



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

MISCELLANEOUS CIVIL APPLICATION 45 OF 2009

REPUBLIC.....APPLICANT.

VERSUS

KWANZA LAND DISPUTES TRIBUNAL COMPR. OF.

WANJALA BIBI
HENRY MUNDIA
JACOB INDIAZI.....1ST RESPONDENT

CM'S COURT, KITALE.....2ND RESPONDENT.

SHADRACK TOMS & OTHERS.....3RD RESPONDENT.

KIPRONO TARUS.....EX-PARTE.

R U L I N G.

By a Notice of Motion dated 9th June, 2009, pursuant to the provisions of section 8 and 9 of the Law Reform Act (Cap 26) Laws of Kenya and Order LIII rules 3 and 7 of the Civil Procedure Rules the applicant seeks orders.

1. **THAT**, this honourable court be pleased to issue an order of certiorari to call into this court and quash the award in KITALE CMCC LAND CASE NO. 3/2009 which was read and adopted as judgment of the court on 3rd March, 2009.
2. Costs be provided for.

The application is based on the following grounds:-

- (i) **THAT**, the Tribunal acted without jurisdiction and/or in excess of their jurisdiction.
- (ii) **THAT**, the claimants had no capacity to sue and/or institute a claim at the Tribunal since they have no letters of administration in respect of the estate of **KIPTARUS ARAP SITIENEI**.
- (iii) **THAT**, the Tribunal had no jurisdiction to distribute the estate of the late **KIPTARUS ARAP SITIENEI**.
- (iv) **THAT**, the award of the Tribunal is null and void.

The application is predicated upon the annexed affidavit of Kiprono Tarus sworn on the 9th day of June, 2009 and the statement of particulars dated 25th March, 2009. On behalf of the applicant, it was argued that the Tribunal had no jurisdiction to distribute the estate of the late Kipkarus Arap Sitienei. In addition thereto it was contended on behalf of the applicant that the claimant had no capacity to sue/or institute a claim in the absence of letters of administration in respect of the estate of Kiptarus Arap Sitienei. For those reasons the applicant

last and final position is that the award is therefore null and void. The applicant prayed that the leave is granted do operate as a stay of proceedings and/or execution of the award/decision of the Kwanza Land Dispute Tribunal which was read and adopted as a judgment of the court on 3rd March, 2009 vide Kitale CMCC Land Case No. 3/2009 pending the hearing and determination of the substitute application herein. The law relating to leave is now well settled. The application for leave "By statement" – the facts relied upon should be stated on the affidavit (See **R. VS. WANDSWORTH JJ EXP. READ (1942) 1 K.B. 281.** "The Statements" should contain nothing but the relief sought and the grounds upon which it is sought. In case of certiorari, leave 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 decision complained of was made on the 27th day of January, 2008 and adopted as a judgment of the court on the 3rd day of March, 2009. This application was made on the 9th day of June, 2009 – within 6 months. Having considered the evidence of support of the application and the statement of particulars, I am persuaded that leave should be granted. Accordingly, there shall be orders in terms of prayer 1 and 2 of the application. The leave granted do operate as a stay of proceedings and/or execution. By way of directions, 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 2 of the Civil Procedure rules.

Dated and delivered at Kitale this 2nd day of February, 2010.

N.R.O. OMBIJA.
JUDGE.

Mrs. Munialo for Chebii for applicant.