



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

**Miscellaneous Civil Application 1 of 2010**

**SARAH NANYAMA OPIYO.....APPLICANT.**

**VERSUS**

**CM'S COURT, KITALE.....REPUBLIC.**

**R U L I N G.**

By an ex-parte chamber summons dated 21<sup>st</sup> January, 2010 pursuant to the provisions of order LIII Rules 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 applicant **SARAH NANYAMA OPIYO** be granted leave by this honourable court to apply for an order of certiorari to remove into this honourable court, Kitale CMC Land Case No. 74 of 1999 for the purpose of quashing the order of E.A. Obina, Resident Magistrate Kitale, made on 8/1/2010.
2. **THAT**, the applicant **SARAH NANYAMA OPIYO** be granted leave by this honourable court seeking an order of prohibition to be issued further orders in Kitale CMC Land case No. 74 of 1999 which are in excess of his jurisdiction or contrary to the award filed by Kaplamai land disputes Tribunal and whose award got adopted as judgment of the court on the 2/12/2002 vide Kitale CMC Land Case No. 74 of 1999.

The application is based on the grounds.

- (a) **THAT**, the Magistrate acted in excess of his jurisdiction when he ordered that **SARAH NANYAMA OPIYO** be evicted from the 20 acres of land in title No. 5534 for that had never been ordered by the Kaplamai Land Disputes Tribunal and whose decision got adopted as a judgment of the court on 2/12/2002 vide Kitale CMC Land Case No. 74 of 1999.
- (b) **THAT**, the Magistrate acted in excess of his jurisdiction when he ordered that the area chief, OCS and the D.O. to confirm compliance in line with the decision of the Tribunal, for indeed the Kaplamai Land disputes Tribunal and whose decision got adopted as a judgment of the court on 2/12/2002 vide Kitale CMC Land case No. 74 of 1999 never made such an order.
- (c) **THAT**, the magistrate is likely to make other and further orders in Kitale CMC Land case No. 74 of 1999 which are in excess of his jurisdiction or contrary to the award filed by the Kaplamai Land Disputes Tribunal.

3. **THAT**, the grant of leave do operate as stay of the eviction ordered on 8/1/2010 by E.A. Obina, Resident Magistrate Kitale and also as stay of further proceedings in Kitale CMC Land case No. 74 of 1999.
4. **THAT**, the costs of this application be in the cause.

The application is based on the supporting affidavit/verifying affidavit of Sarah Nanyama Opiyo and a statement of particulars dated 20<sup>th</sup> January, 2010.

On behalf of the applicant, it was argued that the Tribunal's award was read and adopted as a judgment of the court on 2<sup>nd</sup> December, 2002 vide Kitale CMC Land Case No. 74/1999. The proceedings are annexed as "SNDI". The adoption order is exhibited as "SNO 02" and the decree as exhibit "SNO 03". The order made on 8<sup>th</sup> January, 2010 as exhibit "SNO 04".

However, the presiding magistrate issued orders or further orders in Kitale CMCC No. 74/1999 in excess of its jurisdiction contrary to the award filed by Kaplamai Land Disputes Tribunal. The award of the said Tribunal was adopted as a judgment of the court on 2<sup>nd</sup> December, 2000 vide Kitale CMCC Land Case No. 74 of 1999.

Furthermore, the Resident Magistrate acted in excess of the jurisdiction when he ordered Sarah Nanyama Opiyo to be evicted from the 20 acres of land comprising title No. 5534 which had not been ordered by the Kaplamai Land disputes Tribunal whose decision was adopted as a judgment of the court on 2<sup>nd</sup> December, 2002 vide Kitale CMCC Land Case No. 74 of 1999.

Last but not least that the said magistrate acted in excess of his jurisdiction when he ordered the area chief, OCS and the D.O. to confirm compliance in line with the decision of the Tribunal when the said Tribunal never made such orders.

That in order to prohibit the said magistrate to make further orders in Kitale CMCC Land Case No. 74 of 1999 an order of prohibition do issue against Hon. E. Obina, Resident Magistrate, Kitale.

For those reasons the applicant prayed that the application be allowed in terms of prayer 1 and 2.

The applicant has given notice of the application to the Registrar and has equally lodged with the Registrar copies of statement and affidavits in accordance with the provisions of order LIII Rule 1 (3) of the Civil Procedure Rules.

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 more than the relief sought and the grounds upon 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 12<sup>th</sup> February, 1999. It was adopted as a judgment of the court on 2<sup>nd</sup> December, 2002. A decree was issued on 29<sup>th</sup> July, 2003. An order of eviction was made on 8<sup>th</sup> January, 2010. This application was filed on 21<sup>st</sup> January, 2010 – yet the adoption was done on 2<sup>nd</sup> December, 2002 – outside the six months.

Accordingly this application is for rejection. It is dismissed with no orders as to costs.

Dated and delivered at Kitale this 4<sup>th</sup> day of February, 2010.

**N.R.O. OMBIJA.**  
**JUDGE.**