



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENTA AT EMBU**

**Misc Appli 21 of 2007**

**REPUBLIC.....**  
**APPLICANT**

**VERSUS**

**THE DISTRICT LAND DISPUTES CENTRAL DIVISION.....1<sup>ST</sup>**  
**RESPONDENT**

**THE SENIOR RESIDENT MAGISTRATE COURT KERUGOYA.....2<sup>ND</sup>**  
**RESPONDENT**

**LUCY WANGITHI KIMUNYE.....3<sup>RD</sup>**  
**RESPONDENT**

**KIMUNYE MAINA.....EX-**  
**PARTE**

**RULING**

The 3<sup>rd</sup> Respondent represented by Mr. Njagi Advocate has raised objections to this application (Notice of Motion in Judicial Review).

The main ground is that the dispute arose outside the prescribed period under Order 53 of Civil Procedure Rules. The leave was granted on 20/2/2007 and the decision/award of District Lands Tribunal was dated 3/8/2006. It is also sought to quash the decision of Senior Resident Magistrate Kerugoya who adopted the decision of the Tribunal into a court Judgment out of where a decree was issued for execution on 29/1/2007.

It is my finding that until the award was adopted as a decree of the court it was not executable by any party. Where a decision is delayed beyond the prescribed period of 6 months it is possible for parties to seek leave and extend time. However in this case no extension of time was sought. However the Exparte applicant did not delay when the award became a decree of the court on 29/1/2007.

On the issue of service upon the Deputy Registrar with the notice the application for leave was filed on 14/2/2007 and Notice to the registrar served upon Hon. Deputy Registrar on the same date. However the application was not placed before Judge until 20/2/2007. It is my view that the provisions of Order 53 (3) are complied with on the issue of accompanying affidavit. It is to be noted that the application is supported by affidavit with annexures. The statement of facts which is supported by affidavit clearly

shows nature of the relief sought though generally and I am satisfied that the procedural requirements under order 53 for Judicial Review are complied with. The dispute is serious purporting as it does distribution of the land of a registered proprietors. I do not support the Preliminary Objection which is hereby overruled.

Dated this 25<sup>th</sup> February, 2008.

**J. N. KHAMINWA**

**JUDGE**

**25/3/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Kahiga**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**