



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

MISC CIV APPLI 62 OF 2006

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL

AND

**IN THE MATTER OF AN APPLICATION BY PATRICK OUMA WABWIRE FOR LEAVE TO
APPLY FOR ORDERS OF CERTIORARI**

BETWEEN

**REPUBLIC.....APPLICA
NT**

VS

**BUSIA MUNICIPAL LAND DISPUTES
TRIBUNAL.....RESPONDENT**

AND

**ROSA NEKESA OUMA.....INTERESTED
PARTY**

RULING

By an application dated 25th June, 2006, by way of Chamber summons, pursuant to the provisions of Order LIII Rule 1 (3) of the Civil Procedure Rules, the applicant seeks orders:

1 *That the applicant PATRICK OUMA WABWIRE be granted leave to apply for orders of certiorari to bring into the High Court and quash the Busia Municipal Land Disputes Tribunal award as adopted by the SRM’S Court at Busia in Busia Land Case No.10 of 2006.*

2 *That leave granted do operate as stay of execution of the decree in Busia SRM Land Case No.10 of 2006 pending the hearing and determination of the Judicial Review application herein.*

The application is grounded on matters set out in the statement and is predicated upon the affidavit of Patrick Ouma Wabwire.

For the applicant, it was argued that he (applicant) is the grandson of the late Gabriel Opondo Bunde who passed on in or about 1983 while registered as a proprietor of land parcel BUKHAYO/MUNDIKA/1106.

That the interested party is a sister to Gabriel Opondo Bunde and have not yet obtained letters of administration in respect of the deceased's estate.

In that capacity, the interested party has filed a claim before the Busia Municipal Land Disputes Tribunal in the year 2005 for purposes of obtaining title to a portion of land parcel BUKHAYO/MUNDIKA/1106 belonging to the late Gabriel Opondo Bunde.

That the said Busia Municipal Land Disputes Tribunal allowed the interested party's claim. On 22nd February, 2006 the Busia SRM Court adopted the award of the said Tribunal as a judgment of the court in Busia Land Case No.10 of 2006.

It is the contention of the applicant that the Busia Land Disputes Tribunal lacked the jurisdiction to entertain the interested party's request under Section 3 of the Land Disputes Tribunal and Section 159 of the Registered Land Act (Cap 300) Laws of Kenya. That in any event the interested party equally lacked the *locus-standi* to institute the proceedings without first having taken out the letters of administration in respect of the estate of her deceased's brother.

The applicant last and most important contention is that the interested party's claim before the Busia Land Disputes Tribunal is statute barred by virtue of the Limitation of Actions Act.

I have analyzed the evidence in support of the application and note particularly that the decision challenged was made on 22nd February 2006, a period of less than 6 months as prescribed by Order LIII Rule 2 of the Civil Procedure Rules. I equally note that all the requirements under Order LIII Rules 1(2) and 1(3) have been complied with.

Accordingly, I grant the application in terms of prayer 1 and 2 of the application.

By way of direction, the applicant shall file the Notice of Motion as provided by Order LIII, rule 3, 21 days from the date of this order.

DATED and DELIVERED at Busia this 31st day of July 2006.

N.R.O. OMBIJA

JUDGE

Mr. Bogonko for applicant.