



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
MISC CIV APPLI 117 OF 2006
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI
AND
IN THE MATTER OF LAND DISPUTES ACT
REPUBLIC.....APPLICANT
V ERSUS
RAEL MBURA M'IMARIA
MWATHATHI M'IMARIA.....EXPARTE -APPLICANT
AND
CELINA KANINI M'IMARIA.....1ST RESPONDENT
MERU NORTH LAND DISPUTE TRIBUNAL.....2ND RESPONDENT

R U L I N G

1. The Applicants (ex-parte) Rael Mbura M'Imaria and Mwathathi M'Imaria by their application dated 13.7.2006 and amended on 10.11.2006 are seeking leave to institute judicial review proceedings in the nature of **“certiorari and prohibition to quash proceedings and award of Land Dispute Tribunal Meru North Case No. 33 of 2005 and PM – Maua LDT No. 40 of 2006 and any other subsequent orders.”** The second prayer is that such leave, if granted do operate as a stay of proceedings and judgment.
2. I have read the amended Chamber Summons, the **“Supporting Affidavit”** and the statement of facts dated 13.7.2006. What I gather from all those documents is that the Applicants are the wives of one M'Imaria M'turuciu (deceased). The dispute between the said applicants and one Celina

Kanini M’Imaria, named in error as the 1st Respondent, relates to a parcel of land whose identity is not disclosed in the Summons or any other document on record save that from the decision of the Meru North Land Disputes Tribunal it is described as “**land located in an area which is not yet declared adjudication area, It estimate about one hundred fifty (150) acres**”. (Sic) I am therefore completely unable to tell and counsel for the Applicants did not make the point, what parcel of land specifically is the subject of the dispute. What area even if unadjudicated is in issue? Without such specifics I do not then see how this court can connect the rights of the Applicants to that parcel of land. It is generally trite law that a party coming to seek leave to institute judicial review proceedings must establish his/her interest in the matter and only in public interest cases, so far as I know, can courts relax that general rule. To that extent, the Applicants in their very ambiguous Application have hit their first hurdle.

3. In addition to the above, the Applicants even if I had the benefit of knowing their interest in the land or the specifics of the land in issue have claimed that they represent one M’Imaria M’Tuaruciu (deceased) their common husband who was the “**owner**” of the land and who left them on that land. It is unclear to me what locus standi the two have to make the application in the name of the deceased. No evidence has been tendered to connect them to the deceased person as his legal representatives, even if the claim that he owned unadjudicated land could be sustained, and I think it cannot. Another problematic issue with the summons is that the decision sought to be challenged was made on 10.11.2005 and the Application for leave was filed on 12.7.2006, more than six (6) months after the decision. No attempt, in spite of directions by this court, to explain that anomaly has been made. The same is in my view statute time barred and cannot be saved.
4. It is never the wish of this court to deny a party coming to court the chance to ventilate his/her grievances especially in a land related dispute. However, where an Applicant brings to court an incompetent and misguided Application, the court cannot close its eyes to incompetence and allow it merely because it relates to land.
5. The Application dated 10.11.2007 should not see the light of day and once I find that there are no grounds for seeking leave, it must fail.
6. The Application is dismissed with no order as to costs.

Orders accordingly.

Dated, signed and delivered in open court at Meru this 6th Day of February 2007.

ISAAC LENAOLA

JUDGE

In the presence of

Mrs Kaume Advocate for the Applicant

Advocate for the Respondent

ISAAC LENAOLA

JUDGE