



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
MISC. CIVIL APP. NO. 15 OF 2011(JR)
IN THE MATTER OF THE LAW REFORM ACT, CAP 26

BETWEEN

JOSEPH KIPSOI NGASURA APPLICANT

VERSUS

PRISCILLA CHERONO NGENY1ST RESPONDENT
THE CHAIRMAN NDANAI LAND
DISPUTES TRIBUNAL2ND RESPONDENT
THE PRINCIPAL MAGISTRATES AT SOTIK3RD RESPONDENT

RULING

The Applicant, **Joseph Kipsoi Ngasura**, has sought in his Chamber Summons application dated 29th March, 2011 leave to apply for an order of *certiorari* to remove into this court for the purpose of being quashed the decision dated 1st December, 2010 made by **Ndanai Land Disputes Tribunal** and the decision of the Sotik Principal Magistrate Court made on 12th January, 2011 by Hon. S.R. Rotich, a Principal Magistrate.

Mr. Migiro, learned counsel for the Applicant, urged the Court to allow the application and grant the leave sought because the decision of the Ndanai Land Disputes Tribunal was null and void as the said Tribunal acted beyond the powers conferred on it by **Section 3** of the **Land Disputes Tribunals Act No. 18 of 1990**. He contended that the Principal Magistrate adopted a void decision and consequently the judgment of the court was invalid.

I have duly considered the submission made by Mr. Migiro. I have also perused the verifying affidavit and the Statement of Facts which were filed contemporaneously with the application. I am satisfied that the Applicant has established sufficient grounds for the grant of the leave sought.

Accordingly, I allow the application and grant to the Applicant leave to apply for an order of *certiorari* to remove into this court the decisions referred to in prayers (a) and (b) of the application for the purpose of being quashed.

I direct that a Notice of Motion shall be filed within twenty one (21) days from the date hereof pursuant to **Rule 3(1)** of **Order 53** of the **Civil Procedure Rules (2010)** and shall be served within fourteen (14) days of filing upon the Respondents and all those who may be affected by it.

The Motion shall be mentioned on 7th July, 2011 and seven (7) days prior to the mention on 7th July, 2011, the Applicant shall file an affidavit pursuant to **Rule 3(3) of Order 53 of the Civil Procedure Rules.**

The grant of leave herein shall pursuant to **Rule 1(4) of Order 53 of the Civil Procedure Rules**, operate as a stay of the award of Ndanai Land Disputes Tribunal and the judgment of the Sotik Principal Magistrate in Land case No. 24 of 2010 as well as proceedings connected therewith until further orders of this court or until the Notice of Motion is heard and determined. For the avoidance of doubt, it is hereby ordered that if the Motion is not filed as ordered, the stay shall lapse immediately on expiry of the period within which the Motion is ordered to be filed.

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

DATED at KERICHO this 13th day of April, 2011

G.B.M. KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. Migiro advocate for the Applicant
Mr. Koech -Court Clerk