



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUNGOMA

Misc Civil Appli 78 of 2006

**IN THE MATTER OF AN APPLICATION BY JOTHAM SIMIYU WAMBEYE FOR LEAVE TO
APPLY FOR ORDERS OF JUDICIAL REVIEW**

AND

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

BETWEEN

REPUBLIC.....APPLICANT

VS

THE CHAIRMAN, CHWELE LAND DISPUTES TRIBUNAL.....RESPONDENT

EX-PARTE

JOTHAM SIMIYU WAMBEYE.....APPLICANT

VS

PROTUS KHAMALA BIKETI.....INTERESTED PARTY

RULING

By an ex-parte application by way of Chamber Summons pursuant to the provisions of Order LIII Rules 1(1), (2) and (4) of the Civil Procedure Act and section 8 and 9 of the Law Reform Act and other enabling provisions of the laws the applicant seeks orders:

- 1) *That leave be granted to the ex-parte applicant to move this honourable court for orders of certiorari to remove into this court and quash the decision of Chwele Land Disputes Tribunal which was read and adopted as judgment of the court on 14th February, 2006 in BUNGOMA SPMCC vide LDT Case No. 55 of 2005.*
- 2) *That the grant leave do operate as a stay of proceedings pending the hearing and determination of the substantive motion to be filed.*
- 3) *That costs of this application be in the cause.*

The application is based on the grounds:

- a) *That the Chwele Land Disputes Tribunal acted in excess of jurisdiction in reaching the said award.*
- b) *That the Chwele Land Disputes Tribunal decision was a nullity for all intents and purposes as it seeks to confer proprietary rights where none exist.*
- c) *That the Chwele Land Disputes Tribunal Award was unreasonable in all circumstances of the case and a flagrant breach of the rights of proprietorship conferred by sections 27 and 28 of the Registered Land Act Cap 300 Laws of Kenya*

That the award of the Chwele Land Disputes Tribunal runs counter the express provision of section 134 of the Land Disputes Tribunal Act 1990 and was a nullity for all intents and purposes.

- e) *That the Chwele Land Disputes Tribunal had no jurisdiction to entertain the dispute in the first place.*

The application is predicated upon the annexed affidavit of Jotham Simiyu Wambeye sworn on the 10th day of March 2006.

For the applicant, it was argued that he is the absolute registered proprietor of title NO.BOKOLI/MUKUYUNI/379 as from 25th May 1977 as per exhibit "JSW11"

That the deceased Wambeye Ndinyo was the applicant's father and was registered owner of land parcel No.BOKOLI/CHWELE/453. Succession proceedings in respect of the deceased has not been undertaken.

That on or about 1975 the deceased during his life-time informed the applicant that he (deceased) had sold about 1 ¼ acres of the land to the interested party a part of land parcel NO.BOKOLI/CHWELE/453 to enable him pay dowry for his (applicant's) brother James Wangila Wambeye. That he was not a party to the transaction.

That subsequently the interested party commenced cultivation of the subject land. The applicant was under the impression that the interested party had bought 2 acres from the brother James Wangila Wambeye and had exchanged 1 ¼ acres from the portion he had earlier bought from the applicant's deceased father.

That before the applicant could institute recovery proceedings the interested party lodged a dispute with the Chwele Land Disputes Tribunal. The said tribunal deliberated over the issue and decided that the applicant transfers 3 ½ acres comprised of title No.BOKOLI/MUKUYUNI/379 as per exhibit "JSW 2".

That the applicant is aggrieved by the said award which was read and adopted as a judgment of the court on 14th February 2006 vide BUNGOMA S.P.M.CC LDT No.55 of 2006 (See exhibit JSL.3).

The thrust of the applicant's contention is that the tribunal fell into error of law in arbitrating over a matter that touched on title to land which claim was barred by Limitation of Actions Act (Cap 22 Laws of Kenya). That further, the tribunal fell into error in law in arbitrating upon a matter in which they did not have jurisdiction.

Last but not least that the decision of the tribunal ran contrary to the express provisions of section 3 of the Land Disputes Tribunal Act No.18 of 1990 and hence a nullity for all intent and purposes.

The applicant has given notice of the application to the Registrar and has equally lodged with the Registrar copies of statement and affidavits in accordance with Order LIII rule 1(3) of the Civil Procedure Rules.

The law relating to leave is now well settled. The application for leave "By Statement" – the facts relied

upon should be stated in the affidavit [*See R. v. WANDSWORTH JJ EXP READ [1942] 1 K.B. 281* -.
“The statement” should contain nothing more than the relief sought, and the grounds on which is sought.

In the case of certiorari, leave shall not be granted, unless the application for leave is made not later than six (6) months after the date of the proceedings or such shorter period as may be prescribed by any Act.

The decision complained of was made adopted as a judgment of the court on 14th February, 2006. Having considered the contents of the affidavit in support, I am persuaded that leave should be granted. Accordingly, there shall be orders in terms of prayer 1, 2 and 3 of the application.

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

DATED and DELIVERED at Bungoma this 22nd day of December, 2006.

N.RO. OMBIJA

JUDGE

Mr. Makali for the applicant.