



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**MISC. APPLI. 36 OF 2005**

IN THE MATTER OF APPLICATION BY PHILIP OKELLO OMBAYI FOR JUDICIAL  
REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF LAND PARCEL NO. 429 K/K/KARADING  
ADJUDICATION SECTION AND OTHER LIPS IN CENTRAL KABUOCH

LOCATION

AND

IN THE MATTER OF THE DECISION OF THE LAND ADJUDICATION AND  
SETTLEMENT OFFICER GIVING EFFECT TO A VOID SALE AGREEMENT

AND

IN THE MATTER OF LAND ADJUDICATION ACT CAP 284

AND

IN THE MATTER OF LAND ONTROL ACT CAP 302 LAWS OF KENYA

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE DISTRICT LANDS AND SETTLEMENT OFFICER MINISTRY**

**OF LANDS SETTLEMENT & HOUSING HOMA BAY &**

**RACHUONYO (SOUTH NYANZA) ADJUDICATION AREA ..... 1ST  
RESPONDENT**

**NDHIWA LAND CONTROL BOARD ..... 2ND  
RESPONDENT**

**LANDS REGISTRAR..... 3RD  
RESPONDENT**

**SAMUEL MWANGI NGUGI ..... INTERESTED PARTY**

**PETER AKINYI ODIRA ..... INTERESTED  
PARTY**

**ISCAR ALUOCH OORO ..... INTERESTED PARTY**

**FRED EZRA MWANGO ..... INTERESTED  
PARTY**

**PHILIP OKELLO OMBAYI ..... EX-  
PARTE**

### **RULING**

This is an application under Order 53 rules 1,2 and 3 Civil Procedure Rules by one Philip Okello Ombayi. He seeks for leave to file an application for judicial Review in way of certiorari, prohibition and mandums.

Reading through the application, the statement and affidavit it seems that applicant do not come out clear in the orders he wants. Apparently his father sold land to some people whom he has cited as interested parties.

He has a quarrel with the sale and states that there was no consent obtained from the Land Control Board. Also there were objection filed before the Land Adjudication Officer being No.52 of 1992 by Samuel Ngugi one of the interested parties against DAVID OMBAE OKELLO the father of the ex-parte applicant. The objections were allowed on 20th April 1993. The ex-parte applicant wants to apply for certiorari to quash the decision allowing the objections.

The applicant also seeks for prohibition to stop Land Adjudication Officer effecting and registering transfer of lands in the former Ndhiwa Division.

I have considered the application and find it has no merit. The decision the applicant wants to apply to be quashed was made on 20th April 1993 over 12 years ago. Order 53 Rule 2 CPR clearly provides that no leave can be granted to quash a decision if application for leave is made after 6 months since the making of the decision. The applicant is therefore 12 years too late in bringing this application.

If leave to apply for certiorari is not granted application for orders of prohibition would be futile. The decision the ex-parte applicant want the Respondent prohibited from effecting is the one made on 20th April 1993 which the court says cannot now be challenged through an application for certiorari. An order for prohibition will therefore not serve any purpose.

Equally the court cannot grant mandamus to compel the adjudication officer to correct the adjudication register by excluding corrections made due to the objections. Court has to be shown that the officer has refused to do what he ought to have done.

The court notes that applicant is not a registered owner of the land in dispute. The objections he want quashed was between his father and the interested party.He was not a party to the objections and one therefore finds it difficult to discern any of his rights trampled on. It seems his father is still alive and has not raised any quarrel with the decision by the adjudication officer.

All in all I find application has no merit. The same is dismissed.

Dated 7th June 2005.

**KABURU BAUNI**

**JUDGE**

Cc - Mobisa

Applicant present