



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Misc Appli 37 of 2004**

**IN THE MATTER OF AN APPLICATION BY HADIJAH WANJALA & OSENJI**

**WANJALA FOR LEAVE TO APPLY FOR ORDERS FOR JUDICIAL REVIEW**

**A N D**

**IN THE MATTER OF THE DECISION OF MATUNGU LAND DISPUTE TRIBUNAL**

**DATED 12<sup>TH</sup> MARCH, 2003 ON 18<sup>TH</sup> DECEMBER, 2003 CONCERNING LAND**

**PARCEL NO. WANGA/MATUNGU/1006**

**AND**

**IN THE MATTER OF KAKAMEGA CHIEF MAGISTRATE MISC. APPLICATION**

**NO. 59 OF 2003 EX-PARTE HADIJAH A. WANJALA & OSENJI WANJALA**

**R U L I N G**

In their exparte application by chamber summons dated 29.4.04, the applicants, Hadijah A. Wanjala and Osenji Wanjala, sought leave under Rule 1 of Order LIII of the Civil Procedure Rules to apply for an order of certiorari to bring into this court for quashing the decision and proceedings of Matungu Land Disputes Tribunal (affecting land title No. N. Wanga/Matungu/1006) ostensibly dated 12.3.03 said to have been adopted as a judgment of the court on 18-12-2003 by the Resident Magistrate Court at Kakamega in C.M.C. Misc. Award No.59 of 2003. After its adoption, the said decision ceased to exist. It had become a judgment of the court on 18.12.03. What was in being as at the time the applicants made their application for leave was the judgment dated 18.12.03 in Kakamega C.M.C. Misc. Award case No.59 of 2003.

The time for challenging that judgment by way of judicial review was limited to six months under section 9(3) of the Law Reform Act, Chapter 26 of the Laws of Kenya. The section reads:-

*“In the case of an application for order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired”.*

It seems on the face of it that while the decision and proceedings of Matungu Land Disputes Tribunal sought to be quashed no longer existed at the time of the making of the application,, the judgment (entered in Kakamega C.M. Misc. Application No.59 of 2003) was more than 6 months before the application was brought. Therefore under the above section, the application was brought out of time. I observe that the applicants do not appear to have lodged appeal to the Provincial Appeals Committee

under section 8(1) of the Land Disputes Tribunals Act (No.18 of 1990) against the decision of Matungu Land Disputes Tribunal

In the light of the foregoing, the application is struck out.

*Dated, signed and delivered at Kakamega this 30<sup>th</sup> day of March 2006*

G. B. M. KARIUKI

J U D G E