

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

MISC CIV APPLI 48 OF 1999

REPUBLIC
APPLICANT

LAND DISPUTES TRIBUNAL KAPSABET
DIVISION

CHIEF KAPSABET LOCATION
RESPONDENTS

VERSUS

PAULINE JEPKEMBOI INTERESTED
PARTY

EX-PARTE RAPHAEL TANUI & KIPKEMBOI
TENAI

R U L I N G

Pauline Jepkemboi who is the interested party herein has raised a preliminary objection to these proceedings and it is her contention that the application, which was filed by Raphael Tanui and Kipkemboi Tenai is fatally defective, incompetent and bad in law for several reasons.

Briefly, Tanui and Tenai whom I shall now refer to as ‘the ex-parte applicants’, initially moved this court on 2/5/98 by way of a Notice of Motion and though they didn’t quote the sections of the law which they intended to rely on, it is clear from their prayers, that they were seeking the prerogative orders of certiorari and prohibition, which in my opinion fall under order LIII of the Civil Procedure Rules.

There is no evidence that the two had issued notices to the Registrar as is mandatorily required under rule 1 (3) of the aforementioned order, and in my own estimation there was no good cause for lack of complying with that mandatory requirement, an omission, which I dare say renders the application fatally defective.

But that was not all, for contrary to the mandatory requirement that the ex-parte applicants move the court by way of a Chamber Summons (Order LIII rule 1 (2)), they appear to have moved the court by way of a Notice of Motion.

It is for the above reasons that I find that the application was fatally defective from its inception and the same cannot be allowed to remain on the records.

I do therefore uphold the preliminary and order that this application be struck out with costs to the interested party.

Dated and delivered at Eldoret this 20th day of September 2005.

Jeanne Gacheche

Judge

Delivered in the presence of:

No appearance for ex-parte applicants or interested party

No appearance for respondents