



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
JUDICIAL REVIEW NO. 19 OF 2010

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR

AND

IN THE MATTER OF KIENI LAND DISPUTES TRIBUNAL CLAIM NO. K/E/LDT/01/09

BETWEEN

IN THE MATTER OF SECTION 8 & 9 LAW REFORM ACT

**REPUBLIC.....APPLICA
NT**

VERSUS

**CHAIRMAN, KIENI EAST LAND DISPUTES TRIBUNAL.....1ST
RESPONDENT**

**CHIEF MAGISTRATE, NYERI.....2ND
RESPONDENT**

AND

**PETER KING'AI WANG'OMBE.....INTERESTED
PARTY**

**MARY WAIRIMU GIKUNJU.....EXPARTE
APPLICANT**

RULING

In the Motion dated 22nd February 2010, **Mary Wairimu Gikunju**, the *exparte* Applicant herein, sought for the following orders:

1. ***That the order of certiorari do issue removing into this Honourable court for purposes of being quashed the award of Kieni East Land disputes Tribunal in claim No. K/E/LDT/01/09 dated 27.8.2009.***
2. ***That an order of prohibition do issue against the Chief Magistrate, Nyeri from adopting the award No. K/E/LDT/01/09 dated 27.8.2009 from Kieni East Land Disputes Tribunal as judgment of the court.***
3. ***That costs of this application be provided for.***

The Motion is accompanied by a statement of fact and is verified by the Applicant's affidavit. **Peter King'ai Wang'ombe**, the Interest Party herein, filed a replying affidavit to oppose the Motion. Miss Munyi, learned Provincial Litigation Counsel, filed a notice of preliminary objection on behalf of the Respondents to resist the Motion.

The Interested Party raised an interesting preliminary point which I feel the same merits consideration. It is his submission that the Applicant herein is guilty of material non-disclosure hence his motion should not be entertained by this court. It is pointed out that on 30th September 2009, the applicant was given leave of 21 days to take out judicial review proceedings in the nature of certiorari and prohibition vide **Nyeri H.C.Misc. Appl. No. 38 of 2009**. On 16th October 2009, the Applicant duly filed the Motion but on 29th January 2010, the Applicant withdrew the entire Motion. It is clear from the record that the *Exparte* Applicant proceeded to apply for a fresh leave to take out similar proceedings vide **Nyeri H.C. Misc. Application 19 of 2010**. He was again given 21 days' leave on 3rd February 2010. I have perused at the *exparte* Chamber Summons for leave dated 3rd February 2010 plus the supporting affidavit. It is clear from the aforesaid documents that the *Exparte* Applicant did not disclose the fact that he had previously been granted leave. He did not even disclose the fact that he had withdrawn the entire Motion. I am convinced that the Applicant is guilty of material non-disclosure. The applicant therefore abused the process of Court. With respect, I agree with the interested party. The applicant must pay a price for abusing the process of this court. His Motion dated 22nd February 2010 is ordered struck out with costs to the Interested Party.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE