



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**

**Misc Civil Appli 19 of 2008**

REPUBLIC.....APPLICANT  
**VERSUS**

**SABOTI LAND DISPUTES TRIBUNAL COMPRISING OF:-**  
**CHRISTOPHER SAEKWO & 7 OTHERS.**

**JOHN JAMIN MUSUNDI.....EX-PARTE.**  
**R U L I N G.**

The application dated 4/3/2008 by John Jamin Musundi for leave to apply for an order of certiorari to quash the decision of Saboti Disputes Tribunal which admittedly was read and adopted as a judgment of the court on 21/1/2008 in Kitale CMC Land case no. 22 of 2007 is in substance misplaced and in form wrongly framed. The latter is not fatal. It relates to the error by the applicant in reflecting the Republic at this stage as the applicant. The manner in which the application should have been framed was explained in **MOHAMED AHMED vs. REPUBLIC 91957) EA 323** and **FARMERS BUS vs. TRANSPORT LICENSING (1959) EA 779.**

On substance, the court is enjoined to ascertain whether there is a prima facie evidence of an arguable case. To do this, the applicant must show that there exists a decision that is amenable to the remedy of judicial review and prima facie evidence of an arguable case for the order of certiorari.

The applicant avers in the application that the award sought to be quashed was on 21/1/2008 adopted as a judgment of the court in Kitale CMC Land case No. 22 of 2007. In effect therefore, the decision sought to be quashed no longer exists having been converted into a judgment from which a decree does ensue in accordance with the provisions of section 7 (2) of The Land Disputes Tribunals Act 1990. In the absence of a decision amenable to the remedy of judicial review, it is not possible for the applicant to show prima facie evidence of an arguable case. For this reason, I strike out the application on the ground that it is incompetent as it seeks to quash a decision that does not exist. It is so ordered.

**G.B.M. KARIUKI.**

**JUDGE.**

**11/3/2008.**