



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**MISC. CIVIL APPLICATION ELC 28 OF 2009**

**PETER KIMANI KARIUKI.....APPLICANT**

**VERSUS**

**THE CHAIRMAN THIKA LAND DISPUTE TRIBUNAL.....RESPONDENT**

**GEORGE KARIUKI KEBO.....INTERESTED PARTY**

**RULING**

This is an application by way of Ex-parte Chamber Summons brought under Order LIII Rule 1 and 2 of the Civil Procedure Rules and Section 8 and 9 of the Law reform Act in which the Applicant Peter Kimani Kariuki seeks orders

- (a) That he be given leave to apply for an order of certiorari to remove into this court and quash the decision of Thika Land Disputes Tribunal made on 19<sup>th</sup> February 2009 in Tribunal Claim No 60/05/2008.
- (b) That the leave so granted to operate as a stay of the decree dated 19<sup>th</sup> February 2009.

The application is based on the ground that the Applicant's interest and/or inheritance on land Parcel **LR No KIAMBU/MUNYU/522** stands to be denied and/or be transferred on the basis of proceedings which are prima facie null and void.

The facts which gave rise to this litigation briefly may be stated. There was a dispute over the suit land being the Applicant and the Interested Party. The Interested Party George Kariuki Kebo filed a reference at the Thika Disputes Tribunal being Claim No 60/005/2008.

The parties appeared before the Thika Land Disputes Tribunal on 13<sup>th</sup> January 2009 where each party gave evidence and was subjected to cross-examination. The elders after listening to the evidence of the claimant and the objector made an award in favour of the claimant.

The Land Disputes Tribunal Act No 18 of 1990 provides that the Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law, after hearing the parties to the dispute, any witness or witnesses whom they wish to call, and their submissions if any, and each party shall be afforded an opportunity to question the other party's witness or witnesses.

The Tribunal shall give reasons for its decision. Any party who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.

Either Party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of.

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that court has certified that an issue of law (other than customary) is involved - Section 8 (a). Any question of customary law shall for all purposes

under this Act be deemed to be a question of fact.

To the extent that the Dispute was filed before the Tribunal and the Applicant submitted to its jurisdiction, presented evidence and was subjected to cross-examination and failed to raise the issue of jurisdiction to the Tribunal to handle the matter, he is estopped from raising the issue at this stage.

The Applicant having submitted to the jurisdiction of the Tribunal ought to have prosecuted his case as far as he could have gone and access the High Court on a point of law. The Act provides a very simplified mode of procedure which is less costly and affordable by even a lowly peasant without necessarily hiring the services of a lawyer.

Once a litigant has surrendered to the jurisdiction and that jurisdiction provides a right to access the High Court through appeal, he ought to comply with the rules of procedure as provided and laid down in that jurisdiction and access the High Court on appeal rather than abandon that jurisdiction for the alternative jurisdiction which would become more costly.

Mostly applications for judicial review are based on the ground that the elders have no jurisdiction over registered land. But registration of titles are a creation of the law and one must look into the considerations surrounding the registration of titles i.e if the registration was based on customary law trust where the eldest son of the family is registered in trust for the members of his mother's house and more so in polygamous homes customary law trust was considered in the case of **Mwangi and Another v. Mwangi [1986] KLR 328** at p. 332 where the court said:

“Kikuyu Customary Law recognizes the law of trusts and so does Registered Land Act under which this suit falls.”

The Act provides that a question of customary law shall for all purposes under this Act be deemed to be a question of fact so that if it is established that a person is registered as a trustee under the custom, the elders have jurisdiction to deal with the dispute.

I am not persuaded to exercise my discretion in favour of the Applicant. I decline to grant leave but he is at liberty to apply for extension of time to appeal out of time.

Dated and delivered at Nairobi this 16th day of June 2009.

**J. L. A. OSIEMO**

**JUDGE**