



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS CIVIL APPLICATION NO. 496 OF 2006

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF
CERTIORARI**

AND

**IN THE MATTER OF NORTH KINANGOP LAND DISPUTE TRIBUNAL AND ROBERT
MAINA GATURI AND MBOGO CHEGE GATHEKA**

REPUBLIC.....APPLICANT

AND

NORTH KINANGOP LAND DISPUTES TRIBUNAL1ST RESPONDENT

**NYAHURURU SENIOR PRINCIPAL MAGISTRATE'S COURT.....2ND
RESPONDENT**

AND

EX-PARTE:

JOHN MBUI KANYUGI

JOHN MACHARIA KANYUGI

TERESIA GITIRI NGONE

PETERSON

NJERU

HEZEKIAH MWANGI

NGATHUITA

AND

ROBERT MAINA GATURI

MBOGO CHEGE GATHIEKA.....INTERESTED

PARTIES

RULING

1. By the Notice of Motion dated 17/06/2013 the Applicant sought to set aside and discharge the *ex-parte* orders issued by this court on 13/03/2009 together with costs.
2. The application is premised on the grounds on the face of the application and those in the affidavit of the Interested party sworn in support of the application on 17/06/2013. The application was unopposed.
3. The North Kinangop Land Dispute Tribunal made an award on 18/10/2005 in Tribunal Case No. 24 of 2006 whose adoption is pending before the Nyahururu Principal Magistrate's Court in Land Dispute Case No. 29 of 2006.
4. The *ex-parte* applicant filed a Chamber Summons application on 25/10/2006 seeking leave to institute proceedings in this court for an order of certiorari to quash the said decision and that the leave operates as stay of proceedings or execution in Nyahururu Principal Magistrate Land Dispute Case No. 29 of 2006.
5. The application was allowed as prayed on 13/03/2009 and the *Ex-parte* Applicant directed to file the substantive motion for an order of certiorari within 21 days. The *ex-parte* applicant however neither filed nor served the substantive motion within the stipulated time of 21 days or at all. As a result the lower court cannot adopt the award of the Land Disputes Tribunal to the detriment of the 1st Interested Party.
6. Counsel for the interested parties therefore urged the court to allow the application and set aside the orders.

ISSUES FOR DETERMINATION

7. The sole issue for determination is whether the Applicants have demonstrated sufficient cause to warrant the discharge of the existing *ex parte* orders.

ANALYSIS

8. In my view, this is a very straightforward case. On obtaining the orders of stay of the proceedings in the lower court which in essence restrained the adoption of the award made by the tribunal, the subject was satisfied and found no reason to pursue his claim further. Consequently, he failed to comply with the orders of the court by not filing the substantive motion within the 21 days as directed. The subject has also not taken any steps to prosecute the matter to date.
9. In addition upon being served with the application, he filed no response to explain why he had not acted in compliance with the order of court. Evidently, as a result of his inaction, the interested parties have suffered great prejudice as they are unable to enjoy the fruits of the award by the Land Disputes Tribunal.

FINDINGS

10. The court finds that no substantive motion has been filed to date and that the applicants herein have demonstrated sufficient cause meriting the orders for the discharge of the existing *ex-parte* orders.

DETERMINATION

11. In the circumstances I allow the application. The *ex-parte* orders made on 13/03/2009 for leave and stay are hereby discharged. The interested parties are awarded costs of this application.

It is so ordered.

Dated, signed and Delivered at Nakuru this 11th day of February, 2015

A. MSHILA

JUDGE