



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL MISC. APPLICATION NO. 11 OF 2011(JR)

DANIEL KIPKEMOI SIELE.....APPLICANT
AND
RESIDENT MAGISTRATE, KERICHO.....1ST RESPONDENT
BOMET CENTRAL LAND DISPUTES
TRIBUNAL.....2ND RESPONDENT
GEOFFREY CHERUIYOT KIRUI.....3RD RESPONDENT

RULING

In his *ex-parte* Chamber Summons application dated 25th February 2011, the applicant seeks under **Rule 1 (1) of Order 53** of the **Civil Procedure Rules** leave to apply to this Court for an *order of certiorari* to remove into this Court for quashing the decree made by the 1st Respondent, the Resident Magistrate Court at Kericho, on 26th January 2011 in the C.M. Court Misc. App. No.104 of 2010 and the verdict of the 2nd Respondent, Bomet Central Land Disputes Tribunal.

The applicant also seeks an order of prohibition to prohibit the 3rd Respondent “*from doing any dealings*” such as registering himself as owner of the land No. Kericho/Chesoan/1830.

The prayer for leave to apply for an order of prohibition, like the prayer for leave to apply for an order of certiorari, is inelegantly framed and vague. Were it not for the fact that the formal order sought to be quashed is attached to the application, I would have been disinclined to grant the leave sought. It is necessary that decisions sought to be quashed by an order of certiorari or to be prohibited, must be set out succinctly, and with clarity and precision. An applicant who pleads vaguely and does not bring out clearly the decision/s or order/s or award/s or proceedings sought to be quashed or to be prohibited runs the risk of being denied leave not least because the law including **Section 8 (2) of the Law Reform Act** which vests power in his court to make orders of certiorari, mandamus, and prohibition (**as read with Section 9 (3) of the said Act**) anticipates that the judgment, order, decree, conviction or other proceedings in respect of which leave is sought is discernible and can easily be directed at either for quashing or for prohibition without dubity or vagueness as to what is intended to be quashed or prohibited.

I have perused the ex-parte application as well as the Statement of Facts filed pursuant to **Rule 1 (1) of Order 53** of the **Civil Procedure Rules 2010**. I have also considered the submissions of Mr. Weldon Ngetich, learned Counsel for the applicant. I am persuaded that the applicant has shown sufficient grounds to warrant the grant of the leave sought in the application.

Accordingly, I allow the application and grant pursuant to **Rule 1 (1) of Order 53** of the **Civil Procedure Rules 2010** leave to the Applicant to apply to this Court for an order of certiorari to remove into this Court for quashing the decree referred to in prayer (i) of the application.

I also grant leave to the applicant to apply for prohibition to prohibit the dealings referred to in prayer (ii) of the application.

Pursuant to **Rule 3 (1)** of the **Civil Procedure Rules**, I order that the Applicant shall file the Notice of Motion within 21 days from today and shall, within 14 days of filing serve it upon the Respondents and those who may be affected by it.

The leave herein granted shall operate as a stay of the decree and proceedings sought to be quashed until the Notice of Motion is heard and determined or until further orders of this Court.

The Notice of Motion shall be mentioned on 6/6/2011 when a hearing date shall be allocated to it.

I direct that seven (7) days prior to the mention of the Notice of Motion on 6/6/2011, the applicant shall file an affidavit stating the names of the persons served with the Notice of Motion and the dates and places of service including names of those not served and the reasons for the failure to serve.

The costs of this application shall be costs in the Notice of Motion.

DATED at KERICHO this 2nd Day of MARCH, 2011

G B M KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. Ngetich, Advocate, for the Applicant

Mr. R. Koech, Court clerk