



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**Miscellaneous Civil Application 15 of 2009**

**REPUBLIC.....APPLICANT**

**VERSUS**

**1. KWANZA LAND DISPUTES TRIBUNAL COMPRISING OF:-**

**(a) WAFULA BIBI**

**(b) MATHEW .W. WABILIKI ).....1<sup>ST</sup> RESPONDENTS**

**(c) JACOB INDIAZI**

**2. CHIEF MAGISTRATE OF KITALE.....2<sup>ND</sup> RESPONDENT**

**3. JUDITH WAFULA.....INTERESTED PARTY**

**4. EX-PARTE.....RONGOEI KOSKEI**

**R U L I N G**

By an ex-parte chamber summons dated 3<sup>rd</sup> March 2009, pursuant to the provisions of sections 8 and 9 of the Law Reform Act, Order LIII Rule 1 of the Civil Procedure Rules, the applicant seeks orders:-

1. That this application be certified as urgent.
2. That the applicant Rongoei Koskei be and is hereby granted leave to file an application by way of Judicial Review for an order of certiorari to remove into this Honourable court and quash the decision and award of Kwanza Land Disputes Tribunal Case No. 9 of 2008 which was read and adopted as judgment in Kitale Chief Magistrate Land Case No.94 of 2008 on 16<sup>th</sup> December 2008.
3. That leave so granted to operate as stay of proceedings and/or execution in Kitale CMCC No.94 of 2008 until the substantive application is heard and determined.
4. Costs be in the cause.

The application is based on the grounds:

1. That the Tribunal acted in contravention of the law.
2. That the Tribunal had no jurisdiction to entertain claims barred by statute law.
3. That the Tribunal had no jurisdiction to entertain matters subject to succession proceedings.
4. That the Tribunal was improperly constituted.

5. That the Tribunal was biased and gave no reasons for its decision.
6. That the Tribunal erred in determining and/or considering extraneous matters thus making orders without jurisdiction.
7. That the Tribunal had no jurisdiction to make such awards and confer ownership on behalf of deceased persons.
8. That the Tribunal only forwarded their observations and ruling to the Chief Magistrate's court without the proceedings.
9. That the issue of ownership of Plot No. 140 Meteitei Farm had been decided in the High Court vide the judgment of Hon. Justice R. Nambuye in Kitale High Court Misc. App No.92 of 1999.

The application is predicated upon the annexed affidavit of **Rongoei Koskei** sworn on the 12<sup>th</sup> day of March 2009 and the statement of particulars of even date.

On behalf of the applicant, it was argued that the decision of Kwanza Land Disputes Tribunal in respect of this matter was read and adopted as a judgment of this court on 16<sup>th</sup> December 2008. The said decision is exhibited as "R K 111".

The thrust of his case was a claim of trespass to land – Plot No. 149 Meteitei Farm within Kwanza. Instead of determining the issue at hand, the Tribunal went over-board and determined the issue of ownership. It is the applicant's contention that the Tribunal lacked the requisite jurisdiction to do so. A certified copy of the decree is exhibited as "R K 2" to underscore the point.

The issue of ownership had been determined in Kitale High Court Miscellaneous Application No.92/1999. A copy of the judgment is exhibited as "R K3".

By reason of the foregoing matters the panel of elders had therefore no jurisdiction to investigate and make a finding as to ownership. It would amount to the Tribunal sitting on appeal from the decision of the High Court. Clearly therefore, the Tribunal exceeded its jurisdiction. Furthermore, in making its decision the Tribunal fell in error in making its decision on the basis of a claim which is time-barred by Limitation of Actions Act.

As I understand him, the applicant's contention is that his claim before the Tribunal was one of trespass yet the tribunal decided on ownership which was not an issue before it. The issue of ownership had been decided by the High Court in Kitale in High Court Misc. Application No.92/1999. Thus the Tribunal exceeded its jurisdiction.

I have perused the record and find as a fact that the applicant has lodged with the Registrar copies of the statements and affidavit in compliance with Order LIII Rule 1(3) of the Civil Procedure Rules.

The law relating to leave is now well settled (**See R V WENDSWORTH JJ EXP READ (1942) I.K.B 281**). The facts relied upon should be stated in the affidavit in support. The statement should contain nothing more than the relief sought.

In the case of certiorari, leave should not be granted unless the application for leave is made not late than six (6) months after the date of the proceedings or such shorter period as may be prescribed by the Act.

In the present case, the decision complained of was made on 16<sup>th</sup> December 2008. The decree was issued on 31<sup>st</sup> March 2009. This application was made on 13<sup>th</sup> March 2009 – within 6 months. Having considered all evidence in support of the application, I am persuaded that leave should be granted.

Accordingly there shall be orders in terms of prayers 2,3 and 4 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 29<sup>TH</sup> day of JUNE 2009.

**N.R.O. OMBIJA**

**JUDGE**

**N/A for applicant**

**N/A for respondent**