



REPUBLIC OF KENYA

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

Misc. Civ. Case 62 of 2007

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 Otware 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 application 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`