



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Misc Appli 74 of 2006

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO LODGE JUDICIAL REVIEW
ORDERS OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF THE LAND DISPUTE TRIBUNAL ACT NO.18 OF 1990

BETWEEN

THE

REPUBLIC.....APPLICANT

EXPARTE

BENJAMIN

KISIERO.....APPLICANT

VERSUS

**THE CHAIRMAN CHEPTAIS LAND DISPUTES
TRIBUNAL.....RESPONDENT**

AND

**SIMON WACHIE.....INTERESTED
PARTY**

RULING

By an application by way of Chamber Summons dated 27th February, 2006, pursuant to the provisions of order 44 Rules 1, 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 this Honourable Court be pleased to grant to the applicant leave to file Judicial Review Orders of Certiorari and Prohibition to bring into this Honourable Court and quash the proceedings, findings Award and Orders Adopting the award of the Cheptais Land Dispute Tribunal Case No.25 of 2005 as adopted as judgment of the court on 26.9.2005 vide Bungoma SPM. LDT case No.41 of 2005 and prohibition of the said Tribunal or court from entertaining the same dispute over the subject matter.*

2 *That the leave granted herein do operate as stay of execution or enforcement of the said adopted award until the substantive motion is filed; heard and determined by this Honourable Court.*

3 *Costs be provided for.*

The application is based on the grounds:

1. *That the award or recommendations made by the Cheptais Land Disputes Tribunal as adopted as judgment of the court on 26/9/2005 are void ab-initio and incapable of enforcement.*

2. *That the Cheptais Land disputes Tribunal acted in excess of its jurisdiction in that:*

(i) *Whereas the claim was for eviction from Land Parcel NUMBER NORTH MALAKISI/EAST SASURI/553, wherein the objector interested party had trespassed, the Tribunal ordered for:*

a) *Payment of balance of purchase price*

b) *Subdivision of the Land for Title Deeds to issue*

(ii) *The award was therefore outside the scope of section 3(1) of the Land disputes Tribunal Act No.18 of 1990 and unenforceable in Law.*

The application is predicated upon the annexed affidavit of Benjamin Kisiero sworn on 27th February 2006 in his capacity as the administrator of the estate of the late Zebedayo Kisiero as per exhibits "BK1". For the applicant, it was argued that the deceased Zebedayo Kisiero died on 16th November 1986 as per exhibit "BKII" and was survived by the applicant and eight other sons. That he left behind land parcel number NORTH MALAKISI/EAST SASURI/553 measuring about 39.6 hectares registered in his name as per exhibit "BK111".

That all the deceased's male sons live in this parcel of land in undivided shares. That the interested party herein occupies part of the estate of the deceased and claims purchasers interest. That prior to the death of Zebedayo Kisiero the interested part had sued him (Zebedayo Kisiero) in Kakamega HCCC No.96/1978 claiming title to the portion of the said land as per exhibit "BKIV."

That since the demise of Zebedayo Kisiero ion 1986, no application for substitution of a personal representative has been done and hence the suit abated sometimes in 1987. That no application to revive the suit has so far been made.

That upon taking out letters of administration of the estate of the deceased the applicant filed a claim before Cheptais Land Disputes Tribunal asking for eviction of the interested party from the said land as per exhibits "BKV". That to the applicant's surprise, the decision was inclusive in that they were mere recommendations as per exhibit "BKVI", *Inter-alia* the tribunal recommended that the applicant receives the balance of 20 heads of cattle and demarcation or sub-division of the land to give title to the interested party. At that point in time, the applicant had also filed another suit in Kitale High Court as per exhibit "BKVII".

It is the applicant's case that in these circumstances, the tribunal's decision is incapable of enforcement and the only option is to seek for its quashing or setting aside by way of Judicial Review, hence this application.

I have scanned through the application and finds as a matter of law and fact that the applicant has complied with all the pre-requisites. Accordingly I find that the application is merited as the same has been made within 6 months as by the relevant law enjoins.

Accordingly, I grant the application in terms of prayer 1 and 2 only. Costs shall be in the cause. In conformity with order LIII Rule 3(1) of the Civil Procedure Rules, I order that the applicant do make

application by way of Notice of Motion within 21 days and serve the same on all persons directly affected by it.

DATED and DELIVERED at Bungoma this 20th day of June 2006.

N.R.O. OMBIJA

JUDGE