



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

Misc Civ Appli 607 of 2007

GEORGE J. ODHIAMBO

NEREA AWINDA NYAMBARE

OLIPA IMBOGA MASITSA

JONAH MASITSI.....APPLICANTS

Versus

CHAIRMAN CHILCHILA LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

PRINCIPAL MAGISTRATE KERICHO.....2ND RESPONDENT

**CHAIRMAN SCHOOL COMMITTEE KAPKOROS PRIMARY
SCHOOL.....INTERESTED PARTY**

RULING

By a Chamber Summons dated 5th June 2007, the Applicants, George Odhiambo, Nerea Awinda Nyambare, Olipa Imboga Masitsa and Jonah Masitsa, seek the leave of the court to bring Judicial Review Proceedings for an order of certiorari to call for and quash the decision of Chilchila Land Disputes Tribunal in respect of Kunyak Settlement Scheme land parcels 190, 191, 192 and that there be stay of the said decision.

The Chamber Summons is supported by an Affidavit sworn by Nerea Awinda NYambare and a statement of facts filed in accordance with Order 53 Civil Procedure Rules. The grounds upon which the Application is brought are that the Applicants are the owners of the said plots 190, 191, and 192; that they were not given a fair hearing at the Tribunal; that the Tribunal had no jurisdiction to determine the issue of ownership of land; and that the Land Dispute Tribunal determined the issue of adverse possession which is the preserve of the High Court.

The Chamber Summons was opposed and two Replying Affidavits were sworn by Joseph Kiprotich Langat and John Chebochok. The Respondents contend that the Application is brought out of time, the decision of the Land Dispute Tribunal having been made on 8th November 2006, since the law provides that an application seeking an order of certiorari be made within six months.

It was also argued that since the Applicants allege that the owners of the disputed lands are deceased, the Applicants have not exhibited any letters of Administration and have no locus in the matter.

It is the Respondents further contention that the Respondents should proceed on appeal as the Land Dispute Tribunal acted within its jurisdiction by determining a boundary issue.

The Applicants claim that they are the owners of plots Nos 190, 191 and 192 which were the subject before the Chilchila Land Disputes Tribunal in claim No. 599/06. However, save for the 2nd Applicant, Nerea Awinda Nyambare, who has exhibited a certificate of outright purchase (NAN 2), none of the other Applicants have demonstrated that any of the pieces of land belong to them.

It was deponed that James Ndolo Rowa purchased plot 190 while Erastus Masitsa purchased plot No. 192 and both are deceased. So far none of the Applicants have exhibited evidence in the form of letters of Administration that they are the Administrators of the deceased's Estates. They therefore do not have the capacity or 'locus standi' in this matter and would not be entitled to leave. This fact of lack of locus standi is also good reason for interference with the decision of the Land Disputes Tribunal because the Applicants did not have the capacity to be brought into that dispute as parties till they attained capacity.

However, Nerea Awinda Nyambare has shown that she bought the land and has the capacity to seek leave.

I have seen the decision of the Land Disputes Tribunal and at issue 'F' the Tribunal seemed to determine the question of adverse possession and whether there was a sale agreement between Kapkoros Primary school and the owners of the plots. These two points would bring into question the jurisdiction of the Land Disputes Tribunal.

As earlier pointed out, lack of letters of Administration by the Respondents also raises the question of whether they were proper parties to the claim before the tribunal and that would be ground to grant leave to the Applicants if they were properly before this court.

As regards the issue of time for bringing the Application for Judicial Review, the question would be whether Order, 53 Rule 2 applies to decisions which are null and void ab initio. It is an arguable issue. Besides, the decision of the Tribunal was adopted by the court on 18th January 2007 and the 2nd Applicant would be in time to challenge the decision of the court which would affect the decision of the Land Disputes Tribunal. I have seen the Chamber Summons Application and the Statement in support. The Applicants do not challenge the decision of the court adopting the award of the Tribunal at all but only challenge the decision that of the tribunal. That being the case, it would not serve any purpose granting leave to Nerea Awinda Nyambare to bring an Application for Judicial Review when the Application is defective

The Application to grant leave is refused for the various reasons given in the ruling, that the application is defective and that the 1st, 3rd and 4th Applicants lack capacity to bring an Application for Judicial Review.

Each party bears its own costs.

Dated and delivered this 20th day of July 2007.

R.P.V. WENDOH

JUDGE

Read in presence of

Mr. Mulimo holding brief for Motanya for Interested Party

Mr. Ongeri holding brief for Mr. Nyagwencha for Applicant

Daniel: Court Clerk

R.P.V. WENDO

JUDGE