



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

JUDICIAL REVIEW NO. 35 OF 2013

**IN THE MATTER OF AN APPLICATION BY VIOLET MBERE KABIBU FOR LEAVE TO
 APPLY FOR AN ORDER OF CERTIORARI**

AND

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990

AND

IN THE MATTER OF LAND PARCEL NO. KABARE/NYANGATI/4576

REPUBLICAPPLICANT/RESPONDENT

VERSUS

KIRINYAGA SOUTH DISTRICT

LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

RESIDENT MAGISTRATE’S COURT WANG’URU2ND RESPONDENT

STANLEY KABIBU NDAMBIRIINTERESTED PARTY

VIOLET MBERE KABIBUEX-PARTE APPLICANT

RULING

This ruling is in respect to the ex-parte applicant’s Chamber Summons dated 15th August, 2013 and filed in Court on the same day seeking the following prayers:-

1. *That the applicant be granted leave to apply for an order of certiorari to remove into this Court and quash the decision made by the KIRINYAGA SOUTH DISTRICT LAND DISPUTE TRIBUNAL on 12th March 2010 and adopted as judgment of the Court on 3rd August 2010*
2. *That land parcel KABARE/NYANGATI/1476 be registered jointly in the names of STANLEY KABIBU NDAMBIRI, VIOLET MBERE KABIBU and NANCY KABIBU*
3. *That the grant of leaver herein do operate as a stay of the said decision by the KIRINYAGA SOUTH DISTRICT LAND DISPUTES TRIBUNAL until the determination of the application or until the Court orders otherwise*
4. *That costs of this application be provided for.*

The application is founded upon **Order 53 Rules 1 (1) and (2) of the Civil Procedure Rules** and **Section 8 and 9 of the Land Reform Act** and is supported by the statutory statement and affidavit of VIOLET MBEERE KABIBU the ex-parte applicant herein.

I have considered the application together with the supporting documents. This is essentially an application seeking leave to apply for an order of certiorari to remove into this Court and quash the decision made by the KIRINYAGA SOUTH DISTRICT LAND DISPUTE TRIBUNAL on 12th March 2010 and adopted by the Resident Magistrate's Court at Wang'uru on 3rd August 2010. This being an application for leave under **Order 53 Civil Procedure Rules**, it is required that such application 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** reads as follows:-

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding 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 (3) 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 being quashed, leave shall not be granted 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 under any written law. This requirement was re-emphasized by the Court of Appeal in the case of **AKO VS 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.

As stated above, this application for leave was filed on 15th August, 2013 and the orders sought to be quashed were issued in 2010. This application is therefore well out of time. It is also not clear why no appeal was preferred against the decision of the KIRINYAGA SOUTH DISTRICT LAND DISPUTES TRIBUNAL and if so, with what results.

In view of the above, the ex-parte applicant's Chamber Summons dated and filed herein on 15th August, 2013 is dismissed with no order as to costs.

B.N. OLAO

JUDGE

10TH OCTOBER, 2014

10/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Githinji for Applicant – absent

Respondent – absent

COURT: Ruling was due on 3rd October, 2014 but there was no appearance by either party. Notices were therefore issued for today but still there is no appearance.

I cannot keep the ruling pending indefinitely.

It is accordingly delivered in the absence of both parties this 10th day of October, 2014.

B.N. OLAO

JUDGE

10TH OCTOBER, 2014