



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISCELLANEOUS CIVIL APPLICATION 57 OF 2009

IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION BY MARTIN NABANGI MULONGO FOR ORDERS OF JUDICIAL REVIEW

AND

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

AND

REPUBLIC.....APPLICANT

~VERSUS~

THE CHAIRMAN KANDUYI LAND DISPUTES TRIBUNAL.....RESPONDENT

PIUS NABANGI SIKWEMBE.....INTERESTED PARTY

AND

MARTIN NABANGI MULONGO.....EX-PARTE APPLICANT

JUDGMENT

There is no dispute that land parcel no.E.Bukusu/S.Kanduyi/8482 measuring about 3 Hectares was since 30/10/00 registered in the name of the *ex-parte* Applicant. The Interested Party went to the Kanduyi Land Disputes Tribunal (Respondent) which ordered that the *ex-parte* Applicant gives him one acre of the parcel. The award was dated 23/1/2001. On 5/3/2009 the *ex-parte* Applicant filed a chamber application and obtained leave to file judicial review motion in the nature of *Certiorari* to remove into this court and quash the award which was on 9/1/2009 adopted as the judgment of the Chief Magistrate’s Court at Bungoma. The motion was filed on 13/7/2009 and opposed by the Interested Party.

There is no doubt that the Respondent did not have jurisdiction under section 3 (1) of the Land disputes Tribunal Act no.18 of 1990 to arbitrate in a dispute relating to ownership of registered land (**Beatrice M’Marete v. Republic and Others, Civil Appeal no.259 of 2000 at Nyeri**). However, the chamber application for leave to apply for orders of *Certiorari* was made after the expiry of 6 months

following the award and was therefore a nullity (**Municipal Council of Mombasa v. Republic and Another, Civil Appeal no.185 of 2001**). An application for leave to apply for orders of *Certiorari* is barred by Order 53 rule 2 of the Civil Procedure Rules if it is brought 6 months from the date of the decision sought to be quashed. It follows that the present motion is also a nullity as the leave on which it was based was a nullity. It is consequentially struck out with costs.

Dated, signed and delivered at Bungoma this 9th day of October, 2012.

A. O. MUCHELULE
JUDGE