



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Civil Case 29 of 2007**

1. Land and Environmental Law Division
2. Main subject of Title: Judicial Review from Mombasa (Kilifi).

Land Disputes Tribunal

3. Objection by court (Visram, duty judge).

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

“- Arguments before Land and Environmental Law Division”.

4. Arguments by proposed applicant

- a) The senior magistrate court filed and adopted decision of the Lands Disputes Tribunal on 17 April 2007.

The application for Judicial Review was filed on 17 October 2007.

Calendar days to complete 6 months is per definition of the dictionary Jowitt’s Dictionary of English Law 1977 edition.

Calendar month –a period of time consisting of 30 days in April, June, September and November and of 31 day in the remainder of the months except February which consists of 28 days except in leap year when the intercalary day is added making 30 days.

5. Held:

- 1) The application filed for leave to commence Judicial Review proceeding for certiorari was filed one day out of time. According to case law of

Hady v Ryle (1829) 9B and C 60

quoted in case law of

Mareen v Dawson Bently & Co. Limited

(1961) 2QB 135.

First day is left out and the last day is counted.

2) Application filed for leave to commence Judicial Review was filed on time.

6. Case law by court

Hardy v Ryle (1829) 9 B and C 60 quoted in

Mareen v Dawson Bently & Co. Ltd. (1961) 2 QB 135

7. Advocates:

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

**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 17<sup>TH</sup> 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 articulary 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 8<sup>th</sup> 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