



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

**MISC APPLI 132 OF 2003**

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR ORDERS FOR  
JUDICIAL REVIEW BY STEPHEN MUTHAMI MBAU**

**R U L I N G**

Stephen Muthami Mbau hereinafter referred to as the Applicant has moved this court under Order LIII rule 1(1)(2) of the Civil Procedure Rules seeking leave of the court to apply for orders of certiorari to call into this court for purposes of being quashed the decision of the Chief Land Registrar and or Commissioner of lands to register one Alfayo Arisa Omwansa as proprietor/lessee from the government, of land Title No. Nanyuki Municipality Block 9/167, and further leave to apply for an order of prohibition against the commissioner of lands from allocating, registering or in any manner conferring proprietorship interest in respect of the aforementioned property.

In the statement of facts which is supported by annexures the Applicant maintains that he is the lawful allottee of the aforementioned property but that the commissioner of lands or the Chief Registrar of lands has caused the land to be fraudulently transferred to a 3<sup>rd</sup> party. It is evident that the 3<sup>rd</sup> party is not a party to the present proceedings. It is not clear which decision the Applicant intends to challenge as per paragraph 5 of the statement of facts. The applicant states that the process leading to the registration of the property in the name of the 3<sup>rd</sup> party commenced with the issuance of a letter of allotment to the 3<sup>rd</sup> party dated 7<sup>th</sup> May 1999. Is this then the decision that is sought to be quashed?

In short there are certain pertinent issues. Nevertheless I will grant the applicant leave to apply for orders of certiorari and prohibition as I am sure these issues will be ventilated at the appropriate time.

Since the 3<sup>rd</sup> party in whose name the aforementioned property is registered is not a party to this suit, I do not find it appropriate to order the leave to operate as a stay as such order will affect the interest of a person who is not a party to the suit.

The upshot of the above is that I do grant leave to the applicant to apply for orders of certiorari and prohibition.

Costs shall be in the cause.

***Dated this 12<sup>th</sup> day of November 2004***

**H. M. OKWENGU**

**JUDGE**