



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

JUDICIAL REVIEW NO. 10. OF 2010.

**IN THE MATTER OF AN APPLICATION BY PAUL MAFWABI WANYAMA FOR LEAVE TO
APPLY FOR**

JUDICIAL REVIEW ORDERS OF CERTIORARI

AND

**IN THE MATTER OF BUSIA PRINCIPAL MAGISTRATE'S COURT LAND DISPUTES
TRIBUNAL CASE. NO. 89 OF 2008.**

**IN THE MATTER OF DECISION OF AMAGORO LAND DISPUTES TRIBUNAL CASE NO.
15 OF 2007**

NORTH TESO LOCATION

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN AMAGORO LAND DISPUTES.TRIBUNAL.....RESPONDENT.

AND

JACINTA PAPAINTERESTED PARTY

EX-PARTE

IN THE MATTER OF PAUL MAFWABI WANYAMA.....APPLICANT.

RULING.

1. **JACINTA PAPA**, the Interested Party, through M/S. Ipapu P. Jackah & company advocates gave notice, dated 21st January, 2015 to raise preliminary objection to the application dated 20th February, 2009 for being an abuse of the courts process for reasons that it was filed out of time.
2. The notice was served and heard on 6th May, 2015 in the absence of the Exparte Applicant's

counsel.

3. The court has carefully considered the submissions by the Interested Party’s counsel and the Court of Appeal, Kisumu decision of 18th December, 2014 in Civil Appeal number 41 of 2013 in **Republic -vs- The Chairman, Amagoro Land Disputes Tribunal & Another, Exparte Applicant Paul Mafwabi Wanyama**. The court has also considered the proceedings in this file and the pleadings filed herein and find as follows;

- a. That the leave to file the substantive application was granted on 30th January, 2009.
- b. The Exparte Applicant was directed to file the substantive application in 21 days.
- c. The substantive application dated 20th February, 2009 was filed on 23rd February, 2009. This was three (3) days outside the 21 days ordered during the leave application orders.
- d. That as held in the Court of Appeal decision cited above, this court has no jurisdiction to extend time in judicial review proceedings and the Notice of Motion dated 20th February, 2009 and filed on 23rd February, 2009 is a nullity and of no consequence for being filed out of time.
- e. The preliminary objection by the Interested Party is therefore upheld and the notice of motion dated 20th February, 2009 and filed on 23rd February, 2009, is hereby struck out and dismissed with costs to the Interested Party.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 11TH DAY OF JUNE, 2015.

IN THE PRESENCE OF;

APPLICANT.....ABSENT.....

RESPONDENT.....ABSENT.....

COUNSEL.....MR. IPAPU FOR INTERESTED PARTY.....

JUDGE.