



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
Miscellaneous Application 53 of 2009**

**IN THE MATTER OF AN APPLICATION BY MUSA ARIONGUSIWA & MAINA PALOKAPEL FOR LEAVE
AND
IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990.**

RULING

By an ex-parte chamber summons dated 21st day of July 2009, pursuant to the provisions of order LIII rule 1(1) (2) and (4) of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act (Cap 26) Laws of Kenya, the applicant seeks orders:

1. That the applicants MUSA ARIONGUSIWA and MAINA PALOKAPEL be granted leave by this honourable court to apply for an order of certiorari, to remove into this honourable court and quash the decision of Chesegon Land Disputes Tribunal and which was read and adopted as a judgment of the court on the 11/6/2009 vide Kapenguria Principal Magistrate's Court Land Case No. 2 of 2009 on the grounds:
 - (a) That the Tribunal lacked jurisdiction to entertain, hear and determine a dispute that was commenced in a manner contrary to the provisions of the Land Disputes Tribunal Act, in that there was no written statement of claim or a defence filed by any party.
 - (b) That the Tribunal lacked jurisdiction to entertain, hear and determine the dispute in that the applicants, and who were shown in the proceedings as the claimants, had never lodged any claim in the Land Disputes Tribunal and infact they had been invited as defendants.
 - (c) That the tribunal violated the rules of Natural justice in that:
 - (i) The 1st applicant was not served with any hearing notice for 3/4/09 and consequently he was condemned unheard.
 - (ii) The notice of six (6) days to parties who did not know the nature of the complaint was unreasonably short.
 - (iii) The applicants were not accorded a chance to present their positions.
 - (d) That the proceedings were undertaken in a manner contrary to the provisions of the Land Disputes Tribunal Act in that the evidence of the parties was not recorded or properly recorded and the facility of cross examination was not accorded to the parties.
 - (e) That the Tribunal lacked jurisdiction to entertain, hear and determine the claim since the land in question was not agricultural land.
2. That the applicants confirm that what is stated in this statement of particulars is true, and that the relief sought is an order of certiorari to remove into this honourable court and quash the decision of Chesegon Land Disputes Tribunal and which was read and adopted as a judgment of the court on the 11/6/2009 vide Kapenguria Principal Magistrate's Court Land Case No.2 of 2009.
3. That the grant of leave do operate as stay of enforcement/execution of the award of Chesegon Land Disputes Tribunal and which was read and adopted as a judgment of the court on 11/6/2009 vide Kapenguria Princial Magistrate's Land Case No.2 of 2009.
4. That the costs of this application be in the cause.

The application is based on the grounds set out in the joint statement of particulars and the verifying affidavit of Musa Ariongosiwa and Maina Palokapel.

On behalf of the applicant it was argued that the Tribunal lacked jurisdiction to entertain, hear and determine a dispute that was commenced in a manner contrary to the provisions of the Land Disputes Tribunal Act, in that;

- (i) There was no written statement of claim or defence filed by any party.
- (ii) The applicants who were shown in the proceedings as claimants had never lodged any claim in the Land Disputes Tribunal and that infact they had been invited as defendants.
- (iii) The suit land was not agricultural land.

Moreover, the Tribunal violated the rules of natural justice in that;

- (i) The first applicant was not served with any hearing notice for 3rd April 2009 and in the premises he was condemned unheard;
- (ii) The notice of six (6) days to the parties who did not know the nature of complaint was unreasonably short;
- (iii) The applicants were not accorded a chance to present their position;

Last but not least the proceedings were undertaken in a manner contrary to the provisions of the Land Disputes Tribunal Act. This is by reason of the fact that the evidence adduced by the parties was not recorded or properly recorded not to mention the fact that the opportunity for cross-examination was not accorded to the parties.

The law relating to leave is now well settled (**See R Vs Wendsworth JJ Exp READ (1942) I.K.B 281, "The statement"** should contain nothing more than the relief sought, and the grounds on which it is sought.

In the case of certiorari, the 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 any Act.

The decision complained of was made on 3rd April 2009, the award was adopted as a judgment of the court on 11th June 2009, and the application filed on 20th July 2009, a period of less than six (6) months as enjoined by the provisions of order LIII Rule 2 of the Civil Procedure Rules. I note that all other requirements of order LIII Rules 1(2) and 1(3) have been complied with. Accordingly, I grant the application in terms of prayer 1 and 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 order LIII Rule 2 of the Civil Procedure Rules.

Dated and delivered at Kitale this 1st day of December, 2009.

N.RO.OMBIJA
JUDGE

Mr. Kiarie for Applicant.