

REPUBLIC OF KENYA

High Court at Kakamega

Judicial Review 26 of 2010

REPUBLIC, EX-PARTE WILFRIDA
KHASIALA.....APPLICANT

V E R S U S
CHAIRMAN, LAND DISPUTES TRIBUNAL KAKAMEGA
NORTH.....RESPONDENT

AND

PHILIP CHITELESI.....INTERESTED
PARTY

R U L I N G

In the notice of motion dated 20th February 2010, the ex-parte applicant is seeking an order of prohibition and certiorari against the Kakamega North Land Disputes Tribunal in relation to plot number **S.KABRAS/BUSHU/1306**. Parties herein agreed to file written submissions.

From the submissions of both parties, it is evident that the Kakamega North Land Disputes Tribunal did not deliberate on the dispute. There are no proceedings and decision or order of the Tribunal attached to the application. That being the case, i will not belabour on the issue and do find that the order of certiorari is not available to the applicant. Such an order cannot be issued in a vacuum. There is nothing to be quashed.

On the other prayer for an order of prohibition, the pleadings show that the Kakamega North Land Disputes Tribunal had initiated land dispute case number 21 of 2009 between **PHILIP MULUPI CHITELESI** (claimant) and **WILFRIDA KHASIALA** and **MARTIN SHIKUKU** as the objectors. According to the objectors the suit property is registered in the names of **ISAYA ODINYON KETI** who is deceased and contend that no succession cause had been filed hence rendering the claim before the Tribunal as a non-starter. In view of the fact that the **Land Disputes Tribunals Act No. 18 of 1990** has been repealed and the **Environment and Land Court Act (No.19 of 2011)** is in force, i do find that the prayer for prohibition has been overtaken by events. Currently there is no Tribunal to be prohibited from hearing or determining any dispute between the parties and the Tribunal should be aware that it has been abolished. However, i do find that the ex-parte applicant was within his right to pray for an order of prohibition as a claim had already been filed before the Tribunal.

In the end, I do find that the application herein has been overtaken by events. The Tribunal to be prohibited has been abolished as **Act No. 18 of 1990** has been repealed. I do order that each party meet his/her own costs.

Delivered, dated and signed at Kakamega this 10th day of July 2012

SAID J. CHITEMBWE
J U D G E