



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

MISCELLANEOUS APPLICATION NO. 96 OF 2003

REPUBLIC:.....:APPLICANT

VERSUS

THE DISTRICT LAND DISPUTE

TRIBUNAL KIPKAREN:.....:1ST RESPONDENT
SARAH K. KISORIO:.....:INTERESTED PARTY
DORCAS J. KISORIO:.....:EX-PARTE

JUDGMENT

On 27th March, 2003, **Tunya J.** (now retired) granted **Dorcias, J Kisorio** (hereafter the applicant) leave to apply for an order of certiorari to remove into this court for the purpose of quashing, the decision of Kipkarren Land Disputes Tribunal (hereinafter the respondent) made on 30th January, 2003 and adopted by the Principal Magistrate's Court at Kapsabet vide L.D.T. award No. 7/2003 over L.R No. Nandi/Sasora/106.

Pursuant to the said leave, the applicant lodged this Notice of Motion on 17th April, 2003 for the said relief.

The main grounds for the application are that the respondent had no jurisdiction to entertain the dispute; that the respondent was biased in arriving at its decision; and that the applicant stands to suffer irreparable loss and damage if the said decision is not quashed.

The Notice of Motion is supported by an affidavit which was sworn by the applicant on 17th April, 2003 and a statutory statement which was amended with the leave of the court.

The application is opposed by the respondent and **Sarah J. Kisorio**, the Interested Party. The latter filed a replying affidavit and her counsel filed Grounds of Opposition. Counsel for the respondent opposed the application on matters of law only. The substance of the opposition is that the Notice of Motion is incompetent as it offends the provisions of Order LIII of the Civil Procedure Rules.

The application was canvassed before me on 26th October, 2010 by **Mr. Otieno** for the applicant **Mr. Muiruri** Learned Counsel for the respondent and **Mr. Chemwok** Learned Counsel for the interested party. When counsel for the applicant rose to respond to the submissions on behalf of the respondent and the interested party, he applied for an adjournment to confirm the status of the Chamber Summons pursuant to which leave was granted. When hearing resumed on 31st May, 2011, counsel for the applicant

applied for leave to file a verifying affidavit to introduce exhibits upon which the application was based. I declined the leave sought as the Notice of Motion had been fully argued. That decision determined the Notice of Motion. I say so, because in the absence of documents supporting the motion its fate was sealed. If indeed the verifying affidavit accompanying the application for leave carried no documentary support leave ought not to have been granted. The incompetent Chamber Summons for leave sounded the death knell for the Motion. Order 53 rule 4(1) of the Civil Procedure Rules reads as follows:-

“4(1) Copies of the statement accompanying the application for leave shall be served with the notice of motion and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement.”

This notice of motion, as already stated, is supported by an affidavit filed with the motion. The affidavit therefore clearly contravenes the above sub rule as it was filed without the leave of the court. The defect is compounded by the failure to exhibit the documents to be relied upon to the verifying affidavit. The defective verifying affidavit was in any event not filed with this motion. The motion has no basis. It is incompetent and is struck out with costs.

It is so ordered.

**DATED AND DELIVERED AT ELDORET
THIS 5TH DAY OF AUGUST, 2011**

**F. AZANGALALA
JUDGE**

**Read in the presence of:-
Ms. Otieno for the applicant and
Mr. Chemwok for the Interested Party.**

**F. AZANGALALA
JUDGE
5TH AUGUST, 2011**