



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**JUDICIAL REVIEW NO. 34 OF 2010**

**REPUBLIC ..... APPLICANT**  
**VERSUS**  
**DAVID NGARI NJIRU..... 1<sup>ST</sup> RESPONDENT**  
**THE CHAIRMAN LAND DISPUTE**  
**TRIBUNAL MBEERE DISTRICT .....2<sup>ND</sup> RESPONDENT**  
**THE PRINCIPAL MAGISTRATE**  
**SIKAGO LAW COURTS .....3<sup>RD</sup> RESPONDENT**  
**ZAKAYO NJERU NJAGI .....EX-PARTE APPLICANT**

**R U L I N G**

By summons dated 29<sup>th</sup> June 2010 the ex-parte Applicant successfully applied for leave to bring Judicial Review proceedings in the nature of Certiorari and Prohibition to challenge the decisions of the second and third Respondents in regard to **L.R. MBEERE/KIRIMA/2976**. The ex-parte Applicant and 1<sup>st</sup> Respondent were registered to hold this parcel on behalf of Ikandi clan. The 1<sup>st</sup> Respondent had gone to the 2<sup>nd</sup> Respondent and successfully obtained orders that the parcel be sub-divided and shared to the members of the clan. The case for the exparte Applicant was that the 2<sup>nd</sup> Respondent had no powers to make such an order. The award was filed with the 3<sup>rd</sup> Respondent for execution. The leave granted was accompanied with the directions that it operates as stay of the award and the execution.

The substantive motion was filed and has not been heard. In the present application the exparte Applicant seeks a temporary injunction to restrain the 1<sup>st</sup> Respondent, his agents and/or servants from wasting, damaging, alienating, selling, removing, disposing or in any other matter interfering with the parcel until the motion has been heard and determined. His complaint was that despite having been served with the stay order the 1<sup>st</sup> Respondent has gone ahead and sub-divided the parcel into various portions in apparent bid to execute the award. The application was served but received no response.

If what the exparte Applicant is saying is true, then the 1<sup>st</sup> Respondent will be acting in utter contempt of order of stay. That should give reason to the exparte Applicant to bring contempt proceedings against him. In other words, the exparte Applicant already has an order stopping the execution of the decree resulting from the award by 2<sup>nd</sup> Respondent and therefore the present application is superfluous. Better still, Judicial Review Proceedings are special proceedings and for the Applicant to invoke Order 40 of the Civil Procedure Rules or sections 1A, 1B 3A or 63 (e) of the Civil Procedure Act to seek an injunction in such proceedings would not be allowed. Judicial Review Proceedings confer on the court a special jurisdiction that is neither civil or criminal and in which the other provisions of the

Civil Procedure Act and Rules do not apply. (**REPUBLIC –VS- COMMUNICATION COMMISSION OF KENYA [2001] 1EA 199; COMMISSIONER OF LANDS –VS- KUNSTE HOTELS LTD [1995 – 1998] 1EA**). The only part of Civil Procedure Rules that is applicable is Order 53 whose rules were made pursuant to section 9 of the Law Reform Act (Cap.26).

This application is consequently incompetent and dismissed with costs.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 26<sup>TH</sup> DAY OF JULY 2011.**

**A.O. MUCHELULE  
JUDGE**