



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Miscellaneous Civil Application 81 of 2009

STEPHEN KAMASET (CHAIRMAN)
THOMAS RIONGOITA (SECRETARY)
MUSA LOMUNG'A (TREASURER)
(suing on behalf of SOKOO CLAN).....APPLICANTS
VERSUS
AUGISTONO LORIPO (CHAIRMAN)
THOMAS CHURIANGULA (SECRETARY)
MUKERUK LORIPO (TREASURER)
Sued on behalf of
SOTOT CHAPINTANY CLAN..... :RESPONDENTS

RULING

By an ex-parte chamber summons dated 13th November, 2009, pursuant to the provisions of sections 3, 3A and 63(3) of the Civil Procedure Act, order L Rules 8 and 12 of the Civil Procedure Rules, the applicant seeks orders:

1. That the application be certified as urgent.
2. That the honourable court be pleased to grant leave to the applicants to institute proceedings on their behalf and on behalf of all the members of SOKOO Clan and against the respondents on their behalf and on behalf of SOTOT CHAPINTANY CLAN.

The application is based on the grounds:

- (a) That the applicants are members and particularly elected office bearers of SOKOO CLAN.
- (b) That the respondents are members and particularly elected office bearers of SOTOT CHAPINTANY CLAN.
- (c) That the applicants and the entire SOKOO CLAN have a claim against the respondents and the entire SOTOT CHAPINTANY CLAN in regard to an award by the Sigor Land Disputes Tribunal.
- (d) That the applicants and the SOKOO CLAN generally wish to seek declaratory orders in court.
- (e) That leave is essential before any suit can be instituted.
- (f) That this court has wide and unfettered discretion to grant the orders sought especially in the interest of justice.

The application is predicated upon the annexed affidavit of Stephen Kamaset sworn on the 13th day of November 2009.

On behalf of the applicants it was urged that they are members of Sokoo Clan in Seger Location, Pokot Central District.

That the applicants are office bearers in that they are Chairman, Secretary and Treasurer respectively. That their clan (Sokoo) is aggrieved by the elders award in respect of Sigor Land Disputes Tribunal which was adopted as an award of the court on 22nd May 2006 as

per exhibit "SK2".

That the respondents are also members and office bearers of Sotot Chapintany – clan who were given the liberty to dwell on disputed parcel as per the decree of the subordinate court exhibited as "SK 3'.

The applicants case is that natural justice was breached as they were never given a hearing. Moreover, the proceedings and the eventual award were a nullity as the elders lacked the requisite jurisdiction.

By reason of the foregoing the Sokoo Clan are desirous of filing a declaratory suit to nullify the award and the decree emanating therefrom. The intended remedy cannot be obtained in absence of leave, hence this application for a representative suit.

Order 1 Rule 8 of the Civil Procedure Rules provides:

(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued, or may be authorized by the court to defend in such suit, on behalf of or for the benefit of all persons so interested.

(2) The court shall in such case direct the plaintiff to give notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit."

In this case three of the plaintiffs have been authorized by the rest of them to appear plead or act for them. The authority is in writing (see order 1 Rule 8).

That being the position, the application is granted in terms of prayer 2. By way of directions the plaintiffs shall give notice of institution of the suit to all the defendants, by public advertisement in the Daily Nation or the Standard. Costs shall be in the cause.

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

N.R.O. OMBIJA
JUDGE

Mr. Kiarie

Ms. Kendagor for applicant.