



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

MISC. CIVIL CASE NO. 40 OF 2006.

REPUBLIC.....APPLICANT.

VERSUS

1. CHERANGANI DIV. L.D.T. COMPRISING OF:-

**ISAIAH KIROP)
TOM MUSUNGU)
DOMINIC CHEPTOO).....RESPONDENTS.
HILDA SATIA)
RICHARD KERARIO)**

2. SPM, KITALE

3. JAMES OKIANDI MAMUNI.....INTERESTED PARTY.

4. JOSEPH KIPROTICH CHELIMO.....EXPARTE.

R U L I N G.

1. Pursuant to leave granted to the applicant on 21st March, 2006, the exparte applicant Joseph Kiprotich Chelimo filed a Notice of Motion dated 10th April, 2006. The exparte applicant is seeking for an order of certiorari to remove to this court for purposes of quashing the decision of Cherangani Division Land Dispute Tribunal which was read and adopted as judgment of the court on 5th July, 2005. This application is supported by the grounds that the tribunal acted in excess of the jurisdiction by deliberating over the estate of Chelimo Kibonge who is deceased. The tribunal also made an order in regard to an alleged sale relating to agricultural land when there was no Land Control Board consent as provided for by the law. Lastly, it was submitted that the elder’s award is not capable of reinforcement as the person ordered is not the owner of the land nor is he the administrator of the estate. The exparte applicant also relied on his supporting affidavit sworn on 10th April, 2006 and the statement of particulars and the annextures thereto. The 1st respondent was represented by Isaiah Kirop who was the chairman of the Cherangani Division Land Dispute Tribunal. The interested party appeared in person and relied on his replying affidavit sworn on 7th June, 2010. According to the interested party, he purchased half an acre of land from Chelimo Kibonge, the father of the exparte applicant. The consideration for the land was Ksh. 65,000/= out of which the interested party paid Ksh. 40,000/= leaving a balance of Ksh. 25,000/=. In October, 2003, the interested party tried to pay the balance but the exparte applicant and the members of the family declined to receive the balance. That is what prompted the interested party to seek help from the Cherangani Land Dispute Tribunal and after the tribunal heard both parties, they declared that the interested party had duly purchased half an acre from the exparte applicant’s father.

2. The grounds raised by the exparte applicant are legal issues of concern considering the jurisdiction that is granted to the Land disputes Tribunal which is relied on from section 23 of the Land Dispute Tribunal Act. However, this being a judicial review application, the principles that guide the court are provided for under order 53 of the Civil Procedure Rules. I wish to

highlight the provisions of order 53 (2) which provides as follows:-

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

3. The reason why I have referred to the above provision is because the orders sought to be quashed was adopted as the decree of the court on 27th February, 2005. The exparte applicant sought the leave of the court on 21st March, 2006. That is more than 6 months after the order that sought to be quashed was issued. For that reason, the exparte applicant did not qualify to be granted leave to apply for an order of judicial review. It follows this application is fatally defective and cannot be entertained. According to the Notice of Motion dated 10th April, 2006 is hereby struck out. Due to the nature of issues raised here and the fact that the 1st respondent and the interested party represented themselves, each party shall bear their own costs.

Ruling read and signed this 15th day of July, 2011.

MARTHA KOOME.

JUDGE.