



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
JUDICIAL REVIEW NO. 13 OF 2011
IN THE MATTER OF THE LAW ACT (CAP 26) SECTION 8 AND 9

BETWEEN

LAWRENCE NYAKOSE SOI.....
.....APPLICANT

VERSUS

THE CHAIRMAN CHEPLELWA LAND DISPUTES TRIBUNAL.....1ST
RESPONDENT
THE PRINCIPAL MAGISTRATE, SOTIK.....2ND
RESPONDENT
MICHAEL KURGAT.....3RD
RESPONDENT

RULING

In his application dated 9th March 2011, the applicant, **LAWRENCE NYAKOSE SOI**, seeks leave to apply for an **order of certiorari** to remove into this court for quashing the judgment dated 17th February 2011 made by the 2nd Respondent, the Principal Magistrate at Sotik, in Sotik Land Tribunal Case No. 2 of 2011 pursuant to an award dated 15/11/2006 made by the 1st Respondent, Cheplelwa Land Disputes Tribunal, pursuant to **Section 3** of the **Land Disputes Tribunal Act No. 18 of 1990**.

Mr. E.M. Orina, learned Counsel for the Applicant, urged the Court to grant the leave because the award made by the 1st Respondent went outside the plenitude of the powers conferred on the Tribunal under **Section 3 of Act No. 18 of 1990** aforesaid and was therefore ultra vires the Tribunal’s Statutory powers. As a consequence there was not before the 2nd Respondent a valid award which could legitimately be adopted as a judgment of the court under **Rule 20** of the **Land Disputes Tribunals (Forms and Procedure) Rules 1993** which envisages that the award of the Tribunal is made within the law and is valid. A glance at the decision contained in the award of the 1st Respondent dated 15/11/2006 shows that the 1st Respondent purported to award title to 25 ½ acres of land in dispute which is registered under the **Registered Land Act Cap 300** whose provisions (**in Section 159**) limit the jurisdiction to deal with title to land to the High Court and to the Resident Magistrate Court where the value of the subject matter is within the limit provided for.

I am satisfied that the applicant has established sufficient grounds to warrant the grant of leave to apply

for an order of certiorari.

Accordingly, I allow under **Rule 1 (1) of Order 53 of the Civil Procedure Rules** the application dated 9/3/2011 and grant leave to the applicant to apply for an order of certiorari in terms of prayer (a) of the said application.

Pursuant to Rule 1 (4) of Order 53 of the Civil Procedure Rules, I direct that the leave herein granted shall operate as a stay of the judgment sought to be quashed and the award of the 1st Respondent until the Notice of Motion has been heard and determined or until further orders of this Court but if the Motion is not filed as directed, the stay herein ordered shall lapse after the expiry of the period within which the Motion is directed to be filed.

Pursuant to Rule 1 (3) of the Civil Procedure Rules, the Applicant shall file a Notice of Motion within 21 days from the date hereof and shall within 14 days of filing serve the same upon the Respondents and all those who may be affected by it.

The Notice of Motion shall be mentioned on 6/6/2011 and seven days prior to the mention, the applicant shall file an affidavit giving the names and addresses of and the place and date of service on all persons who will have been served with the Notice of Motion and if any person who ought to be served will not have been served the affidavit shall state that fact and the reason for non-service.

The costs of this application shall be costs in the Notice of Motion.

DATED at KERICHO this 16th Day of March, 2011

G B M KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. Orina, Advocate, for the Applicant

Mr. R. Koech, Court clerk