



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

Misc Appli 78 of 2008

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990

AND

**IN THE MATTER OF LAND DISPUTES TRIBUNAL (FORMS AND PROCEDURE) RULES
1993, LEGAL NOTICE NO.13 OF 1993.**

AND

IN THE MATTER OF MANGA DIVISION LAND CASE NO. 9 OF 2007

AND

**IN THE MATTER OF CIVIL PROCEDURE ACT AND CIVIL PROCEDURE RULES CAP 21
LAWS OF KENYA**

AND

**IN THE MATTER OF AN APPLCIAITON BY JOHN MOSE NYABWERA FOR LEAVE TO
APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION**

BETWEEN

JOHN MOSE NYABWERA.....APPLICANT

AND

MANGA DIVISION LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

RESIDENT MAGISTRATE NYAMIRA LAW COURTS

.....2ND RESPONDENT

AND

SIMEON MOKAYA NYABWERA

RULING

The summons filed on 17/12/2008 that led to leave being granted on 4/2/2009 to bring the application for judicial review were accompanied by the notice to the Registrar, Statement of Claim and Verifying Affidavit. When the notice of motion was filed on 24/2/2009 it was accompanied by a Supporting Affidavit to which were annexed various documents. Under *Order 53 rule 4 of the Civil Procedure rules* it was expected of the *ex parte* applicant to file the motion together with the Notice to the Registrar, the Statement of Claim and the Verifying Affidavit –the same documents that had accompanied the summons for leave. It follows that the motion is fatally defective, and to that extent the court agrees with Mr. Nyambati for the interested parties. (See *Republic .v. Municipal Council of Kericho and another, HC Misc.Application No.25 of 2001 at Kericho* and *Schifbau –Und Entwicklungesellschaft Tangermunde and Company KG .v. The Public Procurement Complaints Review and Appeals Board and another, Civil appeal no. 174 of 2005*).

Mr. Nyambati also raised the issue of the format of the motion Judicial review orders are issued in the name of the Republic and applications therefore are made in the name of the Republic at the instance of the person affected by the action or omission in issue. In the instant application John Mose Nyabwera should have been the *ex parte* applicant. (See *Jotham Mulati Welamondi .V. The Electoral Commission of Kenya, H.C.Misc. Application no.81 of 2002 at Bungoma*). Again, the application is defective for want of form and procedure.

The application sought to attack the jurisdiction of Manga Division Land Disputes Tribunal in dealing with the title and ownership of land registered under the Registered Land Act. It was contended that what the Tribunal did went beyond the powers conferred to it by *section 3(1)* of the Land Disputes Tribunal Act, No. 18 of 1990. I find there is no competent application before court that can give it jurisdiction to inquire into these allegations. I strike out the application with costs.

Dated, signed and delivered at Kisii this 16th day of November, 2009.

A.O.MUCHELULE

JUDGE

16/11/2009

16/11/2009

Before A.O.Muchelule-J

Court clerk-Mongare

Mr. Nyambati –present

COURT: Ruling in open court.

A.O.MUCHELULE

JUDGE

16/11/2009