

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Misc Civ Appil 183 of 2004

REPUBLIC.....APPLICANT

VERSUS

CHAIRMAN KIGUMO DIVISION LAND DISPUTES TRIBUNAL.....RESPONDENT

PAUL NDUNGU WANYEKI.....INTERESTED PARTY

R U L I N G

Paul Ndungu Wanyeki who describes himself as the interested party has come to this court under **Order LIII Rule 3** of the Civil Procedure Rules, Section 8(2) of the Law Reform Act and Section 3A of the Civil Procedure Act seeking an order of *certiorari* to remove to this court the proceedings before the Kigumo Senior Resident Magistrate's Court in Land Disputes Tribunal Number 23 of 2004 in respect of land parcel Loc.2/Gacharage/1053 for the purposes of the same being quashed. Before the application could proceed to hearing Mr. Kirubi who was holding brief for the advocate for the applicant applied for an adjournment and leave to file a further affidavit in response to the replying affidavit.

Mr. Kiminda who appears for the Respondent objects on the ground that there are no provisions under **order LIII rule 4** of the Civil Procedure Rules for the court to grant leave for a further affidavit to be filed. Mr. Kirubi however argues that the applicant is entitled under **order L rule 16** of the Civil Procedure Rules to leave to file a further affidavit since new matters have been raised in the replying affidavit.

I have carefully perused **Order LIII rule 4** of the Civil Procedure Rules and do find that sub-rule 2 clearly provides that the Court may on the hearing of the motion allow further affidavits to be used if they deal with new matters arising out of the replying affidavit.

In this case it is alleged that there are new matters raised which the applicant needs to respond to in a further affidavit. Although the court has not been told what these new matters are, I will exercise my discretion in the applicant's favour and grant the applicant leave to file a further affidavit subject to the same being limited to new issues raised in the replying affidavit and the same being filed within 14 days from the date hereof.

Dated, signed and delivered this 10th day of July 2006.

H. M. OKWENGU

JUDGE