



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

JUDICIAL REVIEW NO. 9 OF 2010

IN THE MATTER OF APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW

BETWEEN

SAMWEL ROP.....1ST APPLICANT

RICHARD ROP.....2ND APPLICANT

LEAH ROTICH.....3RD APPLICANT

VERSUS

MUSA ROP.....1ST RESPONDENT

JANE CHEMUTAI ROP.....2ND RESPONDENT

SOIN LAND DISPUTES TRIBUNAL.....3RD RESPONDENT

SENIOR PRINCIPAL MAGISTRATE'S COURT AT KERICHO.....4th RESPONDENT

RULING

The three Applicants, Messrs **Samuel Rop, Richard Rop** and **Leah Rotich**, have sought leave to apply for an **order of certiorari** to remove into this court for quashing the decision of Soin Land Disputes Tribunal, the 3rd Respondent, relating to Land titles Nos: **KERICHO/SOLIAT/12,13,22 and 46** and the decision of the 4th Respondent, namely, the Principal Magistrate Court at Kericho dated 25/2/2010 made in Misc. Civil App. No.5 of 2010 purporting to adopt as a judgment of the Court the decision of the 3rd Respondent.

I have duly perused the application and the Statement of Facts and the Verifying Affidavit filed herein. I have also considered the submission made by Mr. J.K. Kirui, the learned Counsel for the Applicants. I am satisfied that there are sufficient grounds to warrant the grant of the leave sought not least because the decision of the 3rd Respondent which the 4th Respondent adopted as a judgment of the Court was beyond the powers conferred on the 3rd Respondent by **Section 3 of the Land Disputes Tribunals Act (No. 18 of 1990)**. It seems that the 4th Respondent adopted as a judgment of the Court an award that is alleged to be invalid. Rule 20 of the Land Disputes Tribunals (Forms and Procedures) Rules 1993 on the basis of which the 4th Respondent appears to have adopted the award/decision as a judgment envisages adoption of a valid award made in accordance with the law and not an award made ultra vires or beyond the plenitude of the powers conferred by **Section 3 of the Land Disputes Tribunals Act, No. 18 of 1990**.

Accordingly, I allow the application and grant, pursuant to **Rule 1 (1) of Order 53 of the Civil Procedure Rules**, leave to the applicants to apply for an order of certiorari as prayed for in prayers (a) and (b) of the Chamber Summons dated 2nd March 2011.

I direct that the leave herein granted shall operate as a stay of the decisions of the 3rd and 4th Respondents until the Notice of Motion to be filed as herein directed has been heard and determined or until further orders of this Court. If the Notice of Motion is not filed as directed, the stay shall lapse after the expiry of the period within which the Notice of Motion should be filed.

The Notice of Motion shall be filed within 21 days from today and shall be served within 14 days on the Respondents and all persons affected by it. It shall be mentioned on 6/6/2011 and seven days prior to the mention, the Applicants shall file an affidavit giving the names of those served, their addresses and places and times of service of the Notice of Motion including the names of those not served and the reason for non-service. A hearing date for the Notice of Motion shall be given on the mention date on 6/6/2011.

The costs of the application for leave shall be in the Notice of Motion.

DATED at KERICHO this 16th Day of **March**, 2011

G B M KARIUKI, SC

RESIDENT JUDGE

COUNSEL APPEARING

Mr. J.K. Kirui, Advocate, for the Applicant

Mr. R. Koech, Court clerk