



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

**AT KITALE**

**Miscellaneous Civil Application 22 of 2009**

**DOMOKIRA LOKALI.....APPLICANT.**

**VERSUS**

**TULIARENG PKASA LOPENA  
LOPOTUM PSINEN (ON BEHALF OF THEIR OWN MEMBERS OF KA-LOPENO  
FAMILY.....RESPONDENT.**

**RULING.**

By a chamber summons dated 3<sup>rd</sup> April, 2009, pursuant to the provisions of order 1 Rule 8 (1) of the Civil Procedure Rules and section 3A of the C.P. Act, the applicant seeks orders.

- (1) **THAT**, this court do grant leave to the applicant to file a representative suit/judicial review proceedings against the respondents on behalf of **KA-LOKALI FAMILY MEMBERS**; namely Domokira Lokali, Lomerinyang Lokali, Paulina Kiradomo, Tulasia Lokali, Petasia Lomukenyang Cheparwala Lomukenyang and Cheptuyos Cheparwala Mondu.
- (2) **THAT**, the notice of the institution of the judicial review proceedings/ suit herein be given to the interested parties; namely:- Tuliareng Pkasa Lopeno, and Loputum Psinen on their own behalf and on behalf of Ka-Lopeno family members.
- (3) Costs be in the cause.

The application is based on the grounds:-

1. **THAT**, the applicant were sued by the members of Ka-Lopeno family over land in West Pokot before Chesegon Division Land Dispute Tribunal.

2. **THAT**, the applicant who is aggrieved by the decision of the said Chesegon Division Land Dispute Tribunal wish to apply for Judicial review to quash the said Tribunal decision and decree of the court arising therefrom.
  
3. **THAT**, the said Ka-Lopeno family members now intend to execute the decree to chase away the Ka-Lokali family from Yawaw in Molop Location.
  
4. **THAT**, the applicant intends to institute judicial review proceedings to quash the tribunal's decision and court decree in **KITALE CMCCC LAND CASE NO. 97 OF 2008.**
  
5. **THAT**, the applicant and other family members have same interest in the intended suit/judicial review proceedings and therefore the applicant should be authorized to institute representative suit on their behalf.
  
6. **THAT**, each member of the Ka-Lokali family has endorsed the applicant as their representative in the intended suit/judicial review proceedings.

On behalf of the applicant it was argued that he and his Ka-Lokali family members reside and occupy a piece of land in Yawyaw farm Mulop Location Chesegon Division, West Pokot District.

That at a meeting of the Ka-Lokali family held on 20<sup>th</sup> January, 2009, he was elected to represent the other members in the intended litigation. On that strength he intends to institute a representative judicial proceedings against the respondents and Chesegon Division Land Disputes Tribunal. A copy of the minutes in respect thereof is exhibited as "DL1". Equally exhibited annexed thereto and marked "DL2" is a list of members of the Ka-Lopeno family- the respondents.

Following the Tribunal's decision and court decree being Kitale CMCC Land Case No. 97/2008 the respondents intends to evict the applicants from the suit land. For that reason the applicants and other members intend to institute judicial review proceedings against the Tribunal's decision and decree emanating therefrom for ***inter-alia*** an order of certiorari to bring into this court and quash the decision of Chesegon Division Land Disputes Tribunal filed in Kitale CMCC Land case No. 97/2008 and adopted as a judgment of the court on 17<sup>th</sup> February, 2009.

That the applicant and other family members have the same interest in the intended judicial review proceedings and hence the applicant should be authorized to institute this representative and judicial review proceedings. Annexed and marked exhibit DL3 – a list of members intended to be parties to the suit.

By a supplementary affidavit (with the leave of the court) sworn on the 16<sup>th</sup> day of June, 2009 the applicant introduced a copy of the Tribunal's proceedings exhibited as DLI (b), a copy of the decree in Kitale CMCCC Land case No. 97/2008 exhibited as DL2 (b) and a hearing notice served upon one of the Ka-Lopen family representative – **Tuliareng Pkasa Lopena** summoning him to attend Kitale CMCC Land case No. 97/08 for adoption of the award/decision.

It is clear to me by record of proceedings that the decree in Kitale CMCC No. 97/2008 the plaintiff is **KA-LOPEN FAMILY** and the defendant is **KA-LOKALI FAMILY**. It was decreed:-

- (1) That the land belongs to the KA-LOPEN family.
- (2) That Ka-Lokali Family do move from Yayaw land to Chyeptuyole farm where Arengonyang Lokali lives.
- (3) That Cheptuyok land is for all Ka-Lokali family.

In view of the fact that there is a decree capable of being executed, I take the position that leave should be granted to file a representative suit against the respondents for and on behalf of the Ka-Lokali family members, namely, Domokira Lokali, Lomerinyang Lokali, Paulina Kiradomo, Tuliasia Lokali, Petasia Lomukenyang, Cheparwala Lomukenyang and Cheptuyos Cheparwala M5ondu. Costs shall be in the cause.

Dated and delivered at Kitale this 3rd day of February 2010.

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

**JUDGE.**