



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT MERU

MISCELLANEOUS CIVIL CASE 191 OF 2004

**IN THE MATTER OF: AN APPLICATION BY KINUGU
M'TUARUCHIU FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF: LAND DISPUTES TRIBUNAL ACT
NO. 18 OF 1990 AND THE REGISTERED LAND ACT (CAP 300)**

AND

**IN THE MATTER OF: MERU CENTRAL DISTRICT LAND
DISPUTES TRIBUNAL CASE NO. 52/2004 AND THE CHIEF MAGISTRATE
MERU LAND**

DISPUTES TRIBUNAL CASE NO. 78 OF 2004

AND

**IN THE MATTER OF: PARCEL OF LAND NO. ABOTHUGUCHI/L-KAONGO/175
REPUBLIC APPLICANT**

VERSUS

**THE MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL...1ST RESPONDENT
JOHN M'IMPWI MUTHURI 2ND RESPONDENT**

EX-PARTE: KINUGU M'TUARUCHIU

RULING

By notice of motion dated 24th November 2004, the *ex parte* applicant seeks an order of *certiorari* to

remove to the High Court for the purpose of quashing an award of Meru Central District Land Dispute Tribunal. By Order LIII Rule 3 (1) that motion application should have been within 21 days from the date leave was granted to file the same. The 1st respondent has filed a preliminary objection in the following terms:-

“The notice of motion dated 24.11.2004 was filed out of stipulated period and as such is incompetent and should be struck out with costs.”

The chamber summons application seeking leave to file the judicial review application was dated 22nd September 2004. It was heard by Hon. Mr. Justice Onyancha on 9th November 2004. On that same date, the said judge granted leave as sought and ordered the *ex parte* applicant to file the notice of motion within 21 days from that date.

The *ex parte* applicant filed that motion on 24th November 2004. The 21st day from the date when leave was granted was 30th November 2004. The *ex parte* applicant’s motion was filed well within the 21 days. What I believe provoked the respondent’s preliminary objection was the order that was extracted after the order of leave was issued. In that extracted order there was an error in the date when leave was granted.

The extracted order indicated that leave was granted on 9th September 2004. That error led the respondent to filing the preliminary objection believing that the substantive notice of motion should have been on 30th September 2004.

Having unraveled the error that caused the respondent to move on the preliminary objection, there is but only one order that this court can issue. The order of the court is that the preliminary objection dated 23rd June 2008 is dismissed. Since the respondent was misled by an order extracted by the *ex parte* applicant, I order that the costs of that preliminary objection be in the cause.

Dated and delivered at Meru this 9th day of July 2009.

MARY KASANGO

JUDGE