



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

**Misc Appli 77 of 2003**

**IN THE MATTER OF AN APPLICATION BY ONE MR. ANDREW SHIRACHI  
KHUNALO FOR LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE DECISION OF THE IKOLOMANI LAND DISPUTES  
TRIBUNAL DECISION (UNDATED AND WITHOUT CASE REFERENCE) MADE  
AGAINST ANDREW SHIRACHI KHUNYALO IN RESPECT OF L.R. NO.**

**IDAKHO/SHISESO/955**

**AND**

**IN THE MATTER OF THE RULING/DECISION OF KAKAMEGA CM MISC. APPL.  
NO. 127 OF 1999 DELIVERED ON 13/10/99 BY R. A. OGANYO, RESIDENT  
MAGISTRATE WHICH DECISION FULLY ADOPTED THE SAID IKOLOMANI  
LAND DISPUTES TRIBUNAL COMMITTEE DECISION AS JUDGEMENT**

**BETWEEN**

**ANDREW SHIBACHI KHUNYALO .....APPLICANT**

**VERSUS**

**1. THE CHAIRMAN IKOLOMANI L.D.T. COMMITTEE**

**2. SIMON ASHIONO MUSINDI**

**3. BOAZ ASHIONO SHISANYA.....RESPONDENTS**

**RULING**

The Resident Magistrate at Kakamega, R.A. Oganyo (Mrs.) on 13.10.99 adopted as a judgement of the court the award made by Ikolomani Land Disputes Tribunal in Land Dispute No. Idakho/Shiseso/955.

In the Notice of Motion dated 25.6.2003, the Applicant, Andrew Shibachi Khunyalo , sought an order of Prohibition to prohibit the Respondents, the Chairman of Ikolomani Land Disputes Tribunal and Simon Ashiono Musindi and Boaz Ashiono Shisanya from replying on the ruling or award of the said Tribunal and also to prohibit the Tribunal from entertaining the third Respondent's claim. The second prayer in the Motion was for an order of prohibition to prohibit the Kakamega Chief Magistrate's court from adopting as a judgement of the court the award made by the Ikolomani Land Disputes Tribunal.

It is not denied that the award was adopted on 13.10.99. The orders sought are therefore not available to the applicant for the simple reason that the Notice of Motion was overtaken by events. The award having been adopted as a judgement of the court on 13.10.99, it was not open to the Applicant to seek the orders in the Notice of Motion to prohibit the adoption. Nor would there be any legal basis for the order of mandamus sought to compel the Chairman of Ikolomani Land Disputes Tribunal and/or the Chief Magistrate court at Kakamega to review or rehear the land dispute or to strike out the proceedings in the Ikolomani Land Disputes Tribunal and/or the Ruling as there are no such proceedings and/or Ruling pending. The prayer for mandamus was obviously misconceived. There is no merit in the Notice of Motion and the reliefs sought in it are misplaced and cannot be granted in the circumstances of this case.

The application is dismissed with costs to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. It is so ordered.

*Dated at Kakamega this 15<sup>th</sup> day of April, 2005.*

**G. B. M. KARIUKI**

**J U D G E**