



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

Miscellaneous Civil Application 17 of 2009

REPUBLIC APPLICANT.

VERSUS

CENTRAL DIVISIONAL L.D.T. COMPRISING OF

DAVID TANUI

EUNICE M. CHAKAI

SAMMY AKIFUMA 1ST RESPONDENT.

LEONARD WASWA

BOAZ OWUOR

THE CM'S COURT, KITALE..... 2NRESPONDENT.

RICHARD NYANDIKA NYANGOYA3RD RESPONDENT.

R U L I N G.

By an ex-parte chamber summons dated 16th March, 2009, pursuant to the provisions of order LIII Rules 1 and 2 of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act, Cap 26 of the Laws of Kenya, the applicant seeks orders.

(1) THAT, leave be granted by this honourable Court to the joint applicants herein, to apply for an order of certiorari to remove into this honourable Court and quash the decision of Central Division Land Disputes Tribunal which was read and adopted as a judgment of the court on 13/2/2009 vide Kitale CMC Land Case No. 101 of 2008.

(2)That the grant of leave, do operate as a stay of enforcement of the tribunal award which was read and adopted as a judgment of the court on 13th February, 2007 vide Kitale CMC Land case No. 101 of 2008.

(3)That costs be in the cause.

The application is based on the following grounds:-

- (a) THAT, the tribunal had no jurisdiction to entertain a claim for specific performance of a void contract for Sale of Agricultural Land.
- (b) THAT, the Tribunal had no jurisdiction to entertain a claim for a registrable interest over Land Registered under the Registered Land Act (Cap 300) of the Laws of Kenya.
- (c) THAT, the Tribunal's condemned the 2nd Applicant unheard and yet she was not party to the suit.
- (d) THAT, the Tribunal's decision was/is incapable of enforcement since the applicants have no legal capacity to transfer Land registered in the name of a deceased person.
- (e) THAT, the panel of elders had no jurisdiction to order for a refund of the consideration with interest at current bank rates.
- (f) THAT, the panel of elders award as a whole is not enforceable.
- (g) THAT, the panel of elders did not give reasons for their ruling.
- (h) THAT, the panel of elders award is contradictory.

The application is predicated upon the annexed statement of particulars and the verifying affidavit of Gabriel Nderoma Wabuge both dated and sworn on 16th March, 2009 respectively.

On behalf of the applicant, it was argued that an award of the Central Division Land Disputes Tribunal was adopted as a judgment of the court on 13th February, 2009 vide Kitale CMC Land case No. 101 of 2008, a certificate/order of 13th February, 2009 adopting the award is exhibited as "GNW 2".

That the subject land is neither registered in the name of his late father or his mother. In addition thereto the subject land is registered under the Registered Land Act (Cap 300) Laws of Kenya.

Moreover, the panel of elders went beyond their jurisdiction in making an order for refund of the consideration plus interest at bank rates.

The applicant has given notice of the application to the Registrar and has equally lodged with the Registrar copies of the statements 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 (see R. vs. WANDSWORTH JJ EXP. READ [1942] 1 KB 281.

"*The statement*" should contain nothing more than 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 23rd October, 2008. It was read and adopted as a judgment of the court on 13th February, 2009 vide Kitale CMC Land case No. 101 of 2008. This application was then made on 17th march, 2009 – within 6 months.

Having carefully considered the contents of the affidavit in support and the statement of particulars, I am persuaded that leave should be granted.

Accordingly, there shall be orders in terms of prayer 1, 2 and 3 of the application.

By way of direction, 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 3 of the Civil Procedure Rules.

Dated and delivered at Kitale this 30th day of March, 2009.

N.R.O. OMBIJA.

JUDGE.