



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT KITALE.**

**MISC. APPLICATION NO. 59 OF 2010.**

**IN THE MATTER OF AN APPLICATION FOR LEAVE BY CHERLU RENGEMES FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI TO REMOVE INTO THIS COURT AND QUASH THE DECISION OF THE RIFT VALLEY PROVINCIAL LAND DISPUTES APPEALS TRIBUNAL MADE ON 24TH NOVEMBER, 2009 AND ADOPTED AS JUDGMENT OF THE COURT IN KITALE CHIEF MAGISTRATE'S COURT LAND CASE NO. 1 OF 2010 ON 25<sup>TH</sup> MARCH, 2010.**

**AND**

**CHERLU RENGEMES.....APPLICANT.**

**VERSUS**

**THE CHIEF MAGISTRATE, KITALE )  
THE CHAIRMAN R. VALLEY PROV. ).....RESPONDENTS.  
LAND DISPUTES APPEALS COMMITTEE )**

**JOSEPHAT LOCHILANGOLE.....INTERESTED PARTY.**

**R U L I N G.**

1. Pursuant to leave granted to the ex parte applicant on 25<sup>th</sup> October, 2010, he filed this notice of motion seeking for an order of certiorari to remove to this court and quash the decision of the Rift Valley Provincial Land Disputes Appeal Tribunal which was made on the 24<sup>th</sup> November, 2009 and was adopted as the judgment of this court in Kitale CMCC Land Case No. 1 of 2010 on 25<sup>th</sup> March, 2010. This application is supported by the grounds that the tribunal did not have jurisdiction to hear and deliberate on matters that were less judicata in view of Kitale HCC No. 70 of 2005. Secondly, the Appeals Tribunal lacked jurisdiction and deliberated on matters that fall outside the Land Adjudication Act. Further the tribunal lacked jurisdiction to deliberate on contractual matters and to make an order on specific performance.

2. The ex parte applicant also relied on the supporting affidavit sworn on 1<sup>st</sup> November, 2010. The statement of particulars and the decision that was made by the Appeals Tribunal. When this application was served upon the interested party, Mr. Kiarie, learned counsel for the interested party filed a preliminary objection on points of law on the grounds that the application is incompetent and bad in law for having been incorrectly instituted by the applicant instead of the Republic according to the laid down procedure. In further arguments counsel submitted that the applicant lacks loci standi to institute a judicial review application in his name. The motion seeks for orders of certiorari to quash the order of Rift Valley Appeals Tribunal. It is brought in the name of applicant and not a Republic as the applicant. The orders sought is a prerogative writ which is issued in the name of Republic. Counsel cited the case of **Farmers Bus Services and Others vs. The Transport**

**Licensing Appeals Tribunal [1959] EA page 73** and several other cases that have been determined by the High Court and Court of Appeal. According to the decided cases, the omission to institute the suit in the name of the Republic is fatal to the entire suit and even the provisions of section 3 (a) of the Civil procedure Act which gives the court inherent powers for ends of justice cannot save this fundamental flow. This notice of motion renders itself for striking out.

3. On the part of Mr. Wafula, learned counsel for the exparte applicant is submitted that under the new constitution, the court is enjoined to administer justice without undue regard to procedural technicalities. The omission to bring the motion in the name of the Republic does not go to the root of the application but a mere technicalities. Counsel submitted that the decisions cited by counsel for the interested party were determined before the new constitution came into force. He also drew the attention of the court to the case of **Amos Mathias Mngenyi vs The Chief Magistrate's Court, Milimani, Nairobi.**

4. The issue for determination in this preliminary objection is whether failure to bring the motion that is seeking for a prerogative writ in the name of the Republic is fatal to this application. According to the recent amendments to section 1 (A) and 1 (B) of the Civil Procedure Act and also bearing in mind the principles annunciated in the constitution especially article 159 (1) (d) the court is supposed to administer justice without undue regard to technicalities. This is also the same overriding objective provided for under the Civil Procedure Act which gives the court inherent powers to ensure ends of justice and to prevent the abuse of court process. The plaintiff's application is brought under the provisions of order 53 of the Civil Procedure Rules as well as the provisions of the Law Reform Act. There is a long line of undecided cases by Court of Appeal where it has been emphasized that prerogative orders are issued in the name of the crown and applications for such orders must be correctly instituted. It is common ground and admitted by the exparte applicant that the application was not instituted in the name of the Republic but the name of the exparte applicant. Due to the implications of the order to be issued which must be in the name of the Republic, I am of the view that the omission of the name Republic as the applicant goes into the roots of this application. For that fundamental mistake and with a lot of sympathy to the exparte applicant, I find the application is fatally defective and it is hereby struck off with costs to the interested party.

Ruling read and signed this 22<sup>nd</sup> day of July, 2011.

**MARTHA KOOME.**

**JUDGE.**