



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Miscellaneous Civil Application 34 of 2009

REPUBLIC.....APPLICANT.

VERSUS

**THE CHAIRMAN,
SABOTI DIV. LAND DISP. TRIB.....1ST RESPONDENT.**

THE CM'S COURT KITALE.....2ND RESPONDENT.

RULING.

By an ex-parte chamber summons dated 2nd May, 2009, pursuant to section 8 and 9 of the Law Reform Act and order LIII Rules 1 and 2 of the Civil Procedure Rules, the applicant seeks orders:-

- (a) The Applicant be granted leave to apply for an order of certiorari to move into the High Court and quash the decision and Award of the Saboti Division Land disputes Tribunal, dated 5/9/2008.
- (b) Leave of this honourable court be granted to the applicant to apply for an order of Prohibition so as to prohibit the 2nd Respondent from enforcing the Decree pursuant to the adoption of the 1st Respondent's decision as an order of the court on 16/3/2009 in **KITALE LAND CASE NO. 113 OF 2008 BETWEEN GEORGE CHESEBE VS. BONIVENTURE K. CHESEBE.**
- (c) The leave so granted do operate as a stay of execution of the decree issued by the 2nd Respondent pending the hearing and determination of the main application.
- (d) Costs be provided for.

The application is based on the grounds:-

- (i) The Tribunal's decision is ultra-vires, illegal, null and void.
- (ii) The Tribunal did not have jurisdiction to determine a dispute touching on succession.
- (iii) That the Law of Succession ought to have applied to the devolution in intestate succession which was not the case.
- (iv) The tribunal similarly did not have jurisdiction to determine a dispute touching an ownership of registered land.
- (v) The Tribunal did not have jurisdiction to determine the distribution of the estate of the deceased, **CHESEBE OUMUKOTA KOSIRI.**
- (vi) The 1st Respondent issued Orders which it is not competent to issue.
- (vii) The 1st Respondent arbitrated over a dispute involving family land without the consent and participation of other family members.
- (viii) The ex-parte applicant has therefore raised *prima-facie* or issues that need to be heard and determined substantively.
- (ix) The ex-parte applicant apprehends that the interested party may execute the award.

The application is predicated upon the verifying affidavit of **Bonveture Kiki Chesebe** sworn on the 19th day of May, 2009 and the statement in support of the application for leave dated 19th May, 2009.

On behalf of the applicant, it was argued that he is the son of the deceased, Chesebe Omukor Kosiri, the registered owner of land parcel known as Saboti/Saboti/Block 6/Sakaro/200 measuring 3.642 hectares. A copy of the land title deed is exhibited as Exhibit 'BKL1'.

That the tribunal had no jurisdiction to adjudicate upon a claim touching on registered land. Moreover, the Tribunal had no jurisdiction to adjudicate upon the distribution of the estate of the deceased. That falls squarely within the purview of the Succession Act. Only the High Court has jurisdiction. Where there is no High court then the designated subordinate court has jurisdiction.

That the award of the Tribunal was made on 5th September, 2008. The same was adopted by the court and a decree in respect thereof dated 14th April, 2009 was eventually issued on 6th March, 2009.

That he is apprehensive that the decree is about to be enforced hence this application.

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 the 5th day of September, 2008. The award was read and adopted as a judgment of the court on the 6th day of March, 2009 and this application made on the 22nd day of March, 2009 – within six (6) months.

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

Accordingly there shall be orders in terms of prayer 1, 2 and 3 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 Rules 3 of the Civil Procedure Rules.

Dated and delivered at Kitale this 6th day of October, 2009.

N.R.O. OMBIJA.

JUDGE.

Mr. Kiarie for Ingosi for Esikon.