



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Miscellaneous Application 65 of 2008

REPUBLIC.....APPLICANT.

VERSUS

**DISMUS SIFUNA WAFULA)
RICHARD KHAEMBA WAFULA)
JOHN CERONI)
FREDRICK BARASA).....RESPONDENTS.
LENGOLESH TUDO)
RAPHAEL MAKORI)
FRED WANDABI)**

ALBERT A.A. EKIRAPA :::::::::::::::::::: EX-PARTE.

R U L I N G.

By an ex-parte chamber summons dated 30th October, 2008, the applicant seeks orders:-

- 1. **THAT**, leave be granted to the applicant herein to apply for an order of certiorari to remove into this honourable court and quash the decision of Kwanza Land Disputes Tribunal and which was adopted as a judgment of the court on 26th September, 2008 vide Kitale RMC Land case No. 17 of 2008.
- 2. **THAT**, the grant of leave do operate as a stay of the enforcement of the Tribunal award which was adopted as a judgment of the court on 26th September, 2008 vide Kitale RMC Land Case No. 17 of 2008.
- 3. **THAT**, costs be in the cause.

The application is based on the grounds that:-

- (a) The subject lands being Title Nzoia/Gidea/86 and title Trans Naoia/Gidea/87 are duly registered in the name of the ex-parte applicant under the Registered Land Act (Cap 300) Laws of Kenya.
- (b) The Tribunal exceeded its jurisdiction by dealing with land registered under the Registered Land Act and proceeding to order survey, transfer and registration of the land in favour of the respondents.
- (c) No Land Control Board consent was sought and granted for the purported sale agreement between the ex-parte applicant and the respondent which makes the purported sale null and void *abi initio*.
- (d) The Tribunal lacked jurisdiction to order specific performance of a void sale transaction.

The application is predicated upon the annexed affidavit of A.A. Ekirapa sworn on the 23rd day of October, 2008.

On behalf of the applicant, I was argued to come to a conclusion that the titles – Nzoia/Gidea/86 and Trans Nzoia/Gidea/87 are duly registered in the name of the ex-parte applicant under and on accordance with the Registered

Land Act (Cap 300) Laws of Kenya.

That the Tribunal exceeded its jurisdiction by dealing with land registered under the Registered Land Act and proceedings to order survey transfer and registration of the land in favour of the respondents.

That no Land Control Board consent was sought and granted to validate the sale between the ex-parte applicant and the respondent which makes the purported sale null and void.

Last but not least that the Tribunal lacked the jurisdiction to order specific performance of a valid sale transaction. The law relating to leave is now well settled. The application for leave “**By statement** – the facts relied upon should be stated in the affidavit. The statement should contain nothing other than the relief sought and the grounds on which it is sought.

In the case of certiorari, leave should not be granted unless the application for leave is made not later than six (6) months after the date of the proceedings or such shorter period as may be prescribed by the Act.

The decision complained of was made on the unknown date. However, the award was read and adopted as a judgment of the court on 26th September, 2008. This application was made on 30th October, 2008 within six (6) months. I have carefully scanned through the available evidence. Having done so, I am of the persuasion that leave ought to be granted.

Accordingly, there shall be orders in terms of prayer 1 and 2 and 3 of the application.

By way of direction, the applicant shall file the Notice of Motion within 21 days from the date of this order as prescribed by the provisions of order LIII rule 3 of the Civil Procedure Rules.

Dated and delivered at Kitale this 20th day of January, 2010.

N.R.O. OMBIJA.
JUDGE.

Mr. Njoroge for Thange for applicant.