



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

MISC. APP. NO.71 OF 2012.

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NI. 18 OF 1990

LAWS OF KENYA

AND

IN THE MATTER OF THE REGISTERED LAND NO. SAMIA/BUDONGO/241

AND

IN THE MATTER OF FUNYULA LAND DISPUTE CASE NO. 07 OF 2008

BETWEEN BENJAMIN OGALE BY SYLVESTER OKUMU OKELLO.

AND

SYLVESTER OKUMU OKELLOAPPLICANT

=VERSUS=

CHAIRMAN, FUNYULA LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

CHIEF MAGISTRATE'S COURT, BUSIA.....2ND RESPONDENT

AND

BENJAMIN OGALEINTERESTED PARTY.

R U L I N G.

SYLVESTER OKUMU OKELLO, who is the Exparte Applicant herein, filed the notice of motion dated 3rd April, 2012 through Maloba and Company Advocates requesting for leave to file for orders of Judicial Review (Certiorari) out of time in respect of the decision made by Funyula Land Disputes Tribunal dated 23rd June, 2011 in relation to Land parcel Samia /Budongo/241 and adopted in Busia PMCC. Land case No. 33 of 2008. The application is based on the following grounds:

- a. The time for lodging an application for orders of judicial review has since lapsed.
- b. The Applicant being a layman, was not aware of that fact.
- c. The Applicant had financial constraint preventing him from seeking legal advice in time.
- d. The application is brought in good faith and without inordinate delay.

- e. The court has discretion to grant the extension of time within which to file for certiorari.

The application is also supported by supporting affidavit sworn by Sylvester OkumuOkello on 3rd April, 2012 in which he expounded on the grounds which are set out above. On the day of the hearing counsel for the Applicant did not offer any further submissions other than relying on the documents that had been filed.

The court has carefully considered the application especially the supporting affidavit and found as follows:

1. That under Order 53 Rule 2 application for leave to apply for an order of certiorari is required to be filed within 6 months from the date of the order complained of. The wording in this rule is in the same terms with section 9 (3) of the Law Reform Act and superior courts have over time ruled that this court has no power to extend the period of six months which is set by the statute. The following decided cases are relevant.

- a. *Nyeri HCC. Misc. App. No. 90 of 2003*

MOTOKAA NTHAUTHO – APPLICANT

-VS-

JOSEPH NJERU & 3 OTHERS.

RESPONDENTS.

- b. *JAMES GITHINJI KIARA –VS- WILLIAM*

WACHIRA MWANIKI (2005)eKLR

- c. *Republic –vs- Chairman Meru Central District*

Land Disputes Tribunal and 2 others, Exparte

Stephen MukumuMwirichia (2006)eKLR

- d. *Nyeri HCC. Misc. App. No. 112 of 2008*

Dickson MwirichoMuriuki

-VS-

Central Provincial Land Disputes Appeal Committee

& 6 others.

- e. *KimanziMboo –vs- David Mulwa, Court of AppealNo. 233 of 1996* where the court held that under the Law Reform Act, as well as Order 53 Rule 2 of the Civil Procedure Rules no application for leave can be entertained unless it is made within 6 months of the date of the award or order.
- f. *Wilson Osolo –vs- John Ojiambo& Another (1996)* eKLR where the Court of Appeal was dealing with an appeal in a matter where the High Court had allowed an application for extension of time to apply for an order of certiorari beyond the six months and held that the six months period for an order of certiorari could not be extended as it was a creature of the Law Reform Act. The court of Appeal held” **It can readily be seen that Order 53 Rule 2 is derived verbatim from section 9 (3) of the Law Reform Act. Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil**

Procedure Rules that procedure cannot be availed of for the extension of time limited by statute, in this case, the Law Reform Act.’’

2. That as shown on the heading of application dated 3rd April, 2012, the application herein is brought under the provisions of the Civil Procedure Act and Rules. The decisions of the Court of Appeal cited above, clearly shows that the provisions of the Civil Procedure Rules relating to extension of time do not apply in matters of applications for certiorari.

The foregoing clearly shows that leave to apply for orders of certiorari must always be applied for within six months. This court has no powers to extend that period as shown above and the application dated 3rd April, 2012 is hereby dismissed with costs.

S. M. KIBUNJA.

JUDGE.

Dated on the 4th Day of July, 2013