

REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA

AT KITALE.

MISC. NO. 69 OF 2008.

WILLIAM MUMAINA
WAMBULWA.....APPLICANT.

VERSUS

THE R.M. COURT, KITALE & 3
OTHERS.....RESPONDENT.

R U L I N G.

The notice of motion dated 10th April, 2007 is brought under provision of order 53 of the Civil Procedure Rules and section 8 of the Law Reform Act. The applicant is seeking for an order of certiorari to remove to the High court the proceedings and decree in Kitale Chief Magistrate's court Case No. 122 of 2006 dated 5th December, 2006 and issued on 18th January, 2007 for purposes of quashing. The applicant also sought for an order of certiorari to remove to the High Court for purposes of quashing the proceedings of the award in Kitale Central Division Land dispute Tribunal Case No. 033 of 2006 which was lodged by the applicant. Finally an order of prohibition to issue against the execution of the order of eviction order dated 20th March, 2007. This application is supported by the grounds stated on the body thereto the statutory statement and the verifying affidavit sworn by William Mumaina Wambulwa the exparte applicant in this matter. Mr. Ingosi, learned counsel for the exparte applicant submitted that the tribunal that purportedly made the order does not exist. There is no tribunal known as Central Division Land Disputes Tribunal. It was further submitted that the panel was not properly constituted. There was no secretary who participated in the proceedings which is contrary to the conditions of section 4 (1) of the Land Disputes Tribunal Act. The applicant was the claimant. However, it is contended that the tribunal considered matters that were not before them by issueing an order in respect of a matter that was not before them and failing to consider the applicant and settled on plot No. 640 to plot no. 124. As at the time the tribunal made the award plot no. 124 is also subject to a dispute. Finally it was argued that the order of the tribunal is not dated and it is therefore a nullity. This application was opposed Mrs. Wanyama, learned counsel for the interested party relied on the verifying affidavit sworn by Johnson Barasa Murunga on 29th May, 2007. It was submitted that the exparte applicant voluntarily moved to Central Division Land Dispute Tribunal and filed a claim for the determination of the occupation of plot No. 640. As one of the directors of the company, the exparte applicant owned two plots No. 644 and 124 while plot No. 640 is for public utility reserved for a health centre. The exparte applicant willingly subjected himself to the jurisdiction of Central district Tribunal. He is therefore barred by the principle of Estoppel from denying the jurisdiction of this tribunal which he knew. The fact that the final award did not favour him is not a good reason to dispute the award. The Central Land Dispute Tribunal was properly constituted within the act and it has been in existence. There was also no contravention of the provision of section 4 the proceedings show they were five members and the fact that one of the members took the minutes does not disqualify him from being a member. The award was read and adopted by the court. The exparte applicant was notified and he failed to exercise his rights of appeal within 30 days there is now a judgment of report. The applicant should have appealed against that judgment and sought to set aside the decree. Counsel urged the court to dismiss the application because there is no breach of the rules of natural justice there is no illegalities or irrationality demonstrated to warrant this court to grant an order of judicial review.

The above is the summary of the salient matters raised for and against this application. The orders sought

in this application are of judicial review nature which are granted on the basis of clear evidence of abuse of power by an inferior tribunal, excess of jurisdiction or on the grounds that the tribunal that made the decision failed to observe the rules of natural justice. It is common ground in this matter that the ex parte applicant is the one who filed the claim before the Central Division Land Dispute Tribunal. The proceedings show the tribunal members and a decision which was arrived at on 8th August, 2006 under the provision of the Order 53 (1) of the Civil Procedure Rules no application for an order of Mandamus, prohibition or certiorari should be made after six months after the order that is sought to be quashed. This application was clearly made outside the statutory period. The applicant also seeks to set aside the order in which the award of the tribunal was adopted and made an order of this court. That order was also made on 5th December, 2006 but issued on 18th March, 2007. A decree was also issued and I agree with counsel for the interested party that the ex parte applicant is not amenable to orders of judicial review but an appeal. In circumstances, I dismiss the application with costs to the interested party.

Ruling read and signed on 16th December, 2010.

MARTHA KOOME.

JUDGE.