



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
LAND AND ENVIRONMENT DIVISION
CIVIL CASE NO.129 OF 2010
REPUBLIC APPLICANT
VERSUS
THE KAJIADO NORTH LAND
DISPUTE TRIBUNALRESPONDENT
AND
KILOLE SANKAIRE.....SANGARE
EX PARTESAILOJI KALUNCHU PARANTOI

RULING

1. The matter is for ruling on Preliminary Objection dated 23.7.2014. The preliminary objection is based on the following grounds:
 1. The leave granted to the Applicant for Judicial Review dated 9th June, 2010 to remove into High Court and quash the entire proceedings, findings, ruling and or award made by the Kajiado District Land Disputes on 10th December, 2009 and any subsequent orders, ruling or confirmation of the said Tribunals award or ruling thereof be struck out as they have been extracted/drawn by an Advocate who purportedly used the business name of **Nyende & Co. Advocates** without instructions to use the said law firm's business name, hence not properly on record in this matter.
 2. The said proceedings were further drafted/drawn by an unqualified person under section 28 of the Advocates Act Cap.16 laws of Kenya, hence the order granted to him on 9th June, 2010 be set aside as the same was obtained as a result of pleadings drawn by an unqualified person under section 28 of the Advocates Act Cap. 16 Laws of Kenya.
 3. Despite the Applicant granted leave for Judicial Review dated 9th June, 2010 to remove into High Court and quash the entire proceedings, findings, ruling and or award made by the Kajiado District Land Disputes on 10th December, 2009 and any other subsequent orders, ruling or confirmation of the said tribunals award or ruling thereof, he has never filed the substantive application that was ordered for this matter, neither has he made an attempt to invite the Exparte Applicant for any hearing for this matter but has been enjoying court order issued to him at the detriment of the Exparte Applicant, hence the leave granted shall be set aside

4. The matter be dismissed with costs in the cause.
2. The Preliminary Objection has raised fundamental issues as pertains to the advocates who drew the pleadings qualification to practice as at the time of drawing the pleadings and also the fact that since leave was granted on 9.6.10 substantive motion has never been filed yet he (Applicant) is enjoying orders issued ex parte at the grant of leave stage. The interested party thus seeks the leave granted to be set aside.
3. The only evidence of inactivity of the Advocate who allegedly drew pleadings is a copy of extract of information from LSK Website and a letter by Nyende & Co. Advocates. The court notes that on record is a motion dated 29.6.10 pursuant to leave granted on 9.6.10. The court finds at this stage improper to act on the inadequate averment on the preliminary objection to dismiss the matter at this stage. The motion on the face of it is properly on record.
4. The interested party ought to have filed an affidavit with annexures from the LSK giving the status of the advocate complained of and other factual situations averred in the preliminary objection. Attaching lists and website extracts to the preliminary objection is not enough to persuade court to strike out or dismiss the matter. The court therefore, rejects the Preliminary objection dated 23.7.14.
5. The court directs the Notice of Motion dated 29.6.2010 be canvassed by way of written submissions in the time lines to be agreed.
6. The Interested Party is at liberty to seek for the same to be dismissed if the Applicants are not expediting the hearing of the same. The provisions of Civil Procedures Code and Rules, 2010 obtains in application on dismissal for want of prosecution.

Dated and Delivered at Machakos, this 6th day of March, 2015.

CHARLES KARIUKI

JUDGE