



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

JUDICIAL REVIEW NO. 22 OF 2014

IN THE MATTER OF APPLICATION OR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI

AND

IN THE MATTER OF DECISION BY ELDERS KIRINYAGA DISTRICT LAND TRIBUNAL REF
KIR. S LND 8/2 VOL. 111/87 PITTING MARY WAIRIMU KIMANI (PLAINTIFF) AGAINST
JOSEPH MBURU KIMANI (DEFENDANT)

AND

IN THE MATTER OF JUDICIAL REVIEW

AND

IN THE MATTER OF REPUBLIC

VERSUS

JOSEPH MBURU KIMANI – APPLICANT

JOSEPH MBURU KIMANI APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

By his “*home-made*” application for leave to apply for an order of certiorari filed herein on 1st September, 2014 under a certificate of urgency, the ex-parte applicant seeks the following substantive e prayers:-

1. *Spent*
2. *The applicant be granted leave to apply for an order of certiorari to remove to this Court the award of KIRINYAGA DISTRICT LAND DISPUTES TRIBUNAL REF: KIR. S. LND. 8/2 VOL. III/87 filed in the Senior Magistrate’s Court at Wanguru as ARBITRATION CASE NO. 8/2010.*
3. *That orders made by the Magistrate’s Court vide Senior Resident Magistrate’s Award No. 8/2010 at Wanguru pursuant to the decision or award of the said KIRINYAGA LAND DISPUTES TRIBUNAL’S decision be vacated.*

4. *The grant of leave sought to operate as a stay of execution of the decree from the decision of the tribunal aforesaid until the intended substantive application is heard and determined by this Court.*
5. *Costs be in the cause.*

The application is premised upon Order 53 Rule 1 of the Civil procedure Rules and Sections 8 and 9 of the Law Reform Act and is supported by the applicant's verifying affidavit and statement of particulars to which are annexed the decision of the KIRINYAGA LAND DISPUTES TRIBUNAL sought to be quashed and the decision of the Senior Resident Magistrates Court at Wang'uru adopting the said award.

I have considered the application as well as the verifying affidavit, statement of particulars and other annexures.

Though poorly drafted by the applicant who is acting in person, it is clear that this an application seeking leave to bring into this Court for quashing the decisions of the KIRINYAGA LAND DISPUTES TRIBUNAL in their land case No. 8/2 VOL 11A/87 dated 9th April 2010 and also the decision of the Senior Resident Magistrate's Court at Wang'uru adopting the said award on 10th June, 2010. Being an application for leave under Order 53 of the Civil Procedure Rules, it is required to be made not later than six months from the date when the order sought to be quashed was made. Order 53 Rule 2 of the Civil Procedure Rules provides as follows:-

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of it's being quashed, unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any Act -----“

Similarly, Section 9 (2) of the Law Reform Act provides that in an application for an order of certiorari to remove any judgment, order, conviction or other proceeding for purposes of it's being quashed, leave shall not be granted unless the application for leave is made not later than the six months after the date of the proceedings or such shorter period as may be prescribed under any written law. See also the case of AKO VRS SPECIAL DISTRICT COMMISSIONER KISUMU & ANOTHER 1989 K.L.R 163 where the Court went on to state that this limitation of six months is statutory and cannot even be enlarged under the Civil Procedure Rules that allow for enlargement of time. In this case now before me, the decision of the KIRINYAGA DISTRICT LAND DISPUTES TRIBUNAL is dated 9th April, 2010 while that of the Senior Resident Magistrate's Court Wang'uru adopting it was delivered on 10th June, 2010. This ex-parte application was filed on 1st September, 2014 which is over four (4) years from the date when the decisions sought to be quashed were made. The application has therefore been made well beyond the six (6) months period allowed by the law. It is therefore hopelessly out of time. The application is accordingly dismissed with no order as to costs.

B.N. OLAO

JUDGE

3RD OCTOBER, 2014

3/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Applicant – present

Respondent – absent

COURT: Ruling delivered in open Court this 3rd day of October, 2014.

Applicant present in person.