

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Misc Appli 15 of 2006

JOSEPH GETAMA ROSWE APPLICANT

AND

NTIMARU DIVISION LAND DISPUTES TRIBUNAL 1ST RESPONDENT

KEHANCHA RESIDENT MAGISTRATE'S COURT2ND RESPONDENT

RULING:

The applicant seeks leave to apply for an order of certiorari to remove to this court and quash the decision of Ntimaru Division Land Disputes Tribunal Case No.001 of 2005. He also seeks for an order of prohibition to prohibit the 2nd Respondent Resident Magistrate's court Kehancha from adopting, enforcing or executing the said award of the 1st respondent. He prays for leave, if granted to operate as a stay.

I have considered the application. The award the applicant seeks to be quashed was made on 18th may 2005 almost 8 months ago. Order 53 rule 2 CPR clearly provides that court cannot grant leave unless the application for leave is made not later than 6 months after the decision was made. The said rule states as follows:-

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

Clearly therefore the application offends the provisions of that rule as it was filed after expiry of six months. Those provisions are coached in Mandatory terms and non-compliance of the same makes fatal to the application.

As for prohibition though there is no time prescribed once the court declines to grant leave for the application to apply for certiorari it makes no sense to issue orders of prohibition.

In the circumstances the application is dismissed with costs.

Dated 1st March 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

N/A for Applicant