



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

Miscellaneous Civil Application 35 of 2009

REPUBLIC.....APPLICANT.

VERSUS

KAPENGURIA LAND DISPUTES TRIBUNAL COMPRISING:

JULIUS CHEMAKAS

NELSON KIRAA

BAKARI SAKWA 1ST RESPONDENT.

TERESA NGURIASIWA

GOERGE KAMAR

P.M. KAPENGURIA 2ND RESPONDENT.

ABRAHAM LOKITE MWOK..... INTERESTED PARTY.

JACKSON KEDISIA LOYATEMEX-PARTE.

R U L I N G.

By an application by way of ex-parte chamber summons dated 27th May, 2009, pursuant to the provisions of sections 8 and 9 of the Law Reform Act, [Cap 26 Laws of Kenya] and order LIII Rules 1, 2 and 3 of the Civil Procedure rules, the applicant seeks orders:

1. **THAT**, this application be certified as urgent and the same be heard immediately upon filing.
2. **THAT**, this honourable court be pleased to grant leave to the applicant herein to file an application for judicial Review (certiorari) to remove into this honourable court and quash the award of the

Kapenguria Land Dispute Tribunal which was read and adopted as a judgment of the court in Kapenguria PMC Land Case No. 1 of 2008 on 16/1/2009.

3. **THAT**, the grant of leave do operate as stay of proceedings in Kapenguria PMC Land Case No. 1 of 2008.

4. **THAT**, the status quo prevailing on the ground on 16/1/2009 be maintained pending the hearing and determination of this application and the main application for orders of judicial review.

5. **THAT**, the costs of this application be provided for.

The application is based on the following grounds:

1. **THAT**, the tribunal acted without jurisdiction when it adjudicated a dispute over land registered under the Registered Land Act.

2. **THAT**, the tribunal acted without jurisdiction when it purported to distribute the purported estate of the interested party's mother.

3. **THAT**, the tribunal acted without jurisdiction when it adjudicated a dispute over legal ownership of land.

4. **THAT**, the interested party did not have the capacity to institute a claim on behalf of the estate of his deceased mother.

5. **THAT**, the interested party did not have the capacity to make a representative claim on behalf of the dependants, if any, of his deceased mother.

The application is predicated upon the annexed affidavit of **JACKSON KEDISIA LOYATEM** sworn on the 27th day of May, 2009 and statement of particulars dated 27th May, 2009.

On behalf of the applicant, it was argued that land over which the Tribunal adjudicated is a first registration under the Registered Land Act (Cap 300) Laws of Kenya. A certificate of official search and green card is exhibited as "JK 5" and "JK 4" respectively.

The tribunal had no jurisdiction to adjudicate over a claim over ownership. Moreover the Tribunal made an award in favour of the interested party and other persons on the basis that they were dependants of the interested party's deceased mother.

The interested party is not an administrator of the estate of the deceased mother hence lacks the requisite capacity to institute any claim on behalf of the estate. In the premises the Tribunal does not have jurisdiction to distribute the estate as it purported to do so in this case.

Though the interested party is the only claimant before the Tribunal, nevertheless, the Tribunal purported to make an award in his favour and also in favour of other persons. The interested party, in law, has no capacity to make a representative claim before the tribunals. For those reasons the award should be quashed.

The law relating to leave is now well settled. The application for leave "By statement" – the facts relied upon should be stated in the affidavit. The statement should contain nothing more than the relief sought and the grounds on which it is sought.

In the case of certiorari, leave should not be granted, unless the application for leave is made not later than six (6) months after the date of the proceedings or such shorter period as may be prescribed by the Act.

The decision complained of was made on 10th November, 2008. The award was read and adopted as a judgment of the court on 16th January, 2009. This application was subsequently made on 28th May, 2009 within six (6) months.

I have scanned through the evidence available. Having done so, I am of the persuasion that leave ought to be granted.

Accordingly, there shall be orders in terms of prayer 2, 3, 4 and 5 of the application.

By way of direction, the applicant shall file the Notice of Motion within 21 days from the date of this order as prescribed by the provisions of order LIII Rule 3 of the Civil Procedure Rules.

Dated and delivered at Kitale this 1st day of July, 2009.

N.R.O. OMBIJA.

JUDGE.

Mr. Njoroge for applicant.