



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**JUDICIAL REVIEW NO. 34 OF 2012**

**REPUBLIC (THRO' EXPARTE:- PARESH NARANDASH SEDANI) ... APPLICANT**

**VERSUS**

**THE LAND REGISTRAR, VIHIGA DISTRICT ..... 1<sup>ST</sup> RESPONDENT**

**THE RESIDENT MAGISTRATE, VIHIGA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**SAMSON ANGOLO TIMOTHY OSIRU ..... INTERESTED PARTY**

**R U L I N G**

The interested party SAMSON ANGOLO TIMOTHY OSIRU filed a Notice of preliminary objection dated 6.8.2012. The main issue being raised is that the application for leave was defective as it was made more than six months or to be exact 13 years after the decision of the Luanda Land Disputes Tribunal was made. Parties agreed to file written submissions to determine the preliminary objection.

The interested party in his submissions dated 27.3.2014 indicates that the application for leave was filed out of time. The application ought to have been filed within six months therefore the order granting leave should be set aside. Further, it is contended that the application for leave was brought by a party who did not participate in the proceedings.

On his part, counsel for the applicant contends that the application is seeking an order of prohibition prohibiting the Principal Magistrate at Vihiga from executing transfer documents in favour of the interested party as well as an order of mandamus. It is not an application for an order of certiorari which requires six months period.

I have gone through the pleadings herein and they raise several legal issues. There is the issue as to whether the Luanda Land Disputes Tribunal had jurisdiction to determine the dispute, there is the issue as to whether the tribunal could deal with land registered under the Registered Land Act and already transferred to a third party, whether the tribunal had powers to cancel a title deed, I have also gone through the proceedings before the Vihiga court and there is the issue whether the claim was res judicata. The contention by the interested party is that the application for leave was defective as it was made after the expiry of six months. Under **Order 53 Rule 2** the time for applying for orders of certiorari is limited to six months. The trial court will have to determine whether the current judicial review application was filed out of time. **Rule 53** does not specifically give time limit for the filing of applications seeking judicial review orders of mandamus and prohibition. The applicant is the registered owner of the suit land plot number **W.BUNYORE/EBUSIKHALE/2153**. Locking him out at this preliminary stage will not solve the dispute. The applicant is still at liberty to file a fresh suit and as the interested party correctly points out he was not a party to the proceedings before the Land Disputes tribunal. In essence therefore his rights as the proprietor of the suit land were affected. It is true that he got his title deed in 2004 yet the dispute was heard in 1998, there are several issues which are raised in the application by the applicant which need to be determined by the court at a full hearing.

In the end I do find that the preliminary objection is not one that will settle the dispute once and for all and if it is granted it will still leave several issues unsettled. Parties will therefore continue to litigate in

other forums. I find that the application lacks merit and the same is dismissed. Costs shall follow the outcome of the main suit.

Delivered, dated and signed at Kakamega this 8<sup>th</sup> day of October 2014

**SAID J. CHITEMBWE**

**J U D G E**