



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Civil Misc Appli 831 of 2004**

**IN THE MATTER OF AN APPLICATION BY JUSTUS WELEMBA AND GEORGE
ENOCK OGUNDA FOR ORDERS OF JUDICIAL REVIEW**

A N D

**IN THE MATTER OF THE DECISION OF LURAMBI LAND DISPUTE TRIBUNAL
IN CASE NO. 164 OF 2003 DATED 26TH JUNE 2003, AND READ TO THE PARTIES
ON 1ST MARCH 2004 CONCERNING LAND PARCEL**

NO.BUTSOTSO/SHIBEYE/1906

A N D

**IN THE MATTER OF KAKAMEGA CHIEF MAGISTRATE MISC. AWARD No.183
of 2003.**

B E T W E E N

REPUBLICAPPLICANT

V E R S U S

**LURAMBI LAND DISPUTE
TRUBUNALRESPONDENT**

A N D

**JULIUS ATIRAINTERESTED
PARTY**

ORDER

25/3/2004

G. B. M. Kariuki, J.

Mudoto – c/clerk

Mr. Wainaina for Applicant

Mr. Wainaina: I seek leave on behalf of the applicant in the application dated 22/3/2004. Notice under Rule 1(3) of Order 53 was given. Statement was filed and affidavit. Applicant wishes to apply for certiorari to quash the decision of the Tribunal i.e. Lurambi Land Disputes Tribunal.

Court: I have perused the application made on 19.3.2004 by the applicant. I am satisfied that the applicant has made all a prima facie case for the grant of leave to file judicial review. I accordingly grant the application and prayers 1 and 2 thereof. It is so ordered.

G. B. M. KARIUKI

J U D G E

25/3/2004

19/4/04

In the registry

Mulama for Wainaina for Applicant – present.

N/A for respondent.

DEPUTY REGISTRAR

20/9/2004

Coram: Before G. B. M. Kariuki, J.

Mudoto – c/clerk

Mr. Wainaina for the Applicant

N/A for the Respondent

Mr. Nyikuli for the Interested party.

Mr. Wainaina: The application is dated 29.3.04. It seeks Certiorari to quash the decision referred to in prayer 1 of the Motion. The application is supported by the verifying affidavit of Justus W. Omusikoyo sworn on 18.3.2004. The Tribunal had less members than the law requires. The Tribunal breached Section 4 of Act 18/90. The tribunal also acted in excess of its jurisdiction by entertaining a matter for sale of land. The dispute before it was a claim for land. Section 3 of Act 18/90 does not give the tribunal that power.

Tribunal also entertained a matter that was statutorily barred. Section 7 of Cap 22 – lays 12 yrs as the time to file Motion to recover land. The claim was filed 26/6/03 – the claim arose in 1987 – when the right of action accrued. On these grounds I pray that the decision be quashed. The Motion is competent. Notice was given to the Registrar as required by law. Leave was granted on 26/2/2004 when the decision on 1/3/2004. I pray for the orders.

Mr. Nyikuli: I have instructions to oppose application on two grounds. The decision complained of is dated 26/6/2003.

Application for leave was on 22.3.2004. Leave was granted on 25/3/2004. More than 6 months had elapsed from the date of decision to the date was granted. Order 53 Rule 2 requires that no leave shall be

granted more than 6 months from the date complained of. For that reason, the leave granted was invalid. Order 53 Rule 2 is not qualified in any way nor does it have explanations.

The land (Order 53 Rule 2) must be strictly interpreted. The lower court in the proceedings adopted an orthodox procedure. The date of the decision was the date the decision was made. "The statement of Facts" filed by the Applicant is nowhere provided for by Order 53. The Statement does not comply with Order 53. It should be expunged from the record. The application should be dismissed with costs.

Mr. Wainaina: Statement complies with Order 53 as it gives the name and description of the applicant, grounds on which relief is sought. Time does not affect the substance. Section 72 of Cap 2. The statement contains grounds relied on. The date of decision of Tribunal is when it was rendered to parties in March 2004. Leave was therefore obtained in time. May the court allow the application.

Court: Ruling on 8/10/04.

G. B. M. KARIUKI

J U D G E