



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI(MILIMANI LAW COURTS)

MISC CIV CASE 29 OF 2007

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS UNDER
ORDER LIII OF THE CIVIL PROCEDURE RULES**

IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

IN THE MATTER OF THE LAND DISPUTES TRIBUNALS ACT, 1990

**IN THE MATTER OF THE DECISION OF THE KILIFI DISTRICT LAND DISPUTES
TRIBUNAL ENTERED AS JUDGMENT OF THE COURT ON 17TH APRIL 2007**

BETWEEN

ISAAC MATANO APPLICANT

VERSUS

KILIFI DISTRICT LAND DISPUTES TRIBUNAL RESPONDENT

MLEKA CHILELE INTERESTED PARTY

RULING

INTRODUCTION

1. An application to apply for leave to commence Judicial Review by way of certiorari against a decision of a Senior Magistrates Court adopting a Judgment of the Kilifi Lands Disputes Tribunal was made to this High Court of Kenya at Nairobi.

2. The decision/judgment in question so adopted was made on the 17 April 2007. When the matter came up before the Duty Judge (Visram J) he noted that the application for leave was filed 6 months out of time. The Hon. Judge directed that

“Whereas a “decision sought (of certiorari) to quash orders of a court was made more than six months before filing of the Judicial Review application”

“Arguments be made before the Land and Environment Law Division”.

3. S.M. Keyonzo holding brief for J.S. Asige Advocates argued the following point.:-

Although the application was filed 6 months and one day out of time he could only refer to court to the definition of a calendar

month using Jurites dictionary of English Law 1977 edition he informed the court that

“A period of time consisting of thirty day in April, June, September and November and of thirty one day in the remainder of the months except February, which consists of twenty eight days exception in leap-year when the articuraly day is added making 29 days.”

4. I was unable to understand why the advocates was relying on this definition. The truth is the decision to be quashed of the court was made on 17 April 2007 and the application dated

12 October 2007 at Mombasa was filed five days later being

17 October 2007. The question arises as to whether the application for leave to commence Judicial Review proceeding are out of time?

II: Finding

5. In the case law of Hady v Ryle (1829) 9B and C 60 quoted in the case law of Mareen V Dawson Bently and Co. Ltd (1961) 1 QB 135.

Facts

The plaintiffs had been discharged from custody on

December 14. He had brought an action against a Justice for trespass and false imprisonment. He filed his action on June 14. The law then was that “no action shall be brought against any Justice of the Peace for anything done in the execution of his office unless commenced within six calendar months after the act committed.”

(A justice of the peace in other jurisdiction would include a person who has similar powers to a magistrate in Kenya.)

It was held in that case, that “the action that was brought on June 14 in respect of a cause of action which had arisen on December 14 was in time.”

6. The reasons given is that “the day on which the cause of action arose was excluded from the computation of the six months, while that on which the action was brought was included in it.”.

7. Therefore in this application, in computing time, the day when the judgment/award was entered as the decision of the court is excluded and the day that the application for leave for Judicial Review is reentered is included.

8. I would rule that this application has been filed on time following the arguments of the above case.

9. There will be no orders as to costs.

Dated this 8th day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

S.M. Keyonzo holding brief for S. Asige Keverence & Anyanzwa Advocates for the applicant