



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**MISC. CIVIL APPLICATION NO. 157 OF 2002**

**THE RIFT VALLEY**

**LAND DISPUTES APPEAL TRIBUNAL.....1ST RESPONDENT**

**THE CHIEF MAGISTRATE, NAKURU.....2ND RESPONDENT**

**VERSUS**

**RETETI OLE ESHO.....1ST APPLICANT**

**JANE R. TIMANTO ESHO.....2ND APPLICANT**

**AND**

**JOHN MACHARIA MWANGI.....INTERESTED PARTY**

**RULING**

The Applicants, Reteti ole Esho and Jane Rose Timanto Esho filed a Notice of Motion under the provisions of Order L III Rule 3 of the Civil Procedure Rules seeking the following orders of this court;-

- (i) The court do issue an order of prohibition against the Chief Magistrate Nakuru to prohibit the said court hearing, determining or in any manner dealing with Nakuru CMCC Land Dispute No. 11 of 2001 and or adopting the award of the Rift Valley Provincial Land Dispute Appeal relating to Land Reference Number CIS/MARA/OL POSI MORU/1030.***
- (ii) The court do issue an order of certiorari to bring before this court and quash the proceedings and the decision made by the Rift Valley Provincial Land Dispute on the 20th September 2001 relating to L.R. No. CIS/MARA/OL POSI MORU/1030.***
- (iii) The costs of the application and the costs of Nakuru HC Misc. No. 118 of 2002 be provided us.***

The 1st Respondent filed grounds of opposition to the application. The 1st Respondent's main ground of opposition was that the orders prayed for by the Applicant could not be granted as the entire suit was barred by Statute. The Interested Party filed a replying affidavit opposing the application.

At the hearing of the application, Mr Karanja Learned Counsel for the Applicants (subjects) submitted that the Land Disputes Tribunal together with the Rift Valley Appeals Tribunal did not have jurisdiction to entertain the land dispute. It was contended on behalf of the Applicants that the Rift Valley Appeals Tribunal had made an order that the title issued to the Applicants be cancelled and a fresh one issued to

the interested party. It was submitted that the said decision was made without jurisdiction by the Tribunal. The Applicants argued that the decision was wrong as the Interested Party had no right in law to refer the dispute to the Land Disputes Tribunal as the case involved sale of land. The Applicants referred this court to the decisions made in **MACHAKOS HC CIVIL APPEAL NO. 163 OF 1999 PHILLIP MUTISO MAKAU –VS- KANKO OLE LEPEN (unreported), CIVIL APPEAL NO. 152 of 2001 ASMAN MALOBA WEPU KITULU –VS- FRANCIS W. BIKETI (C.A. Kisumu) (unreported) and NAIROBI H.C. CIVIL APPEAL NO. 502 OF 2000 MUNYUI KAHUHA –VS- NGANGA KAHUHA (unreported)** in support of their application for judicial review.

Mr Gai, Learned Counsel for the 2nd Interested Party opposed the application. He submitted that the orders that the Applicants were seeking were not merited. Learned Counsel submitted that the Chief Magistrate could not be prohibited as prayed by the Applicants as he had not made any decision which could be subject to orders of prohibition. It was further submitted that the application for the orders of certiorari was not warranted as no facts to support the application had been pleaded. It was further argued on behalf of the Interested Party that the Applicants participated in the proceedings upto the Appeal stage without raising any question as to the jurisdiction of the Tribunal. The Interested Party submitted that the Applicants could only have appealed against the decision of the Tribunal and not filed an application for judicial review.

I have carefully read the application filed by the Applicants. I have considered the submissions made by the respective counsels for the Applicants and the Interested Party. The dispute between the Applicants and the Interested Party arose out of an agreement which was entered between the said two parties whereby the Applicants agreed to purchase the Interested Party's parcel of land in consideration of the Applicants securing the Interested Party another parcel of land at a place known as Melili. As it transpired, the Applicants did not purchase the land for the Interested Party at Melili. Meanwhile, after the said agreement was entered into, the Applicants went to the previous owner of the suit land known as Jackson ole Sadera, who upon being shown the agreement between the Applicants and the Interested Party transferred the said suit land to the Applicants. The said parcel of land was duly registered in the names of the Applicants. When the Applicants failed to deliver their part of the agreement, the Interested Party referred the dispute to the Land Disputes Tribunal at Narok (i.e. **Narok Land Disputes Tribunal Case No. 8 of 2001**). The Narok District Land Disputes Tribunal delivered its verdict against the Interested Party. On the 7th of March 2001 he appealed to the Rift Valley Land Disputes Tribunal. The Rift Valley Land Disputes overturned the decision of the Narok District Land Disputes Tribunal on the 20th of September 2001. It ordered that the title deed issued to the Applicants being **CIS/MARA/OL POSI MORU/1030** be cancelled and a fresh one be issued to the Interested Party for the portion of seven and a half acres. It is this decision that the Applicants were aggrieved by and filed this application before this court.

There are several issues that have come to the fore for determination by this court. The first issue is whether the Applicants filed their application within the requisite statutory period. **Section 9 the Law Reform Act** provides that:-

*“(2) Subject to the provisions of subsection (3), rules made under subsection(1) may prescribe that applications for an order of mandamus prohibition or certiorari shall, in specified proceedings, be made within six months, or such a shorter period as may be prescribed, after the act or omission to which the application for leave relates.*

*(3) In the case of an application for an 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 the judgment, order, decree, conviction or other proceedings 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 limited by law for the bringing of Appeal; the court or Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”*

**Section 9(3) of the Law Reform Act** has substantially been reproduced and provided as **Order LIII Rule 2 of the Civil Procedure Rules.**

In the present case, the Rift Valley Land Disputes Appeal Tribunal made its decision on the 20th of September 2001. The Applicants sought the leave of the court to file an application for judicial review on the 16th of April 2002. The six months period provided which the Applicants ought to have filed the application for judicial review expired on the 20th of March 2002. The Applicants therefore sought leave to file the present application after the expiry of the statutory period which they were required to adhere to before filing the application.

In the circumstances therefore, the leave granted by this court for the applicants to file the substantive motion for judicial review was granted in error. The subsequent application filed was therefore filed without any legal authority. This Court therefore lacks jurisdiction to entertain the application filed by the Applicants. In the premises therefore the application, having been filed outside the statutory period, is hereby dismissed with costs to the Interested Party. I refrain from making any comments on the merit or otherwise of the application filed in view of the above decision made.

The Interested Party shall also have the costs of the Application which the Applicants sought leave.

It is so ordered.

**DATED at NAKURU this 21st day of January 2005.**

**L. KIMARU**

**JUDGE**