



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Misc Civ Appli 33 of 2003**

REPUBLIC APPLICANT

VERSUS

MACHAKOS DISTRICT LAND TRIBUNAL RESPONDENT

AND

SAMUEL WAMBUA KAMAMI EX PARTE APPLICANT

AND

PETER NTHENGE NGEWA INTERESTED PARTY

RULING

The main application is dated 5.2.2004 and it seeks an Order of Certiorari to bring before this court the award of Machakos District Land Tribunal Case No. 102 of 2002 for the purpose of quashing it. Before the application could be prosecuted the Interested Party represented by M/s Makau and Company Advocates filed a Preliminary point of Objection on points of law dated 21.6.2004. They include:-

- (a) That the Ex Parte applicant’s application is misconceived, bad in law and offends the provisions of Order LIII rule 1 (2) of The Civil Procedure Rules in that no notice was given to the Registrar or any filed in court together with the relevant affidavits as required.
- (b) That the Chamber Summons, if any was filed to seek leave of court, was defective, bad in law and contrary to the provisions of Order LIII rule 1(2) and rule 2 of the Civil Procedure Rules.
- (c) That the application is misconceived and bad in format and not served with copies of the affidavits accompanying the application for leave.

These Preliminary Points of Objections were argued on 14.12.2005 by Mr. Makau Senior in the absence of the Ex Parte applicant or the latter’s advocates as it turned out that they were served but did not turn up. The points taken up by Mr. Makau are therefore unopposed.

I have on the other hand, examined the court record. The motion for the certiorari order was filed on 6.2.2003 by Rachier and Company Advocates for the Ex Parte applicant. It is accompanied by an affidavit and several exhibits together numbering to 31 pages. It is not accompanied by the leave of this court to file the motion itself. It is not accompanied by a statement of facts or verifying affidavit. The accompanying affidavit does not even aver that leave of court to file the Motion was priory obtained. These omissions must have been brought to the attention of the Ex Parte applicant through these Preliminary Points of law although they need not have been. The impression given by the perusal of the file, is that the firm of A. K. B. Muthama shown to have been constantly served for the hearing of this matter, has very little interest to represent his client in this matter. It is not known whether he informs the applicant each time he is served and brushes the date aside as inconvenient, or whether he just does not

care. Whatever are the reasons for Mr. Muthama's conduct in this matter is neither do not concern or go into the heart of the format of this application. In summary, this application's format does not comply with the requirement of Order LIII rule 1 to rule 3. Order LIII is a special order which requires strict adherence in form and substance by those who apply it. The applicant herein, has not complied with its requirement.

He needed leave of court to file this Notice of Motion seeking the review order of certiorari. Such leave itself has a special method of obtaining it as provided under Order 53. I need not say much about it since there is no evidence that the applicant ever attempted to seek the leave. Then follows the Notice of Motion itself. I have already said that it did not comply with Order 53.

For the above reasons this application is clearly incompetent for being basically irregular in form and substance. It is hereby struck out. Costs are to the Interested Party, to be agreed upon or taxed. Orders accordingly.

Dated and delivered at Machakos this 3rd day of March 2006.

D. A. ONYANCHA

JUDGE