



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO. 145 OF 2011**

**JOAB SHIUNDU MACHESO.....APPLICANT**

**VERSUS**

**NDIVISI LAND DISPUTES TRIBUNAL.....1ST RESPONDENT**

**THE PRINCIPAL MAGISTRATE – WEBUYE..2ND RESPONDENT**

**RULING**

The application dated 17th November 2011 seeks leave to apply for an order of certiorari to remove into this honourable court and quash the decision of Ndivisi Land Disputes Tribunal made on 19th May 2011 adopted as judgment of the court in Webuye PMCC land case no. 13 of 2011 on 21st October 2011. The application is supported by affidavit of Joab Shiundu Macheso which has annexed the proceedings both of the Magistrates court and of the Tribunal.

The application was not granted ex parte as the judge ordered the interested party to be served. The interested party filed his grounds of opposition which listed 4 grounds.

The parties presented their arguments by way of written submissions. The applicant submits that he is the registered owner of the suit parcel of land. He relied on the cases of ***Kariuki vs. Attorney General [1990 – 1994] E.A*** which held that leave is granted where applicant demonstrates he has a prima facie case. He also submitted that the award of the tribunal is formally communicated to the parties at the time of its reading in the magistrate's court. Therefore the time for applying for Judicial Review started running on 22nd October 2011. The application for leave was thus filed within time.

The interested party argued otherwise. He submits the decision of the Ndivisi Land Disputes tribunal was made on 19th May 2011 and application for leave filed on 23rd November 2011 hence outside the six months period as provided for under Order 53 rule 2. He relied on the case of ***Wilson Osolo vs. John Ojiambo Ochola & another Civ. Appeal NO. 6 of 1995*** in support of this argument. He submitted that though the application was filed on 23.11.11, it was not served on the interested party until 28th June 2012 meaning it was treated casually. He urged the court to dismiss the application with costs.

I have had the opportunity to read through the file. A look at the proceedings of the Land Disputes Tribunal forwarded to court shows the date of signing of the award as 19th May 2011. It does not show if on this date it was also read to the parties. It was forwarded to the court for adoption as is required under Sec. 7 (2) of the Land Disputes Tribunal Act on the same date. A date of 23rd June 2011 was fixed for the reading of the award. It was postponed for one reason or another and it was not until 21st October 2011 when the award was finally read.

The question this court is asked to determine is when does time begin to run? Is it when the award is dated or when it is adopted as an order of the court? Justice Khamoni in *Wamwea vs. Catholic Diocese of Muranga registered Trustees, Nbi Civ. Appeal No. 568 of 2000 e KLR* said that,

***“adoption makes the decision of the Tribunal a decision of the magistrate's court and as a result the decision of the tribunal ceases to exist a separate entity challengeable alone”.***

This is confirmed further by the provisions of sec. 7 (2),

***“ the court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered, a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act”.***

My interpretation of this section and the decision of the Learned judge, is the award cannot be executed unless it is adopted to be an order of the court. Therefore it is my finding that time begins to run from the date of adoption as that is when the award is read out to the parties. If it were to be looked at differently, as some schools of thought have held that time runs from the date of award, then it is mandatory that the tribunal notifies all parties of its decisions and time then runs from the period when the parties are deemed notified of the award. No such exercise/step is indicated that the award was read out to parties on the 19th May 2011 or notices sent out in proceedings sought to be quashed.

This court having taken the view that time runs from the date of adoption (reading) of the award, I make a finding that the application was made/brought within the time prescribed in law. The same is allowed. The applicant to file the substantive motion within 21 days from date of delivery of this ruling. The leave to operate as stay in any event.

**RULING SIGNED this 3rd day of July and DELIVERED AND READ** in open court this 4th day of July 2013.

**A. OMOLLO**

**JUDGE.**