



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

Misc Civ Appli 2 of 2006

**IN THE MATTER OF AN APPLICATION BY GABRIEL OKELLO MURWAYI OF LEAVE TO
APPLY FOR ORDERS OF JUDICIAL REVIEW**

AND

IN THE MATTER OF THE REGISTERED LANDS ACT (CAP 300 LAWS OF KENYA)

AND

IN THE MATTER OF THE LAW REFORM ACT CAP.26 LAWS OF KENYA

**REPUBLIC.....APP
LICANT**

VS

**DISTRICT LAND REGISTRAR
BUSIA/TESO.....RESPONDENT**

AND

**HUMPREY EKESA KHAUNYA.....INTERESTED
PARTY**

EXPARTE

(GABRIEL OKELLO MURWAYI)

RULING

By an application dated 16th January, 2006 by way of an ex-parte Chamber Summons, pursuant to the provisions of Order LIII Rule 1(2) of the Civil Procedure Rules, the applicant seeks orders:

(1) That this Honourable court be pleased to grant leave to the applicant to apply for orders of mandamus to direct the District Lands Registrar Busia/Teso to visit, survey, establish the boundary between land parcels No.L.R. BUKHAYO/MALANGA/130 and L.R. BUKHAYO/MALANGA/131 and file the report.

(2) Costs hereof be provided for.

The application is based on the grounds that:

- (1) The respondent has a legal duty to solve boundary disputes.**
- (2) The respondent has refused to perform his statutory duty.**
- (3) The applicant is desirous of applying for an order of Mandamus.**
- (4) It is a mandatory prerequisite that leave is sought prior to filing the substantive proceedings.**

The application is predicated upon the annexed affidavit of Gabriel Okello Murwayi sworn on the 13th day of January 2006.

For the applicant, it was argued that on 13th December, 2005, an application was made to the District Lands Registrar Busia/Teso requesting him to visit land parcel NO.BUKHAYO/MALANGA/130 and 131 with a view to resolving the boundary dispute between the applicant and his neighbour. Copies of receipts vide which the application was made are marked "GOM -01 (a) and (b)."

That the respondent reacted by a letter exhibited as "GOM – 02" declining. The visit was made conditional upon the applicant paying the cost of Civil suit No.95 of 2002, apparently ordered by the court.

It is the contention of the applicant that the respondent's refusal to undertake his statutory duty is based either on incompetence or in ignorance of the law. It could also be mischief. That this court should therefore grant leave for the applicant to apply for orders of mandamus as prayed for herein.

I have carefully analysed the evidence in support of the application and note that the decision complained of was made on 29th December, 2005 and this application made on 20th December 2006, a period of less than six (6) months as enjoined by the provisions of Order LIII, Rule 2 of the Civil Procedure Rules.

Accordingly, I grant the application in terms of prayer 1 and 2. I equally note that all other requirements under Order LIII Rules 1(2) and 1(3) have been complied with.

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

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

N.R.O. OMBIJA

JUDGE

Mr. Ashioya for Mr. Were.