



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Civil Case 62 of 2007

1. Land and Environmental Law Division
2. Subject of title. Judicial Review From Migori Land Disputes Tribunal
3. Application for leave to apply for orders of Certiorari dated 29 October 2007 filed 3 October 2007.

Reasons

- a) Rebecca Nyamisi Mose inherited land LR Kamagambo/Kayimach/82 from her late husband.
- b) Land bought by her late husband through an auction
- c) Children (adult) of original owners sued in the Land Disputes Tribunal for ownership
- d) Tribunal granted them full ownership despite Rebecca Nyaumusi Mose holding a title deed.
- e) Tribunal exceeded their powers?
- f) Leave sought for certiorari to quash orders of tribunal.

4. Held: Leave to bring Judicial Review for orders of certiorari against the Land Dispute Tribunal be granted.

5. Case law- nil

6. Advocate:

E. Oduk of Advocate for the plaintiff-exparte/applicant- present

IN THE MATTER OF TITLE NO. KAMAGAMBO/KANYIMACH/82

AND

**IN THE MATTER OF MIGORI DISTRICT LAND DISPUTE TRIBUNAL MISCELLANEOUS
CASE NO.38 OF 2007**

(RE:MIG/DNG/LDT/07/LPN/82

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF REBECCA NYAMUSI
MOSE.....APPLICANT**

AND

MANASSE SABARA OTWERE 1ST RESPONDENT

ZABLON ODARI OTWERE 2ND RESPONDENT

JOASH KIVONI OTWERE 3RD RESPONDENT

MIGORI DISTRICT LAND DISPUTES TRIBUNAL.....4TH RESPONDENT

RULING

1: Background

1. Rebecca Nyamisi Mose inherited land parcel Kamagandio/Kayimach/82 from her late husband, Joseph Orina Onchieku. Her late husband purchased the land on 7 May 1988 in a public auction which was held against the original owner for debt due to a third party. The original owner was Juoto Otwere Sabana who spent a considerable time in court trying to reclaim this land. He passed away on 1 October 2001.
2. His children pursued the claim to this land. In the end they filed a Land Disputes Tribunal Court case at Migori which heard and determined the dispute that revolved around who was the rightful owner of the land. The tribunals award was that the whole parcel of land be given to the children of the original owner who are now adults.

II: Application for leave

3. Rebecca Nyamisi Mose filed his Judicial Review against the Land Disputes Tribunal seeking orders of certiorari to quash the decision of the tribunal as they had exceeded their jurisdiction. Her application is dated the 29 October 2007 and filed on 31 October 2007.

III: Leave

4. The application has been brought against a quasi judicial body. The orders of certiorari can only be applied for if it is brought within 6 months of when the decision was given. In his applciaiton the tribunal made their decision on 2 October 2007. This application is therefore filed within time required.
5. This court grants the application for leave to commence judicial review proceeding for orders of certiorari to quash the decision of the said tribunal having exceeded its powers and mandate. That such leave operates as a stay.
6. The application shall be made within 21 days by notice of motion to the High court. That there shall be at least eight clear days between the service of the notice of motion and the day named herein for hearing. The costs will be in the cause.

Dated this 8th day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

E. Oduk of Oduk & Co. Advocates for the plaintiff /Ex parte/applicant -present