



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL MISC. APPLICATION NO. 16 OF 2011 (JR)
IN THE MATTER OF LAW REFORM ACT (CAP 26) SECTIONS 8 & 9

BETWEEN

RICHARD A. MALEL & 4 OTHERS.....APPLICANT

VS.

THE CHAIRMAN BURETI LAND DISPUTES

TRIBUNAL.....1ST RESPONDENT
THE CHIEF MAGISTRATE, KERICHO.....2ND RESPONDENT
ESTHER CHEROTICH BII.....3RD RESPONDENT

RULING

The five Applicants, Messrs **Richard A Malele, Phylister Langat, Johana Langat, Joseph Langat and William Langat** seek in their Chamber Summons application dated 31st March 2011, leave to apply for an order of certiorari to remove into this Court for quashing the order dated 9th March 2011 made by The Chief Magistrate at Kericho, the 2nd Respondent, in Kericho Cr. Misc. App. No. 6 of 2011 pursuant to the award given by Bureti Land Disputes Tribunal, the 1st Respondent, on 4th February 2011.

When the application for leave came up for hearing on 4th April 2011, Mr. E. M. Orina, learned Counsel for the applicants, submitted that the 1st Respondent made the award in excess of its jurisdiction in that it purported to order transfer of land title **No Kericho/Kapkatet/1161** and land title **No Kericho/Kapkatet/1448** to the 3rd Respondent and the 1st applicant (and others not named in the award). The 1st Respondent also purported to transfer land title **Kericho/Londiani/Baration/** (whose Number was not given) to the 3rd Respondent and the 1st Applicant. This is the decision that the 2nd Respondent endorsed as a judgment of the Court ostensibly pursuant to **Rule 20** of the **Land Disputes Tribunals (Forms and Procedure) Rules 1993**. It was Mr. Orina’s submission that the award was null and void as **Section 3** of the **Land Disputes Tribunals Act No. 18 of 1990** does not confer jurisdiction on the 1st Respondent to deal with title to land.

I have perused the Verifying Affidavit and the Statement of Facts and I have considered the submissions made by Mr. Orina. I am satisfied that the Applicants have made out sufficiently a case for the grant of leave to apply for an order of certiorari.

Accordingly, I grant to the applicants leave pursuant to **Rule 1 (1)** of **Order 53** of the **Civil Procedure Rules** to apply for an order of certiorari as prayed in prayer (a) of the application dated 31/3/2011. I also order 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 award of the 1st Respondent and the judgment/decree of the 2nd Respondent given

on 9th March 2011 in Kericho C. M. Misc. App. No. 6 of 2011 until the Notice of Motion herein directed to be filed has been heard and determined providing that if the Motion is not filed as directed, the leave herein granted shall lapse immediately after the expiry of the period within which the motion is required to be filed.

I direct the Applicants to file in this Court a Notice of Motion within 21 days from the date hereof and to serve the same within 14 days of filing upon the Respondents and all such persons as may be affected by it. I further direct that the Motion shall be mentioned on 28/6/2011 at 9.00am. Seven days prior to the mention on 28/6/2011, the Applicants shall file in this Court an affidavit pursuant to **Rule 3 (3) of Order 53**.

A date for the hearing of the Motion shall be given on 28/6/2011. The costs of this application shall be Costs in the Motion.

DATED at **KERICHO** this 6th day of April, 2011

G.B.M KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. E. M. Orina, Advocate, for Mr. Moturi, Advocate for Applicants

Mr. R. Koech, Court clerk