



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL MISC. APPL. NO. 3 OF 2011 (JR)

SAMWEL KIPKOECH KILELAPPLICANT

VERSUS

KONOIN LAND DISPUTES TRIBUNAL 1ST RESPONDENT
SOTIK PRINCIPAL MAGISTRATE'S COURT2ND RESPONDENT

RAELI METO 1ST INTERESTED PARTY
RECHO METO2ND INTERESTED PARTY

RULING

The Applicant, **SAMUEL KIPKOECH KILEL**, seeks in his *ex parte* Notice of Motion dated 10th February, 2011, leave to apply for an order of certiorari to remove into this court for quashing the proceedings and decision of Konoin Land Disputes Tribunal dated 16th December, 2010. The Applicant also seeks leave to apply for an order of prohibition to prohibit the Sotik Principal Magistrate from adopting and enforcing the decision of Konoin Land Disputes Tribunal as a judgment or decree of the court.

I have perused the said application and the Statement of facts and the Verifying affidavit filed herein and I am satisfied that there are sufficient grounds made out for the grant of the leave sought not least because the decision sought to be quashed seems to have been made *ultra vires* the statutory powers vested in Konoin Land Disputes Tribunal by **Section 3** of the **Land Disputes Tribunals Act No. 18 of 1990**.

Accordingly, I grant the Applicant pursuant to **Order 53 Rule 1(1)** of the **Civil Procedure Rules** leave to apply for orders of certiorari and leave apply for an order of prohibition as prayed for in prayers 2 and 3 of the application.

I further direct pursuant to **Rule 1(4) of order 53** of the **Civil Procedure Rules** that the leave herein granted shall operate as a stay of the proceedings relating to the decision of Konoin Land Disputes Tribunal dated 16th December, 2010 until the Notice of Motion to be filed as hereinafter directed has been heard and determined or until further orders of this court but in the event that the Notice of Motion is not filed as directed, the stay herein ordered shall lapse after the expiry of the period with which the Notice of Motion is required to be filed.

Pursuant to **Rule 3(1) of Order 53** of the **Civil Procedure Rules**, I direct that the Applicant shall file in this court within twenty one (21) days of the date hereof a Notice of Motion and shall serve the same within fourteen (14) days of filing upon the Respondents and all those who may be affected by it.

The Notice of Motion shall be mentioned on 6th June, 2011 at 9.00a.m. At least seven (7) days prior to 6th June, 2011, the Applicant shall file an affidavit pursuant to **Rule 3(3)** of **Order 53** of the said Rules showing the names and addresses of the persons served with the Notice of Motion and the places and dates of service including the names of those not served and the reasons for non-service.

Directions and hearing date shall be given on 6th June, 2011. Costs of the application shall be costs in the Notice of Motion.

DATED at **KERICHO** this 23rd day of March, 2011

G.B.M. KARIUKI, sc
RESIDENT JUDGE

COUNSEL APPEARING

Mr. V.K. Bii Advocate for the Applicant
Mr. Koech - Court Clerk