



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JR ELC MISC APPLICATION 7 OF 2008**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

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

**IN THE MATTER OF: PROVINCIAL LAND DISPUTES APPEALS COMMITTEE (APPEAL NO. 30. of 2003)**

**IN THE MATTER OF: THE SENIOR RESIDENT MAGISTRATE’S COURT AT KAJIADO (LAND DISPUTE TRIBUNAL NO. 4 OF 2003)**

**KIMATHI OLE**

**GISA.....APPLICANT**

**VERSUS**

**LAND DISPUTE APPEALS COMMITTEE (RIFT VALLEY PROVINCE)..1<sup>ST</sup> RESPONDENT**

**SENIOR MAGISTRATE’S COURT (KAJIADO).....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

Before me is a Chamber Summons (EXPARTE) brought under Order LIII Rule 1 and 2 of the Civil Procedure Rules seeking orders:

(1) That leave be granted to the applicant KIMATHI OLE SIGA for an order of prohibition against the Senior Resident Magistrate’s Court at Kajiado prohibiting the said court from reading adopting or confirming as per notice dated 18<sup>th</sup> January 2008, the decision of the Provincial Land Disputes Appeals Committee (RVP) which was awarded on 23<sup>rd</sup> October 2007.

(2) That leave be granted to the applicant KIMATHI OLE GISA to apply for an order of certiorari against the Senior Resident Magistrate Court at Kajiado removing to this Honourable Court the said notice dated 18<sup>th</sup> January 2008 to read adopt or confirm the award of the Provincial Land Disputes Appeals Committee RVP and the same be quashed.

(3) That leave be granted to the Applicant KIMATHI OLE GISA to apply for an order of certiorari against the Provincial Land Dispute Appeals Committee (RVP) removing to this Honourable Court the said Committees award dated 23<sup>rd</sup> October 2007 awarding LR No. KAJIADO/DALALEKUTU/1032 to SEKENTO OLE NTUARIEKI and ordering that he does surrender the said title be quashed .

(4) That the grant of leave to apply for orders of prohibition and certiorari aforesaid do operate as a stay of the intended reading, adopting/confirming of the award of the Provincial Land Disputes Appeals Committee (RVP) being PLDAC APPEAL No 30 of 2003 by the Senior Resident Magistrate's Court in LDT No. 4 of 2003 set for 14<sup>th</sup> February 2008 at Kajiado Law Courts. The application is based on the grounds as stated on the body of the Chamber Summons.

The application is also supported by statement of facts and verifying affidavit therein. I have considered the application in light of the statement of facts, the relief sought as well as the verifying affidavit and submission by counsel and I have come to the conclusions that the orders sought are not tenable for the following reasons. The dispute in this suit is over land. It was first heard by the District Land Disputes Committee which awarded the suit land to SEKENTO OLE NTUARIEKI. The applicant herein being dissatisfied with the decision of the District Land Disputes Tribunals appealed to the Provincial Land Disputes Committee which did dismiss his appeal. The provisions of the Statute, Land Disputes Tribunals Act No. 18 of 2007 are very clear of what steps to be taken after the litigant appeal is dismissed by the Provincial Land Disputes Appeal Committee

Section 8 "8" The decision of Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court"

8. "9" Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court within 60 days from the date of the decision complained of:"

The applicant ought to have exercised his right to appeal to the High Court and not to come to court through Judicial Review. The applicant could only come to the High Court through Judicial Review after the decision of the District Land Disputes decision without having appealed to the Provincial Land Dispute Appeals Committee.

The other issue raised by the applicant is the Notice by the Resident Magistrate dated 18<sup>th</sup> January 2008. The applicant sought an order of certiorari against the Senior Resident Magistrate's Court at Kajiado removing to this court the said award before reading and quash the same. This prayer is not tenable. The provisions of Section 7 of the Act are very clear about what the magistrate is supposed to do.

Section 7 provides as follows:

**"7"(1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal.**

**"2" The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforced in the manner provided for under the Civil Procedure Act."**

It is clear from the above provision that all the magistrate does is to enter judgment without question. The operative word is **"shall enter"**.

From the reasons stated above I am not persuaded to grant the orders sought. Accordingly the applicant's Chamber Summons dated 6<sup>th</sup> February 2008 is dismissed with no order as to costs.

Dated and delivered at Nairobi this 28<sup>th</sup> day of February 2008.

**J. L. A. OSIEMO**

**JUDGE**

