



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**JUDICIAL REVIEW 26 OF 2007**

**IN TH MATTER OF AN APPLICATION BY KBERNARD MUCHIRI GATHUMBI FOR  
LEAVE TO APPLY FOR ORDER OF JUDICAL REVIEW**

**AND**

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

**AND**

**IN THE MATTER OF CENTRAL LAND DISPUTES TRIBUNAL**

**AND**

**IN THE MATTER OF PROCEEDINGS IN KERUGOYA SENIOR RESIDENT MAGISTRATE'S  
COURT LDT ARB CASE NO. 57 OF 2007**

**BERNARD MUCHIRI GATHUMBI.....  
APPLICANT**

**VERSUS**

**THE CHAIRMAN CENTRAL LAND DISPUTES TRIBUNAL.....1<sup>ST</sup>  
RESPONDENT**

**SENIOR RESIDENT MAGISTRATE KERUGOYA.....2<sup>ND</sup>  
RESPONDENT**

**GEORGE D. GATHUNGU.....3<sup>RD</sup> RESPONDENT**

**RULING**

This is the preliminary objection raised in the notice dated 17/1/2011 by the 3<sup>rd</sup> Respondent. It seeks to have the entire proceedings instituted herein to be dismissed on the following grounds:

- 1. The notice of motion dated 3/7/2008 is fatally and substantively defective in law having been brought under the wrong provisions of the law.**
- 2. That the notice of motion dated 3/7/2008 and filed on 4/7/2008 together with leave to institute Judicial Review proceedings are a nullity obinitio and amount to abuse of court process.**
- 3. That the suit land in issue is registered in the names of a 3<sup>rd</sup> party since 28/8/2008 by names Sospeter Maina and court orders should not be issued in vain.**
- 4. That this court lacks jurisdiction to entertain the proceedings herein.**

Only Mr. Kahiga for the 3<sup>rd</sup> Respondent filed written submissions. He gave a history of the matter and submitted that the matter was improperly before this Court. He has also cited a number of authorities. The 3<sup>rd</sup> Respondent argues that the leave granted herein is a nullity. The reason he gives is that the matter was filed outside the 6 months period.

It is true Judicial Review proceedings seeking an order of certiorari must be filed within 6 months. The record shows that the award complained of was made on 3/10/2007. It was adopted as a Judgment of the Court on 22/10/2007. The application for leave to file Judicial Review proceedings was to filed on 17/12/2007. This clearly shows it was filed in less than 2 months. This is therefore contrary to the 3<sup>rd</sup> Respondents averment and submissions that it was filed outside the 6 months period.

The application was heard on 5/6/2008 by the Court. I do not know why but I believe that was the date given to the Applicant. The Applicant did not have control of the Court diary. I therefore find that the Leave was properly granted. The order of the Court was that the LEAVE operates as stay and the substantive motion be filed within 21 days. From the record I see a notice of motion dated 3/7/2008 was filed on 4/7/2008. There is an amended notice of motion filed on 8/10/2010. The amendment was done with the leave of the Court. Therefore substantially the exparte applicant filed his notice of motion on 4/7/2008.

The Leave granted on 5/6/2008 gave the exparte Applicant 21 days within which to file the Notice of Motion. The 21 days expired on 26/6/2008. Technically, when the notice of motion was filed on 4/7/2008, there was no leave. And there was nothing difficult for the exparte Applicant to come back to the Court and ask for extension of the time for filing of the notice of motion. He failed to do that and has no one to blame for this blunder.

I therefore agree with the 3<sup>rd</sup> Respondent's counsel that the amended application before the Court was filed without the substantive leave, as the leave granted on 5/6/2008 lapsed on 26/6/2008. On 4/7/2008 when the notice of motion was filed there was no Leave as is envisaged under Order 53 Rule 1(2) of the Civil Procedure Rules.

I accordingly uphold the preliminary objection raised by Mr. Kahigah for the 3<sup>rd</sup> Respondent. The application cannot therefore stand and the same is struck out with costs.

**DELIVERED, SIGNED AND DATED AT EMBU THIS 4<sup>TH</sup> DAY OF JULY, 2012.**

**H.I. ONG'UDI  
JUDGE**

**In the presence of:-**

**Mr.Kahigah for 3<sup>rd</sup> Respondent/Applicant**

**Ms. Mureithi for Exparte Applicant  
Njue CC**