

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
HIGH COURT CIVIL MISC. NO. 367 OF 2001

REPUBLIC:..... APPLICANT

VERSUS

MAKUENI DISTRICT LAND TRIBUNAL:..... RESPONDENT

R U L I N G

The Notice of Motion dated 13/12/01 is brought pursuant to Order 49 Rule 5 Order 50 Rule 1 and Order 53 Rule 2 of the Civil Procedure Rules and Section 3 A of the Civil Procedure Act. The applicant prays for enlargement of time to enable the applicants to file an application for Judicial Review for the order of certiorari.

The grounds upon which the application is brought are that the applicants will suffer irreparably if the prayer is not allowed and the order of the Tribunal which is sought to be quashed by certiorari is left to stand and that the delay in bringing this application was due to the delay in disposing of an appeal No. 49/99 preferred by the applicants to the Provincial Land Board which was struck out summarily on a technicality.

The application was supported by the affidavit of one of the applicants one Muia Maingi Masaku. He depones that on 17/8/99 the Land Disputes Tribunal Makueni ordered the subdivision of land Parcels **UKIA/KILALA/392, NZAVI/NZIU/872** and 8 73 between Telesia Mumbua and Mumbi Masaku whereas it is him who held the said title **NZAVI/NZIU/872** which had been registered in his name. They intend to challenge the jurisdiction of the tribunal and its constitution.

Both the Respondents and Interested Party opposed the application on grounds that under Order 53 Civil Procedure Rules there is no provision for extension of time as the time provided for bringing of proceedings of Judicial Review is six months and that Order 49 of the Civil Procedure Rules does not apply. That Order 53 provides for special jurisdiction and no other provisions of the Civil Procedure Rules are applicable.

The power to issue Judicial Review orders is given to the High Court by the Law Reform Act (Cap 26) Section 8 and 9 of the said Act and Order 53 of the Civil Procedure Rules.

Section 8 (1) of the Law Reform Act provides as follows:

“The High Court shall not, whether in the exercise of its civil or criminal jurisdiction issue any of the prerogative writs of mandamus, prohibition or certiorari.”

Section 8 (1) of the Law Review Act above, therefore, denies the High Court the power to issue orders of mandamus prohibition and certiorari when exercising civil or criminal jurisdiction. What that means is that the applicant cannot invoke the provisions of Order 49 of the Civil procedure Rules for extension of time when seeking Judicial Review, the Court of Appeal held in the case of **THE COMMISSIONER FOR LANDS versus KUNSTE HOTEL LTD** Civil Appeal 234/95, that the court exercises special jurisdiction under Order 53 of the Civil Procedure Rules and when doing so, it is neither exercising civil nor criminal jurisdictions.

In another case of **KIMANZI NDOO and DAVID MULWA MUTHUSI Civil Appeal 233/96**, the Court of Appeal also held that under the Law Reform Act, as well as Order 53 Rule 2 of the Civil Procedure Rule, no application for leave can be entertained unless it is made within six months of the date of the

award or order and that since leave had been granted well out of the prescribed period of six months, the purported leave could have been granted.

The Court of Appeal also considered whether the provisions of Civil Procedure Rules applied to applications under Order 53 of the Civil Procedure Rules and it came to the conclusion that they did not. This was in the case of ***REPUBLIC versus COMMUNICATIONS/COMMISSION OF KENYA Civil Appeal 175/00.***

The High Court at Embu considered a similar issue like the one before this court today in the case of ***JOSEPH NJERU KOMBO versus DISTRICT COMMISSIONER MBEERE and 30 OTHERS*** where leave to file an application for Judicial Review had been granted by the court after expiry of six months, Justice Juma held that the leave which was granted by the High Court to extend time to issue an application for Judicial Review was a nullity since it was applied for after six months of the statutory period of six months. I hold the same view.

From the above referred decisions, it is clear that Order 49 of the Civil Procedure Rules does not apply to proceedings under Order 53 of the Civil Procedure Rules and time to bring an application for Judicial Review cannot be enlarged. The application is, therefore, dismissed with costs.

Dated at Machakos this 20th day of December 2004

Read and delivered in the presence of

R.V. WENDOH

JUDGE