



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUNGOMA

Civil Misc Cause 75 of 2006

**IN THE MATTER OF AN APPLICATION BY NATHANIEL MAKHAPILA SAPAYA FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW OF CERTIORARI**

AND

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990 IN THE
KANDUYI LAND DISPUTES TRIBUNAL 18/05 AND BUNGOMA SPM'S MISC. NO.6/06**

BETWEEN

REPUBLIC.....APPLICANT

VS

1. SHADRACK WALEMBA MAKHAPILA

**2. MUSA WANGILA MAKHAPILA.....INTERESTED
PARTIES**

EX PARTE

**NATHANIEL MAKHAPILA
SAPAYA.....APPLICANT**

RULING

By an ex parte application by way of Chamber Summons, pursuant to the provision of Order LIII Rule 1 and 2 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act (cap 26) Laws of Kenya, the applicant seeks orders:

1 That the applicant:

- (i) Nathaniel Makhapila Sapaya be granted leave to apply for judicial review orders of certiorari to remove into this Court and quash the proceedings and award of Kanduyi Land Disputes Tribunal in claim no.18/05 judgment of the Court on 21.2. 2006 vide Bungoma SPM's Misc. Case no.6/06.
- (ii) That the grant of leave herein do operate as a stay of execution of proceedings in respect hereof.
- (iii) That costs of the application be provided for.

The application is based on the grounds:

- (a) That the tribunal had no jurisdiction to arbitrate in a dispute involving a registered parcel of land in terms of evicting the applicant for purposes of allowing the interested party to occupy all of it in total disregard of the fact that the registered proprietor is the applicant and no suit has been filed in Court to challenge his ownership.
- (b) The interested party herein have no cause of action as they have no legal interest in E.BUKUSU/E.SANG'ALO/394 which is registered in the names of the applicant.
- (c) The panel of elders had no jurisdiction to arbitrate on a case where fraud was alleged.

The application is predicated upon the annexed affidavit of Nathaniel Makhapila Sapaya and statements of facts filed herewith.

The applicant is predicated upon the affidavit in support and by way of submission urged me to find that the Land Disputes Tribunal had no jurisdiction to entertain the claim of eviction for purposes of allowing the interested party to occupy the land parcel no.EAST SANG'ALO/394, Registered in the name of the applicants as per exhibit marked "NMS 1" in the affidavit in support.

That the panel of elders had no jurisdiction to arbitrate on a case touching on a registered land. I have noted from the statement of facts, that the award was read as judgment of the Court vide Bungoma Misc. No.6/06 on 21st February 2006, a period not later than 6 months after the date of the proceedings. Order LIII rule 2 is thus satisfied.

I equally note that notice of the application for leave was served on the Registrar on 6th March 2006 as enjoined by Order LIII Rule 1 (3).

Accordingly, I grant leave in terms of prayer 1 and 2 of the application. The Notice of Motion to be filed within 21 days. Costs shall be in the cause.

Dated and Delivered at Bungoma this 13th day of March 2006.

N.R.O. OMBIJA

JUDGE