



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

HIGH COURT MISC. APP. NO. 108 OF 2014

GODWIN OUMA MAKUBE.....PLAINTIFF

=VERSUS=

MOSES DIRU AMBASA.....RESPONDENT

RULING

GODWIN OUMA MAKUBE, hereinafter referred to as the Applicant, filed the application dated 8th August, 2014 against **MOSES DIRU AMBASA**, hereinafter referred to as the Respondent, for the following orders;

“ a) That the applicant herein be granted leave to file orders of certiorari to quash the decision of the Land Dispute Tribunal in Funyula and subsequent adoption in BSA LDT NO. 701 of 2007.

b) That costs be in the cause.”

The application is based on three grounds and affidavit of the Applicant sworn on 8th August, 2014. The Applicant appeared in court on 4th November, 2014 for the hearing of his application and adopted the contents of the papers that he had already filed.

The court has considered the grounds on the application, the contents of the supporting affidavit and the applicant’s submissions and find as follows;

1. That applications for leave precedent to the filing of judicial review orders is provided for under Order 53 of the Civil Procedure Rules as properly cited in the heading of the application. The application is supposed to be *ex parte* with details set out under Rule 1 (2). Even though the application herein was not designated as *Ex parte* on the heading, the Applicant was allowed to proceed *ex parte*.

2. That the Applicant seeks for leave to file a substantive application to quash the Funyula Land Disputes Tribunal award. The copy of the award annexed to the application shows the tribunal case was number 8 of 2007. Also the copy of the tribunal award at the last page, next to the Chairman’s name has the date of 26th September, 2007. The copy of the proceedings in Busia PM Land Dispute case No. 70 of 2007 shows the award was read on 14th December, 2007 and the court’s coram indicates that the Applicant herein was present.

3. That in terms of section 8 of the Land Disputes Tribunal Act, which was later repealed under

section 31 of the Environment and Land court Act, No. 19 of 2011 which came into operation on 30th August, 2011, any party not satisfied with the tribunal's decision had 30 days to lodge an appeal with the Provincial Land Disputes Appeals Committee. The Applicant herein did not file an appeal from the year 2007 when the award was made to 2011 when the tribunals were dissolved following the repealing of the enabling Act. That was a period of about four years and it is now about seven years from the date of the award of Funyula Land Disputes Tribunal.

4. That had the Applicant complied with section 8 of the then Land Disputes Tribunal then he would have come before this court on appeal on points of law under section 8 (9) of the said Act if not satisfied or taken the judicial review route after obtaining the requisite leave.

5. That for leave to be granted, the application must be filed within six months from the date the award being challenged was made in accordance with Order 53 Rule 2 of the Civil Procedure Rules which is in the same terms with section 9 (3) of the Law Reform Act. The application herein has been brought after about seven years. The six months Limitation is set by statute and cannot be categorized as a technicality in view of the Court of Appeal decisions in ***KIMANZI MBOO -VS- DAVID MULWA*** E.A.C. A. NO. 233 OF 1996 AND ***WILSON OSOLO -VS- JOHNN OJIAMBO & Another eKLR.***

6. That for reasons set out above, the court find the application is time barred and is dismissed.

It is so ordered.

S.M. KIBUNJA

JUDGE.

DATED AND DELIVERED ON 13th DAY OF NOVEMBER, 2014.

IN THE PRESENCE OF;

.....P.I.P.....PLAINTIFF

..... N/A..... DEFENDANT

JUDGE.