



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**MISC. CIVIL CASE NO. 15 OF 2000.**

**NYAMIRA F.C.S..... APPLICANT.**

**VERSUS**

**THE CHIEF LAND REGISTRAR )**

**THE DISTRICT LAND REGISTRAR ) ..... RESPONDENT.**

**(TRANS NZOIA)**

**R U L I N G.**

Before me is a very unusual application. The same is an ex-parte chamber summons brought to court under OL r.10 Civil Procedure Rules and sections 3, 3A and 63 of the Civil Procedure Act.

It is noted that OL r.10 has 4 subrules but counsel has not specified which rule he is relying on. Section 63 of the Civil Procedure Act also has 5 sub sections. Counsel did not see the need to specify under which sub section his application is grounded. He cannot be basing the application on all these sub-rules and subsections.

On this ground alone, his application should be deemed as incompetent and the same should be struck out. I will nonetheless decide the application on merit in order to dissuade the applicants from re-filing the same application while citing the specific provisions of the Civil Procedure Rules. The applicants are seeking for orders that

***“That the applicants 1, 2, 3 and 4 be allowed to be joined to this miscellaneous application No. 15 of 2000 as interested parties or in any capacity the court may deem fit and just in the circumstances.”***

He has also asked for costs of the application. The application is premised on 5 grounds, which are enumerated on the face of the application. I need not repeat them for the purposes of this application. It is also supported by the affidavit of the 1st applicant dated 22/12/2004.

Although as stated earlier on the specific provisions upon which the application is grounded are not cited, I infer from the contents of section 63 Civil Procedure Act that it must be based on section 63 (e). Section 63 (e) provides as follows:-

***63r “In order to prevent the ends of justice from being defeated, the court may***

***(a) Make such other interlocutory orders as may appear to the court to be just and convenient.”***

I emphasise here the word interlocutory. The word interlocutory refers to something that is intermediate – between the beginning and the end. In a civil suit, it denotes any application between the filing of the suit and the final judgment or decree. The main suit has to be alive for there to be an interlocutory order.

In my considered view there is no pending suit in this case. Further OL r.10 (2), which appears to be the provision the applicant is relying on, refers to “any stage of the proceedings”. In my view, OL r.10 (2) does not apply to a situation where the case has already been finalized. Nor does section 63 (e) Civil

Procedure Act.

The parties in this suit filed a consent on 4/3/2002. The same was adopted by the court and an order was issued pursuant to that consent order. A decree was also issued on 26/3/2002. That in effect sealed the fate of that matter. The parties never came to court to ask that the said decree be set aside. They must even have executed the decree, which was issued over 3 years ago. My finding therefore is that there is no pending suit in this case where the applicants herein can be enjoined. I also find that OL r. 10 refers to "Suits" where you have plaintiffs and defendants. It cannot apply to applications brought under OLIII Civil Procedure Rules such as Misc. case No. 15/00.

Overall therefore, I find that this application is misconceived. Same is bad in law and I dismiss the same with no order as to costs.

**WANJIRU KARANJA.**

**AG. JUDGE.**

DELIVERED, DATED AND SIGNED AT KITALE THIS 13th DAY OF APRIL, 2005

IN THE PRESENCE OF:-