) The first respondent is Coast Province Appeals committee.
- (b) The decision dated 20<sup>th</sup> December 2007 by the first respondent in favour of the 2<sup>nd</sup> respondent is barred in law, ultra vires, null and void.
- (c) There is miscarriage of justice by bending the law to suite the 2<sup>nd</sup> respondent.
- (d) The exparte applicant was not given notice or chance of being heard before the said decision was made.
- (e) The 2<sup>nd</sup> respondent is to blame for latches.
- (f) The 1<sup>st</sup> respondent's decision is contrary to the rules of the natural justice and equity.
- (g) Unless the orders sought out herein are granted as prayed, the ex-parte applicant shall suffer irreparable loss and damages.
- (h) The appeal has been fixed for hearing on 28<sup>th</sup> January 2008 and this date falls on Christmas vacation.
- (i) That unless the honourable court order that this application to be heard during this vacation, the respondents shall proceed with the hearing of the appeal which was instituted contrary to the law and to the detriment of the exparte applicant.

The application is supported by the annexed statutory statement of Karisa Kadege Jefwa the grounds on which the relief is sought.

On behalf of the applicant, it was argued that the first respondent is the Appeal's Committee Coast Province while the second respondent is a male adult of sound mind. That the first respondent have colluded and have made a decision favouring the 2<sup>nd</sup> respondent in total disregard of the rules of natural justice and equity in failing to invite the exparte applicant to show cause or issuing him with notice of hearing or according him an opportunity of being heard. It was contended, by the applicant, that in so doing the first respondent acted outside their statutory mandate under the Land Disputes Tribunal Act in addition to the Limitation of Actions Act (Cap 22) Laws of Kenya.

That as a result thereof the first respondent decision is biased, lacks legal backing and hence illegal. That the said decisions made on 20<sup>th</sup> December 2007 is exhibited as "KKJ1" for avoidance of doubt. Last but not least that the first respondent decision is time barred, in excess of jurisdiction hence a miscarriage of justice consequently null and void.

I have anxiously analysed the application together with the statutory statement, the facts relied upon the grounds on which the relief is sought and the relief sought.

I have perused the court file and find as a fact that the notice of this application was given to the Deputy Registrar as enjoined by Order LIII Rule (3) on 16<sup>th</sup> January 2007. However, there is no evidence that the applicant has lodged with the Registrar copies of the statement and affidavits. This is excusable in the light of the fact that there is notice of the application filed as aforesaid.

I also note that the decision challenged was made on 20<sup>th</sup> December 2007, which is not later than six months after the date of the proceedings.

The appeal (75/2006) has been fixed for hearing on 28<sup>th</sup> January 2008. Accordingly, in compliance with

Order LIII Rule 2 of the Civil Procedure Rules 1 adjourn this application for leave until the appeal is determined. Those are the orders I am capable of making in the disclosed circumstances of this case. Costs shall be in the cause.

DATED and delivered at Malindi this 23<sup>rd</sup> day of January 2008.

**N. R. O. Ombija**

**JUDGE**

Mr. Mulwa } for applicant