



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

Miscellaneous Civil Application 130 of 2010

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

AND

**IN THE MATTER OF AN APPLICATION BY WILSON PEPELA MUKENYA OF JUDICIAL
REVIEW**

AND

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

AND

IN THE MATTER OF THE WEBUYE LAND DISPUTES TRIBUNAL DISPUTES NO.4 OF 2008

REPUBLIC.....APPLICANT
~VRS~

**THE CHAIRMAN WEBUYE LAND DISPUTE
TRIBUNAL.....RESPONDENT**

AND

BEATRICE KHAEMBA.....1ST INTERESTED PARTY

SYLIVESTER MURICHO MUYOMA.....2ND INTERESTED PARTY

EX-PARTE

WILSON PEPELA MUKENYA.....APPLICANT

JUDGMENT

Land parcel no.Bokoli/Bokoli/61 measuring 47 acres is registered in the joint names of the *ex-parte* Applicant and his brother Fred Nyongesa Mukenya. The Interested Parties went to the Webuye Land disputes Tribunal (the Respondent) to claim one acre and two acres, respectively, of the suit land. On 19/1/2009 the Respondent granted the claim. The *ex-parte* Applicant appealed to the Western Provincial Land disputes Appeals Tribunal which on 25/3/2010 dismissed the appeal. On 23/7/2010 the Chief Magistrate's Court at Bungoma adopted the award as the judgment of the court. On 18/8/2010 the *ex-parte* Applicant filed a chamber application for leave to apply for an order of *Certiorari* to remove into

this court and quash the decision of the Western Provincial Land Disputes Appeals Tribunal which was adopted by the subordinate court on the grounds that the Tribunal had acted in excess of jurisdiction as it had no power to hear and determine a dispute relating to registered land. Leave was granted and the present motion was filed. The Interested Parties defended the motion saying that the Tribunal had jurisdiction to hear and determine the dispute.

I have considered the motion which was filed through C.K. Areba & Co. Advocate, the submissions and the replying affidavits.

The chamber application and the motion were directed against the Chairman Webuye Land Disputes Tribunal as the Respondent, and yet the prayer was against the Western Provincial Land Disputes Appeal Tribunal and the court that adopted the award. The Appeal Tribunal simply dismissed the *ex-parte* Applicant's appeal. The decision that was being adopted therefore belonged to the Respondent. That decision was rendered on 19/1/2009. It means that, the *ex-parte* Applicant came for leave after the statutory six (6) months period had elapsed. The order of *Certiorari* would therefore not issue. **(Municipal Council of Mombasa v. Republic & Another, Civil Appeal no.185 of 2001)**. Secondly the Appeals Tribunal and the subordinate court were not made parties to the chamber application and motion.

It is for these reasons that I dismiss the motion. Because the Respondent did not have the jurisdiction to entertain the claim, I ask that costs be borne by the Interested Parties.

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

A. O. MUCHELULE
JUDGE