



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUSIA**

**Civil Misc 45 of 2006**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE LAW OF SUCCESSION ACT CAP 160 LAWS OF KENYA**

**AND**

**IN THE MATTER OF AN APPLCIATION BY WENJESLAUS OBOTE FOR AN ORDER OF  
CERTIORARI**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**CHAKOL LAND DISPUTES TRIBUNAL .....  
RESPONDENT**

**AND**

**RAPHAEL OURWATE ESABA .....  
INTERESTED PARTY**

**RULING**

By an ex-parte application by way of Chamber Summons pursuant to the provisions of Order LIII

rule 1(1), (2) and (3) of the Civil Procedure rules the applicant seeks orders:

**1. That the applicant Enjeslaus Obote be granted leave to apply for an order of certiorari to call into the High Court and quash the ruling and orders made by the Chakol Land Disputes Tribunal as adopted by the Principal Magistrate as the judgment of the Principal Magistrate, Busia vide BSA P.M LDT NO.78 of 2005 on 17.11.2005.**

**2. That the grant for leave to operate as a stay of the said Chakol Land Disputes Tribunal's ruling and adoption by the Principal Magistrate's court together with all subsequent orders over parcel of land NO.S.TESO/ASINGE/746 pending the hearing and final determination of the application for Judicial Review.**

The application is based on the statutory statement of facts dated 11<sup>th</sup> May 2006 and the affidavit of Wenjesllaus Obote sworn on the 11<sup>th</sup> day of May 2006.

For the applicant, it was argued that the Chakol Land Disputes Tribunal ruled that the interested party do give one acre out of land parcel NO.SOUTH TESO/ASINGO/746. The ruling/decision and the proceedings are annexed to the affidavit in support and marked as exhibit "No.2".

That on 17<sup>th</sup> November 2005 the Principal Magistrate, Busia adopted the Tribunal's Award as judgment of the court. The judgment is annexed to the affidavit in support and marked as exhibit "WO2."

The applicant's contention is that both parties to the Chakol Land Disputes Tribunal lacked the capacity to sue and be sued as the land in dispute belonged to the deceased in respect of whose estate no succession proceedings have commenced [See exhibit "WO3".]

That on the premises the Tribunal acted ultra-vires. It had no jurisdiction to adjudicate on matters touching on the said estate, leave alone ordering the alteration of the title which belongs to a deceased person whose estate has not been the subject of succession proceedings.

At this stage, so far as certiorari, is concerned the onus is on the applicant to show by affidavit and statutory statement that at least some of his/her rights have not been observed in some particular manner. That he/she has been unfairly treated which would be the subject of Judicial review. That the subject decision has been made by a judicial or quasi-judicial body.

The thrust of the applicants case, as I understand, is that the Chakol Land Disputes Tribunal backed the requisite jurisdiction to alter title to a parcel of land whose owner is dead before succession proceedings is completed. Hence the decision of the said Tribunal should be quashed.

The law relating to leave is now well settled. The application for leave "By statement" – the facts relied on should be stated in the affidavit [see *R. V. Wendsworth JJ EXP READ (1942) 1. K.B. 281* – "The Statement" should contain nothing more than the relief sought, and the grounds on which it is sought.

In the case of certiorari, the 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 on the 17<sup>th</sup> day of November 2005 and this application made on the 11<sup>th</sup> day of May 2006, a period of less than six (6) months as enjoined by the provisions of Order LIII rule 2 of the Civil Procedure Rules. All other requirements of Order LIII Rules 1 (2) and 1(3) have been complied with.

Accordingly, I grant the application in terms of prayer 1, 2 and 3 only.

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 Busia this 22<sup>nd</sup> day of December 2006.**

**N.R.O. OMBIJA**

**JUDGE**

Mr. Ashioya for Mr. Onsongo for the applicant.