



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
MISCELLANEOUS CIVIL APPLICATION 68 OF 2008

**IN THE MATTER OF AN APPLICATION BY BENJAMIN KISAKA MUYALA FOR JUDICIAL
REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990 AND LAND
PARCEL NO.E.BUKUSU/S.KANDUYI/659**

AND

**IN THE MATTER OF AN AWARD OF THE CHAIRMAN KANDUYI LAND DISPUTES
TRIBUNAL IN DISPUTE**

**NO.19 OF 1996 GIVEN ON 5/9/1996 AND ADOPTED BY THE BUNGOMA SENIOR RESIDENT
MAGISTRATE**

**AS JUDGMENT OF THE COURT ON 31/7/2002 IN MISC. CIVIL APPLICATION NO.14 OF
1997**

BETWEEN

**REPUBLIC.....AP
PLICANT**

~VRS~

- 1. THE CHAIRMAN KANDUYI LAND DISPUTES
TRIBUNAL.....1ST RESPONDENT**
- 2. THE SENIOR RESIDENT MAGISTRATE BUNGOMA LAW
COURTS.....2ND RESPONDENT**

AND

RITAH NEKESA

EX-PARTE**BENJAMIN KISAKA MUYALA****RULING**

This notice of motion dated 27/3/2003 (as amended on 31/12/2009) was for Judicial Review orders of *Certiorari* and *Prohibition*. The *ex-parte* Applicant asked that the award of the Kanduyi Land Disputes Tribunal (1st Respondent) delivered in Dispute no.19 of 1996 on 5/9/1996 and the proceedings of the Senior Resident Magistrate at Bungoma (2nd Respondent) to adopt the award of the judgment of the court be removed into this court by order of *Certiorari* and quashed. It was also sought that an order of *Prohibition* does issue to prohibit the 2nd Respondent from effecting the award and judgment. The grounds were that the entire proceedings and award of the 1st Respondent were a nullity as it did not have jurisdiction under section 3 (1) of the Land Disputes Tribunal Act no.18 of 1990 to determine an issue relating to the ownership of registered land. It was alleged that a Succession Court had issued letters of administration in respect of the estate of the deceased Makokha Mutayi to one John Wafula Makokha and yet the Tribunal had purported to distribute the estate, a function that did not belong to it. Lastly, that the *ex-parte* Applicant was not made aware that the Interested Party had gone to the 1st Respondent and filed a complaint against him in regard to land parcel no.East Bukusu/South Kanduyi/659 and an award given, yet he had occupied 8 acres of the suit land for over 40 years. The suit land was consequent to the succession case registered in the name of John Wafula Makokha. It is the land that the 1st Respondent ordered to be subdivided and shared out.

The award that is complained of was handed down on 5/9/1996. Under Order 53 rule 2 of the Civil Procedure Rules and section 9 (3) of the Law Reform Act (Cap. 26) the leave was not sought inside six months after the date of the award. A motion founded on leave sought after the six months is incompetent and the court had no jurisdiction to grant the Judicial Review order of *Certiorari* (**Ako v. Special District Commissioner Kisumu & Another [1989] KLR 163**). The motion is consequently dismissed and/or struck out with costs.

Dated, signed and delivered at Bungoma this 10th day of July 2012.

A. O. MUCHELULE
JUDGE