

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
JUDICIAL REVIEW NO: 8 OF 2013

JOHN AMWOKA CHILISWA.....1ST APPLICANT

HOSEA OKHUPO KULUNDU.....2ND APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

OBADIA HOSEA KULUNDU.....INTERESTED PARTY

RULING

The applicants filed the chamber summons dated 14/11/2013 seeking leave to commence Judicial Review proceedings. The court directed that the application be served upon the respondents. The interested party filed a replying affidavit sworn on 9/12/2013. According to the respondents the application is time barred as the decision of the tribunal was made on 29/11/2009. There has been inordinate delay on the part of the applicant.

The applicants contention is that he is the registered owner of the suit land namely **S/KABRAS/LUKUME/1273**. The land dispute tribunal awarded 2 acres to the interested party. The applicant maintains that the tribunal had jurisdiction to do so as the land was already registered in the applicant's name. The decision of the Tribunal was adopted by the Resident magistrate on 8/10/2012. I have gone through the pleadings and do find that there is need to have the issues raised by both parties to be fully deliberated upon by the court. The applicant is the registered owner of the suit land and should only be disposed of his land through the normal channels. The application raises issues of law and should not be dismissed on technicalities. The issue of limitation will be dealt with in the main application.

In the end I do allow the application dated 14/11/2013 as prayed. The applicant to file his substantive application within 21 days hereof. Costs shall follow the outcome of the main application.

Dated, signed and Delivered at Kakamega this 3rd day of July 2014.

SAID J. CHITEMBWE

JUDGE