



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

JUDICIAL REVIEW. NO. 56 OF 2010

IN THE MATTER OF TITLE NO. SOUTH UGENYA/RUWE/730

AND

IN THE MATTER OF SIAYA DISTRICT LAND TRIBUNAL CASE NO SIAYA 40/2010

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

REPUBLIC.....APPLICANT

-VERSUS-

SIAYA DISTRICT LAND TRIBUNAL.....RESPONDENT

EX PARTE

WILLIAM OCHIENG OLIECH.....1<sup>ST</sup> INTERESTED PARTY  
BENSON B. OGOGE MUGENYA.....2<sup>ND</sup> INTERESTED PARTY

#### JUDGMENT

By an application by way of a chamber summons dated 27<sup>th</sup> December, 2010 the *ex parte* applicant **William Ochieng Oliech** sought for leave to institute judicial review orders and for the leave to operate as a stay. The application though granted was silent on which judicial review orders were being sought.

On the 17<sup>th</sup> of January, 2011 the *ex parte* applicant filed a notice of motion seeking for an order of certiorari to remove into this court for purposes of quashing the decision of the Siaya District Land Tribunal dated 15<sup>th</sup> July, 2010 and adopted as a judgment of the Principal Magistrate's court at Siaya in P.M.C.C. No. L.D.T Case 63 of 2010 and for a declaration that the said decision and the judgment in P.M.C.C. L.D.T NO. 63 are null and void and of no legal effect. He also sought for costs.

The application was supported by the statutory statement and supporting affidavit of the same date as the application although similar to the ones in support of the application for leave.

The application was predicated upon the following grounds; that the *ex parte* applicant is the absolute proprietor of **SOUTH UGENYA/RUWE/730** as a first registered owner; that the Siaya Land Disputes Tribunal lacked jurisdiction to sit over a dispute relating to registration of the title; that in cancelling the registration of the *ex parte* applicant the tribunal acted in excess of its jurisdiction.

The notice of motion was objected to by the 2<sup>nd</sup> interested party **Benson B. Ogoge Mugenya** in a lengthy replying affidavit which in essence supported the decision of the tribunal. At the hearing of the motion the counsel acting for the interested party raised 2 objections on technicalities; first that the application is incurably defective in that it has not been properly intitled. He quoted the case of **Joseph Oyoo versus The Chairman Matungu Land Disputes Tribunal & Another – Kakamega HCC MISC. APPL. NO. 127 OF 2006** and **Welamondi versus The Chairman Electoral Commission of Kenya** (2002) KLR 486, secondly that an order of declaration is not obtainable in Judicial Review

proceedings.

The application before court reads as follows:-

**REPUBLIC .....APPLICANT**

VERSUS

**WILLIAM OCHIENG OGOE OLIECH.....1<sup>ST</sup> INTERESTED PARTY**  
**BENSON B. OGOE MUGENYA.....2<sup>ND</sup> INTERESTED PARTY.**

In the case of **Welamondi vs The Chairman Electoral Commission of Kenya** (supra) the court at length described how a Notice of Motion in Judicial Review ought to be intitled. It is to be filed in the name of the Republic *ex parte* the applicant.

The current application does not show who the *ex parte* applicant is. It has 2 interested parties yet in the body of the application the 1<sup>st</sup> applicant is referred to as the applicant. Like in the case of **Welamondi** (supra) I find that the case is muddled up to this extent.

The second objection raised on the prayer seeking for a declaration is merited. Judicial review proceedings offer 3 remedies namely; certiorari, prohibition and mandamus. Order 53 rule 1 is clear. Indeed in my view the prayer for a declaration was unnecessary as the prayer for an order of certiorari would have quash the ruling of the tribunal in any event.

In view of the finding in the first and second objections it matters not whether the prayer for certiorari lies or not as the application is defective to the extent that it is improperly intitled and therefore fatally defective and must be struck off.

Application is therefore dismissed with costs.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF OCTOBER, 2011.**

**ALI-ARONI**

**JUDGE**

**In the presence of:**

..... present for Appellant

.....present for Respondent