



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

Miscellaneous Application 46 of 2009

ROSA CHEMUTAI NGOSOSEI

JONAH KIPSEREM BORE.....APPLICANT.

VERSUS

DIVISIONAL LAND DISPUTE TRIBUNAL...RESPONDENT.

R U L I N G.

By an ex-parte chamber summons dated 25th June, 2009, pursuant to the provisions of Order L111 Rule 1 (1) (2) and 4 of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act (Cap 26) laws of Kenya, the applicant seeks orders:-

1. THAT, the applicants ROSA CHEMUTAI NGOSOSEI and JONAH KIPSEREM BORE be granted leave by this honourable Court to apply for an Order of Certiorari, to remove into this honourable Court and quash the decision of Central Division Land Disputes Tribunal and which was read and adopted as a judgment of the court on 27/1/2009 vide Kitale CMC Land Case No. 103 of 2008 on the GROUNDS:-
 - (a) THAT, the Tribunal lacked jurisdiction to entertain and determine a dispute on title to land, over land registered under the Registered Land Act (Cap 300) of the Laws of Kenya.
 - (b) THAT, the Tribunal lacked jurisdiction to order the cancellation of the applicant's title issued under the Registered Land Act on the 24/4/2002.
 - (c) THAT, the Tribunal lacked jurisdiction to entertain a claim that was barred by the Limitation of Actions Act, Cap 22 of the Laws of Kenya, as well as by Section 13 (3) of the Land disputes Tribunal Act.
2. THAT, the grant of leave do operate as stay of enforcement/execution of the award of Central Division Land Disputes Tribunal and which was read and adopted as a judgment of the court on 27/1/2009 vide Kitale CMC Land Case No. 103 of 2008.
3. THAT, the costs of this application be in the cause.

The application is based on the grounds set out in the statutory statement of particulars of even date and the affidavit of ROSE CHEMUTAI NGOSOSEI also of even date.
On behalf of the applicant, it was argued that he is a joint registered owner of title No. WAITALUK/KAPKOI BLOCK

6/KIMOSON/51. A photocopy of the certificate of title issued on 24th April, 2002 is exhibited as "RCN2". That the claim herein accrued in 1986 but there was no consent of the Land Control Board in respect of the said sale.

That the Tribunal's award was made on the 23rd day of October, 2008 and adopted by the court as a judgment on the 27th day of January, 2009 vide Kitale land Case No. 103/2008.

I was urged to find that the Tribunal lacked jurisdiction to entertain and determine a dispute in respect of title over land registered under the Registered Land Act (Cap 300) Laws of Kenya. Furthermore, the Tribunal lacked jurisdiction to order the cancellation of the applicant's title issued under the Registered Land Act.

Last but not least that the Tribunal lacked jurisdiction to entertain a claim that was barred by the Limitation of Action Act (Cap 22) Laws of Kenya in addition to section 13 (3) of the Land Disputes Tribunal Act.

I have carefully analysed the application, the statement of particulars and the affidavit in support. The thrust of the applicant's case is that the Tribunal lacked jurisdiction to entertain and determine a dispute over a title registered under the Registered Land Act (Cap 300) Laws of Kenya. In addition thereto that the Tribunal lacked the requisite jurisdiction to entertain a claim that was barred by Limitation of Actions Act (Cap 22) Laws of Kenya and section 13 (3) of the Land Disputes Tribunal Act No. 10 of 1990. Hence the decision of the Tribunal should be quashed.

The law relating to leave is now well settled. (see R. vs. WENDEWORTH JJ EXP READ (1947), KB 251. In the case of certiorari, leaves shall 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 adoption was done on the day of 27th January, 2009. The application was made on the 25th day of July, 2009, a period of less than six (6) months as enjoined by the provisions of order LIII Rule 2 of the Civil Procedure Rules. All other requirements of order LIII Rule 2 1 (3) have been duly complied with. Accordingly, I grant the application in term of prayer 1, 2 and 3 of the application.

By way of directions, the applicant shall file the notice of motion within 21 days from the date of this order as prescribed by order LIII Rule 3 of the Civil Procedure Rules.

Dated and delivered at Kitale this 4th day of February 2010.

N.R.O. OMBIJA.
JUDGE.