



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MACHAKOS**

**CIVIL MISC. APPLIC. NO. 141 OF 2012**

**REPUBLIC.....PLAINTIFF/APPLICANT**

**VERSUS**

**KAJIADO CENTRAL LAND DISPUTE**

**TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**SENIOR RESIDENT MAGISTRATE'S**

**COURT AT KAJIADO.....2<sup>ND</sup> RESPONDENT**

**SILAS NJIRU.....3<sup>RD</sup> RESPONDENT**

**MWANGI KAGUO.....4<sup>TH</sup> RESPONDENT**

**BENSIN MBUVI.....5<sup>TH</sup> RESPONDENT**

**BENSON MUTUKU.....6<sup>TH</sup> RESPONDENT**

**SUSAN KANYEKI.....7<sup>TH</sup> RESPONDENT**

**SAMSON MUTUNGI.....8<sup>TH</sup> RESPONDENT**

**ZIPPORAH NGUNYU.....9<sup>TH</sup> RESPONDENT**

**AND**

**DANIEL NKATETE NASHA.....EX-PARTE APPLICANT**

**JUDGMENT**

1. In the Notice of Motion dated 6<sup>th</sup> August, 2012, the Ex-parte applicant is seeking for the following orders:

***a. That, an order of certiorari do issue to quash the award of the Kajiado Central Land Disputes Tribunal in Tribunal Case No. 691/05/2011 and/or 688/06/2011 and the orders/decree of the Senior Resident Magistrate's Kajiado in land Case No. 26 of 2012 emanating from the said Tribunals Award.***

***b. That, an order for prohibition do issue to prohibit the Kajiado District land Registrar and surveyor for implementing/acting upon the said Award/Decree.***

2. The Application is supported by the Affidavit of the Ex-parte applicant who has deponed that the suit land was registered under the Registered Land Act; that the Land Disputes Tribunal had no jurisdiction to entertain a claim over title to land or of ownership of land and that the Tribunal had no jurisdiction to deal with the dispute.

3. According to the Applicant, the claim was time barred and that the Senior Resident magistrate, Kajiado adopted an erroneous award and hence the decree emanating therefrom is a nullity.

4. The Applicant finally averred that he was never given a chance to be heard contrary to the rules of natural justice.

5. In response, the Interested Parties filed a Notice of Preliminary objection in which they averred that the Motion is fatally defective because: the 2<sup>nd</sup> -9<sup>th</sup> Interested Parties were not parties to Kajiado District Land Disputes Tribunal No. 686/06/11 and 691/05/2011; that by the time of filing the Notice of Motion, the Land Disputes Tribunal Act had been repealed by the Environment and Land Court Act and the Applicant has ignored the practice rules issued by the Chief Justice in Gazette Notice No. 1617 of 17<sup>th</sup> February, 2012.

6. In the Grounds of Opposition, the Interested Parties averred that the Notice of Motion contravenes the mandatory provisions of Order 53 Rule 2 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act.

7. The Applicant's and the Interested Parties' advocates filed their respective submissions which I have considered. I have also considered the submissions of the Attorney General.

8. I will first of all deal with the issue of whether indeed the suit offends the provisions of Order 53 Rule 2 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act and whether the suit is defective having been filed after the repeal of the Land Disputes Tribunal Act.

9. Section 9(3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules provides that in an Application for an order of Certiorari, leave shall not be granted unless the application for leave is made not later than six months after the date of the order to be quashed.

10. The record shows that the Kajiado Central Land Disputes Tribunal made its decision in case No. T.C.691/05/2011 on 18<sup>TH</sup> August, 2011. The decision of the Tribunal was adopted by the Senior Resident Magistrate in Kajiado Land Disputes Tribunal Case No. 26 of 2012 on 30<sup>th</sup> May, 2012.

11. The Application for leave to commence Judicial Review proceedings for an order of certiorari "to quash the award of the Kajiado Central Land Disputes Tribunal and orders/decree of the Senior Resident Magistrate" was filed on 17<sup>th</sup> July, 2012.

12. It is trite that the decision that is to be quashed by this court is that of the Tribunal and not the magistrate.

I say so because the Magistrate, pursuant to the provision of Section 7(1) of the Land Disputes Tribunals Act, was only supposed to enter judgment "in accordance with the decision of the Tribunal".

14. In the circumstances, the six months' period within which the Ex-Applicant was supposed to have filed the Application for leave to commence judicial review proceedings for an order of certiorari started to run from 18<sup>th</sup> August, 2011 and not on 30<sup>th</sup> May, 2012.

15. Having filed the Application for leave on 17<sup>th</sup> July, 2012, which was after the lapse of six months, the

Application is a nullity for having been filed outside the time prescribed by the law.

16. In the circumstances, I agree with the Interested Parties' advocate's Preliminary Objection and submissions that the suit is fatally defective for having been filed after the lapse of six months from the date of the decision of the Tribunal.

17. Having found that the Application before me contravenes the mandatory provisions of Order 53 Rule 2 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act, I shall not address the other issues that have been raised in the Application and the Preliminary Objection.

18. For those reasons, I dismiss the Notice of Motion dated 6<sup>th</sup> August, 2012 with costs.

**DATED, DELIVERED AND SIGNED AT MACHAKOS THIS 16<sup>TH</sup> DAY OF JUNE, 2017.**

**O.A. ANGOTE**

**JUDGE**