



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

JUDICIAL REVIEW 46 OF 2009

IN THE MATTER OF THE LAND CONSOLIDATION ACT, CAP 283 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE MERU CUSTOMARY LAW OF INHERITANCE

AND

**IN THE MATTER OF LAND PARCEL NUMBER 1541 & 1641 AKIRANGONDU "A"
ADJUDICATION SECTION**

AND

**IN THE MATTER OF THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAUA
CRIMINAL CASE NUMBER 1464 OF 2009**

(Republic Vrs Silas Kinyua)

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26 OF THE
LAWS OF KENYA**

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

BETWEEN

SILAS KINYUA M'MWETI APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION AND SETTLEMENT
OFFICER, IGEMBE NORTH DISTRICT 1ST RESPONDENT
THE DIRECTOR, LAND ADJUDICATION AND
SETTLEMENT 2ND RESPONDENT
THE SENIOR PRINCIPAL MAGISTRATE'S COURT
AT MAUA 3RD RESPONDENT

AND

CONSOLATA KABUTIA M'MWETI ... 1ST INTERESTED PARTY
M'MUJURI THILANGE 2ND INTERESTED PARTY
SILAS MURIUKI KARITHO 3RD INTERESTED PARTY
THIURI M'MUKARIA 4TH INTERESTED PARTY
HENRY KIBARA 5TH INTERESTED PARTY
JULIUS KATHERU 6TH INTERESTED PARTY
JOSEPH MUTUMA 7TH INTERESTED PARTY
IRUKI M'KAIRIAMA 8TH INTERESTED PARTY
FATHER MUTHOMI (*In charge of K.K. Catholic, Catholic
Diocese of Meru, Tuuru Parish*) 9TH INTERESTED PARTY
GEOFFREY MANYORE 10TH INTERESTED PARTY

RULING

The *ex parte* applicant has moved the court by chamber summons dated 24th June 2009. The application seeks leave to apply for an order of *certiorari*, an order of *mandamus* and an order of prohibition. He then prays that the leave granted do operate as stay.

From the verifying affidavit of the applicant, it is clear that the background of this matter began from the time the lands in Kenya were consolidated and demarked. The land in question 1541 AKIRANGONDU 'A' ADJUDICATION SECTION formerly belonged to the *ex parte* applicant's father who is now deceased. That land was in 1990 transferred by the applicant's mother (1st interested party) to 2nd interested party. It was then when the woes of the applicant began. The 2nd respondent transferred his interest in that land to the 3rd interested party. There was a portion of land that remained after the said transfers from the original land which the 1st interested party sold to 4th, 5th, 6th, 7th, 8th, 9th and 10th interested parties. The *ex parte* applicant has variously tried to use the influence of the administration to reverse those transfers in vain. He has been charged before criminal courts with acts attributed to him done on the said parcels of land. Hence why he seeks an order of prohibition to stop Criminal Case No. 1464 of 2009. He seeks order for *certiorari* to quash the decision of District Land Adjudication and

Settlement officer. He does not state anywhere when that decision was made. I have considered the application and the affidavits on record. Leave to file an order of *certiorari* cannot be sought more than 6 months after the decision sought to be quashed was made. See O.LIII Rule 2 of the Civil Procedure Rules. The *ex parte* applicant failed to state the date of the decision he seeks to quash, but from reading his affidavit, that decision could well have been in 1990. Leave to file for *certiorari* cannot in view of that Rule be granted. The order of prohibition to stop the criminal trial has no basis either. The issues raised by the applicant can very well be the defence he offers at that trial. The prayer for leave to file for prohibition will also not be granted. From the evidence, the *ex parte* applicants provided before court the only prayer which I find merited is for leave to file for an order of *mandamus*. The other prayers even for stay are not merited. The order of the court is that this court does grant leave to the *ex parte* applicants to file for an order of *mandamus* as prayed in prayer No. 2 of chamber summons dated 24/6/2009. The costs of that chamber summons shall be in the cause.

Dated and delivered at Meru this 8th day of October 2009.

MARY KASANGO

JUDGE