

Interested Party, the 1st Respondent wrongfully and without jurisdiction or standing conducted certain proceedings whereby he purported to void the contract made between the 1st Interested Party and the Applicant for the sale by the said Interested Party to the Applicant of a portion of the subject parcel thereby purporting to deprive the Applicant of his property acquired through purchase.

vi. *The 1st Respondent's action were not lawful and are oppressive, injudicious and unconstitutional.*

vii. *The 1st Respondent lacks the necessary jurisdiction or standing to do what he purported to do.*

viii. *The decision of the said Respondent is a total nullity and ought to be removed to the High Court and quashed."*

3. The grounds are repeated in the Affidavit sworn 15.2.2006 and adopted wholly in submissions by the advocate for the decree holder.

4. The Respondents and Interested Parties were duly served but none filed any response and so I cannot tell what their side of the story is. That notwithstanding I will dismiss the Application for the following reasons.

5. Firstly, although leave was granted on 27.2.2006 by Onyancha,J. the decision purportedly dated 8.11.2005 is not annexed to the verifying Affidavit sworn on 15.2.2006. It is trite law that a decision can only be subjected to scrutiny by this court and quashed if necessary if that decision is before it. Without compliance thereof it would be a legal absurdity to purport to do so. What is even more surprising in this case is that at paragraph 5 of the Affidavit, the ex-parte Applicant depones as follows:-

"That the 1st Respondent without the authority and necessary jurisdiction to do so took upon himself to entertain the said complaint and wrongfully made a decision which I verify believe to be a total nullity for lack of jurisdiction and locus standi."

6. How can this court determine that the decision is a nullity for want of locus standi or jurisdiction when there is in fact no decision placed before it? I submit that it cannot.

7. Secondly, although reference is made in the Statement of Facts and the Affidavit to certain agreements for sale of land, no such agreements are in fact exhibited. At paragraph 3 of the Affidavit aforesaid it is said that the agreements are annexed and marked as "PKM". They are not annexed.

8. Without belaboring the point, the Application before me is without such facts as can enable this court to properly determine it although in fact it is not opposed.

9. The above being my finding, the motion dated 9.3.2006 is less than serious, exhibits no merit and can only be dismissed as I hereby do with no order as to costs.

10. Orders accordingly.

Dated and delivered at Machakos this 15th day of October 2008.

Isaac Lenaola

Judge

In the presence of: Mr. Kamanda h/b for Mr. Mulwa for Applicant

Isaac Lenaola

Judge