



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

IN THE ENVIRONMENT AND LAND DIVISION

MISC CIVIL APPLICATION NO. 6 OF 2016

**IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL
REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

AND

IN THE MATTER OF THE PRINCIPAL MAGISTRATE'S COURT OF KENYA

AT SIAKAGO LAND DISPUTES TRIBUNAL CASE NO. 20 OF 2012

AND

IN THE MATTER OF SECTION 31 OF THE ENVIRONMENT AND LAND COURT ACT

AND

**IN THE MATTER OF ADOPTION OF A TRIBUNAL AWARD BY THE PRINCIPAL
MAGISTRATE'S**

COURT OF KENYA AT SIAKAGO IN LAND DISPUTE TRIBUNAL CASE NO. 20 OF 2012

REPUBLIC

VERSUS

ANISELIMO NJERU MBANDA.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE'S COURT OF KENYA AT SIAKAGO.....2ND RESPONDENT

AND

N.K. NYAGA LAND REGISTRAR MBEERE.....INTERESTED PARTY

NATIONAL LAND COMMISSION.....EX-PARTE APPLICANT

RULING

The Ex-parte applicant herein (**THE NATIONAL LAND COMMISSION**) has moved this Court by its Chamber Summons dated 15th December 2016 and filed under certificate of urgency and sought the following orders:-

1. *Spent.*

2. *That the applicant be granted leave to apply for an order of certiorari to quash the entire decision of the Land Disputes Tribunal over the property known as NTHAWA/SIKAGO/299.*

3. *That the applicant be granted leave to file for an order of certiorari to quash the entire decision of the Principal Magistrate's Court in adopting the award of the Land Disputes Tribunal on 31st January 2013.*

4. *That the applicant be granted leave to apply for an order of prohibition to stop the 1st and 2nd respondent from enforcing the determination of the Land Disputes Tribunal and the subsequent adoption by the 2nd respondent herein.*

5. *That the applicant be granted leave to apply for an order of prohibition to stop the 2nd respondent from enforcing its ruling dated 24th November 2016 holding that the interested party herein is in contempt of Court.*

6. *That the applicant be granted leave to apply for an order of mandamus compelling the interested party to retain the caution over the property known as NTHAWA/SIKAGO/299 placed by the applicant herein.*

7. *That the leave so granted do operate as a stay of execution relating to the orders made by the Land Disputes Tribunal touching on the property known as NTHAWA/SIKAGO/299, the subsequent adoption and the ruling for contempt of Court made by the 2nd respondent herein pending the hearing of the Judicial Review proceedings herein.*

The application is supported by the statutory statement of **NJUGUNA JACQLINE** the Ex-parte Applicant's advocate and a verifying affidavit sworn by **EMMA NJOGU** its Commissioner.

The application was argued by **Ms NJUGUNA JACQLINE**. It is clear from the statement herein that the land parcel No. NTHAWA/SIKAGO/299 (the suit land) is currently registered in the names of Siakago Primary School and the Ex-parte applicant's mandate includes managing such land on behalf of both the National and County Government. The suit land was the subject of litigation before the Siakago Land Dispute Tribunal (the Tribunal) in **LDT CASE No. 20 of 2012** which directed that it be divided into two portions. The Tribunal's award was subsequently adopted by the Principal Magistrate's Court at Siakago in **P.M.C.C LDT CASE No. 20 of 2012**. Arising out of that adoption, the Principal Magistrate's Court at Siakago delivered a ruling on 24th November 2016 holding the interested party in contempt of Court orders and directed it to purge the same within seven (7) days. That gave rise to this application.

I have considered the application and the submissions by counsel.

Prayers 2 and 3 of the Ex-parte Applicant's Chamber Summons seek leave to apply for orders of certiorari to quash the decision of the Tribunal over the suit property and also the decision of the Siakago Principal Magistrate's Court adopting the award of the Tribunal. The award of the Tribunal is not annexed to the application but the Decree of the Siakago Principal Magistrate's Court dated 31st January 2013 is annexed. It is therefore obvious that the Tribunal must have delivered its award before 31st January 2013. The application seeking leave to apply for orders of certiorari was filed on 15th December 2016 well after the six (6) months period provided for under **Order 53 Rule 2 of the Civil Procedure Rules** which provides as follows:-

“Leave shall not be granted to apply for an order of certiorari to move any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the

application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and time is limited by law for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired”.

It is clear therefore that prayers No. 2 and 3 of the Ex-parte Applicant’s Chamber Summons dated 15th December 2016 are not available for being out of time.

Prayers No. 4, 5 and 6 of the said application seek orders of prohibition and mandamus. Prima facie, I am persuaded that the Ex-parte Applicant is entitled to the orders seeking leave to apply for order of prohibition and mandamus, The ruling of the Principal Magistrate’s Court at Siakago holding the interested party herein to be in contempt appears to be premised on a judgment that may have been null and void for want of jurisdiction.

Ultimately therefore and upon considering the Ex-parte Applicant’s Chamber Summons dated 15th December 2016, I allow it and make the following orders:-

- 1. Leave is granted to the Ex-parte Applicant to apply for orders of prohibition and mandamus as sought in paragraphs 4, 5 and 6 of the said Chamber Summons.***
- 2. The leave do operate as a stay of execution of the ruling of the Siakago Principal Magistrate’s Court dated 24th November 2016 holding the interested party in contempt of Court.***
- 3. The Ex-parte Applicant shall file and serve the Notice of Motion within 21 days from the date hereof on the respondents and all such persons as may be affected by the same.***
- 4. Costs in the cause.***

B.N. OLAO

JUDGE

20TH DECEMBER, 2016

Ruling dated, delivered and signed in open Court this 20th day of December, 2016

Ms Njuguna for the Ex-parte Applicant present.

B.N. OLAO

JUDGE

20TH DECEMBER, 2016