



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Misc Civil Appli 9 of 2009

1. Judicial Review

- a. Application for leave to seeking Judicial Review proceedings for certiorari.
- b. Land Dispute Tribunal court of Bomet heard and determined a dispute on 25th July, 2007.
- c. That miscellaneous civil application 79/06 award adopted and read at magistrate's court on 28.9.06.
- d. Award struck out (illegally) (J.K. Ng'eno) magistrate and parties advised to go to High Court.
- e. Respondent filed same award on 22nd June, 2009 in magistrates court case 50/09 instead of asking orders of J.K. Ng'eno be set aside as having been irregularly issued.
- f. That the 2nd application in file Miscellaneous 50/09 is declared as *Res Judicata*.

2. Held

- a. That leave be and is hereby granted to bring Judicial Review proceedings.
- b. That there be a Notice of motion filed within twenty one (21) days and eight clear days between service and date of hearing.

3. Case Law – Nil

4. Advocate

E.M. Orina advocate instructed by M/S E.M. Orina & Co. advocates for the exparte applicants – present.

BETWEEN

KITUR ARAP SOI.....1ST APPLICANT

TAPNYONYE ARAP SOI2ND APPLICANT

VERSUS

CHAIRMAN

BOMET LAND DISPUTES TRIBUNAL1ST RESPONDENT

THE PRINCIPAL MAGISTRATE COURT,

KERICHO2ND RESPONDENT

TAPSABEI TEMUGEN3RD RESPONDENT

RULING NO. 1

I: Procedure

1. This application concerns a land disputes tribunal.
2. The said tribunal situated in Bomet determined the dispute between two parties on the 21st July, 2007. The award was concluded and filed according to law in the magistrates court in misc. civil application 79/06. The magistrate read the award on 28th September, 2006 that ordered the eviction of one party.
3. Instead of the magistrate now adopting the ward the magistrate struck out the award (*J.K. Ng'eno*) and asked parties to proceed to the High court. This was of course illegal and irregular. What the party aggrieved should have done was to apply for the review and setting aside of those orders, failure to then appeal to the High Court.
4. Instead the aggrieved party wanted for three years then filed the same award dated 25th July, 2007 to court under misc. case 50/09.
5. The exparte applicant came to court seeking orders for leave to apply for certiorari to quash the reading of the award and adopting the same by the magistrate as the same is *Res Judicata* in any event.
6. The award given exceeded the mandate the tribunal were given.

II: Findings

7. Leave be and is hereby granted to the exparte applicant to file Judicial Review proceeding of certiorari.
8. That a notice of motion be filed within twenty one (21) days. That there must be eight clear days between the date of service and the date of hearing.
9. The costs be in the cause.

DATED this 31st day of July, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

E.M. Orina advocate instructed by M/S E.M. Orina & Co. advocates for the exparte applicants – present.