

IN THE MATTER OF MATHIOYA LAND DISPUTES TRIBUNAL DISPUTE NO.26 OF 2005

AND

IN THE MATTER AN APPLICATION FOR ENLARGEMENT OF TIME

MARK MWANGI.....APPLICANT

VERSUS

CHARLES KARANJA MARK.....1ST RESPONDENT

MATHIOYA LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

RULING

In this Exparte Notice of Motion dated 18th January 2008 the Applicant seeks orders of this Court enlarging the time for the Applicant to file an application under Order LIII Rule 1 of the Civil Procedure Rules for leave to file an application for Judicial review to get “an order of certiorari against the Mathioya District Land Disputes Tribunal” award in that Tribunal’s case No.26 of 2005.

The Applicant also asks that costs be in the cause but in law the costs of an application like this one is always paid by the Applicant. The Applicant is therefore not entitled to costs of this Notice of Motion in any event.

When the Applicant says the award was read on 2nd November 2005 and adopted on 18th November 2005, he is referring to the reading of that award by the Land Disputes Tribunal and the adoption of that award by the Resident Magistrate’s Court at Kangema. Particulars do not appear to be clear but it would appear that the Resident Magistrate’s Court case number was L.D.T Case No.26 of 2005.

M/s Kiruguni, the Counsel who has prosecuted this Ex-parte Notice of Motion, has told me that the Applicant has had the services of two other firms of Advocates, namely M/s Mwangi Kamau & Co. Advocates and M/s R.M. Kimani & Co. Advocates and that the former firm of Advocates failed to file an appeal after having been instructed by the Applicant to file same while the latter was instructed by the Applicant to file and failed to file in the Resident Magistrate’s Court an application for Judicial review. Instead he filed an application for ordinary review which has been left pending to-date.

An appeal to the Provincial Land Disputes Appeals Committee from the decision of the Land Disputes Tribunal at Mathioya should have been filed within 30 days from the date of that decision.

The Resident Magistrate’s Court at Kangema having adopted the decision of the Land Disputes Tribunal at Mathioya as a Judgment of that Court, to-day that decision remains in Law, a Judgment of that Court and is no longer therefore a mere decision of the Land Disputes Tribunal at Mathioya properly subject to being quashed by an order of certiorari. The quashing of such a decision ought to be done before the decision is adopted as a Judgment of a Court because once the decision of a Land Disputes Tribunal has become a Judgment of a Court, an order of certiorari purporting to quash the decision of the Land Disputes Tribunal at that stage is an order of infutility because that purported quashing cannot quash the relevant Judgment of the Court based on a decision of the Land Disputes Tribunal, which decision, in law, no longer independently exist to be quashed

From what I am saying therefore, this Ex-parte Notice of Motion is hereby dismissed for the following reasons:

Firstly, there has been an inordinate delay in filing the Exparte Notice of Motion and the handling of

the case by different firms of Advocates, now M/s Kamunye Gichigi & Burugu Advocates, and their failures, where applicable, offer no good excuse.

Secondly, different firms of Advocates are handling this case in contravention of Order III Rule 9A of the Civil Procedure Rules, particularly the Law firm of Kamunye Gichigi & Burugu Advocates with the result that this Notice of Motion is not competent.

Thirdly, not only is this Ex-parte Notice of Motion legally improper but also untenable as the existence of an order or Judgment entered by a Court of Law is being ignored with impunity.

Dated this 21st day of February, 2008.

J.M. KHAMONI

JUDGE