



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISCELLANEOUS APPLICATION NO. 40 OF 2013

**IN THE MATTER OF AN APPLICATION BY PETER M. NGARI FOR LEAVE TO APPLY FOR
AN ORDER OF CERTIORARI**

AND

IN THE MATTER OF LAND DISPUTE'S TRIBUNAL (ACT 18 OF 1990)

AND

IN THE MATTER OF LAND PARCELS

MBEERE/KIAMBERE/1605/1606/1607/1608/1609/1610/1611/1612/1613

KIAMBERE ADJUDICATION SECTION

REPUBLIC APPLICANT

VERSUS

GACHOKA DISTRICT LAND DISPUTE'S TRIBUNAL..... 1ST RESPONDENT

THE HON. ATTORNEY GENERAL2ND RESPONDENT

AND

PETER M. NGARI EX-PARTE APPLICANT

DAVID NGARI INTERESTED PARTY

RULING

By an amended Chamber Summons filed herein on 9th December, 2013, the ex-parte applicant herein seeks leave to apply for an order of certiorari to remove into this Court and quash the decision made by the Land Disputes Tribunal Mbeere South District in Land Dispute Tribunal Ministers Land Appeal Case No. 267 of 2001 dated 31st July 2013 awarding land parcels No. MBEERE/KIAMBERE/1605 – 1613 to the interested party herein. The applicant also seeks that the grant of leave do operate as a stay of the said decision till this application is determined or until further orders of the Court.

The application is grounded on the Statutory statement and affidavit of the applicant PETER M. NGARI and the other annexures attached thereto.

The main ground, as I discern from the material placed before me, is that the said Tribunal had no powers to issue the orders that it did because by that time, the Land Disputes Tribunal Act had already been repealed and further, the appeal itself was filed ten (10) years after the mandatory stipulated period of sixty (60) days within which an appeal ought to be filed. I have considered the application and the submissions of Mr. Ngare advocate for the applicant. I am satisfied that prima facie, the applicant has established sufficient grounds for the orders sought in the said Chambers Summons. I accordingly allow the same and grant the leave sought. In accordance with **Rule 3 (1) of Order 53 of the Civil Procedure Rules**, I direct that the applicant do file the substantial Notice of Motion within 21 days from the date of delivery of this ruling and serve the same upon all the respondents and **all** such persons as are affected by it within 14 days of filing and thereafter file an affidavit indicating who has been served. The leave granted shall also operate as a stay of any decision made pursuant to the said Minister's Appeal sought to be quashed.

The costs shall be in the cause.

B.N. OLAO

JUDGE

31ST JANUARY, 2014

31/01/2014

Coram

B.N. Olao – Judge

CC – Mwangi

Mr. Ngari for the Applicant present

Respondent

COURT: Ruling delivered in open Court this 31st day of January 2014.

Mr. Ngari for Mr. Kamunda for applicant present.

B.N. OLAO

JUDGE

31ST JANUARY, 2014