



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL MISC. APPLICATION NO. 14 OF 2011 (JR)
IN THE MATTER OF THE LAW REFORM ACT, CAP 26

BETWEEN

RICHARD SEREM.....1ST APPLICANT
JOEL K. SEREM.....2ND APPLICANT
VS.
ANNAH SEREM.....1ST RESPONDENT
GILBERT ROBERT KIPKIRUI.....2ND RESPONDENT
THE CHAIRMAN AINAMOI LAND DISPUTES
TRIBUNAL.....3RD RESPONDENT
THE RESIDENT MAGISTRATE’S, KERICHO.....4TH RESPONDENT

RULING

The two Applicants, **Richard Serem** and **Joel K. Serem**, seek in their Chamber Summons application dated 29th March 2011 leave to apply to this Court for an order of certiorari to remove into this Court for quashing firstly the decision of the Ainamoi Land Disputes Tribunal dated 21/1/2011 and secondly the order of the Resident Magistrate at Kericho made on 21/2/2011 in Kericho C. M. Misc. Application No. 4 of 2011.

Mr. Migiro, the learned Counsel for the Applicant, urged the Court to grant the leave sought because, he submitted, the decision of Ainamoi Land Disputes Tribunal was invalid as it was made outside the powers conferred on the said Tribunal by **Section 3** of the **Land Disputes Tribunals Act, No. 18 of 1990**. This invalid decision, he said, is what the Resident Magistrate adopted as an order of the Court. He submitted that the adoption of the void decision did not validate it and that the court order was also a nullity.

I have duly considered the submissions made by Mr. Migiro. I have also perused the Statement of Facts and the Verifying Affidavit filed contemporaneously with the application as required by **Rule 1 (2) of Order 53** of the **Civil Procedure Rules**. I am satisfied that the applicants have shown sufficient grounds for the grant of the leave they seek. Accordingly, I allow the application and grant the applicant leave to apply for an order of certiorari as prayed in prayers (a) and (b) of the Chamber Summons application dated 29th March 2010.

I direct that a Notice of Motion shall be filed within 21 days of the date hereof and shall be served within 14 days of filing upon the Respondents and all such persons as may be affected by it.

The Notice of Motion shall be mentioned on 7/7/2011 when a hearing date shall be given. Seven days

prior to 7/7/2011, an affidavit shall be filed pursuant to **Rule 3 (3)** of **Order 53** of the **Civil Procedure Rules**.

The leave herein granted shall operate as a stay of the decision dated 21//1/2010 made by Ainamoi Land Disputes Tribunal as well as a stay of the Court order dated 21/2/2011 made by the Principal magistrate at Kericho in Kericho C. M. C. Misc. App. No. 4 of 2011 until the Notice of Motion is heard and determined or until further orders of this Court. If the Notice of Motion is not filed as herein directed, the stay herein ordered shall lapse immediately on expiry of the period within which the motion is directed to be filed.

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

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. N. Bett, Court clerk