



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Civi lAppli 861 of 2007**

**IN THE MATTER OF AN APLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
SEEKING FOR ORDERS OF CERTIORARI AND PROHIBITION BY BEATRICE  
CHEROTICH KOSKEI AND GEOFFREY KIPKURUI NGETICH**

**AND**

**IN THE MATTER OF DECISION BY THE OLENGURUONE LAND DISPUTES TRIBUNAL IN  
LAND DISPUTES TRIBUNAL CLAIM NO.56**

**OF 2006**

**AND**

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

**AND**

**IN THE MATTER OF THE AWARD BY OLENGURUONE LAND DISPUTES TRIBUNAL  
SENIOR RESIDENT MAGISTRATE COURT AT MOLO IN DISPUTE NO.36 OF 2006**

**BETWEEN**

**BEATRICE CHEROTICH KOSKEI**

**GEOFFREY KIPKURUI NGETICH.....APPLICANTS**

**AND**

**OLENGURUONE LAND DISPUTE TRIBUNAL..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL MAGISTRATE, MOLO LAW COURTS.....2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR NAKURU.....3<sup>RD</sup> RESPONDENT**

**AND**

**KIPKEMOI A. CHEPKOSIOM**

**RAEL CHEPKOSIOM .....INTERESTED PARTIES**

**RULING**

An interesting point of law has arisen at the outset. Applicants' counsel acknowledges having served respondents on 17.08.07 with the chamber summons dated 07.08.07 supposed to be for hearing today. Respondents' counsel informs court that respondents instructed his firm on 20.08.07; that he noted defects in the application which in his view make the application incompetent such as to make it a nullity. Respondents' counsel, therefore, wishes to raise a preliminary objection to the application as it stands today.

On the other hand, applicants' counsel submits that the application ought to be ex-parte at this stage seeking leave to file the substantive application; that the present application for leave ought to proceed unimpeded and that whatever points of law respondents wish to raise should be raised when the present application for leave has been heard, leave granted and the substantive application filed. Additionally, applicants' counsel submits that respondents' counsel never notified him of intention to raise a preliminary objection, that he is, therefore, ambushing him and that the court should not allow that.

I note that respondents were served with the present application for leave on 17.08.07, i.e. last Friday. Today is Tuesday 21.08.07. Respondents' counsel says he was instructed only yesterday and has had no time to file formal notice of the preliminary objection. But he adds that he did not have to file formal notice of intention to raise a preliminary objection and that a preliminary objection can be raised at any time.

If, as respondents' counsel contends, the present application is defective and incompetent, any proceedings based on it would be a nullity and a waste of everybody's time. It is trite law that a preliminary objection can be raised at any time and that if such an objection exists, it is preferable for it to be raised at the earliest possible opportunity. I, therefore, hold that respondents' counsel is entitled to raise his preliminary objection to the application as it stands, for the applicants to respond thereto for the court to make a determination thereon.

Accordingly, I allow respondents' counsel to raise his preliminary objection for applicants' counsel to respond thereto but if applicants' counsel prefers to be served with formal notice thereof first, he is at liberty to seek adjournment of today's proceedings.

**Dated at Nairobi this 21<sup>st</sup> day of August, 2007.**

**B.P. KUBO**

**JUDGE**