

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
JUDICIAL REVIEW HIGH COURT MISC. NO. 1 OF 2010

REPUBLIC APPLICANT
VERSUS
M'MWARANIA M'MURUGA 1ST RESPONDENT
MUCHEKE MWIRABUA 2ND RESPONDENT
CHAIRMAN – LTD (MERU CENTRAL).....3RD RESPONDENT
ANDELIANO MUTWIRI 4th RESPONDENT

RULING

An application dated 18th January 2010 is before me for consideration. Although the heading of the application shows that the applicant is the Republic of Kenya, the same was urged by counsel appearing for the ex parte, that is, Andeliano Mutwiri. At this point, I should state that the applicant seeks the leave of the court for an application to be made for orders of certiorari to quash the decision of the Adjudication Land Dispute Cause No. 83 of 2006 sitting at Igoji. That decision was made on 8th June 2009. It is obvious by looking at the date of that decision that the application is defeated by order 53 Rule 2 of the new Civil Procedure Rules. This is because leave was sought in excess of the six months provided under that rule. Mutwiri did however file a further affidavit dated 11th October 2010. By that affidavit, Mutwiri stated that the tribunal's decision was read before the lower court on 10th November 2009. He deponed that the parties knew the content of the ruling on that day. Mutwiri however fails in this application for leave to seek for judicial review because he failed to prove by documents that he was the owner of parcel number Igoji/Gikui/1321. This is the parcel the subject of the dispute. It is clear even looking at the proceedings before the tribunal that Mutwiri filed that action before the tribunal seeking for an order that the property be registered under his name. The tribunal ruled against him and ordered that that portion of land be registered in his brother's name, Kaburia Muraga. That being the case, Mutwiri would seem to be a busy body in this action and is not entitled to seek for judicial review of the tribunal decision. What Mutwiri should probably have done is to file an appeal or an action in court seeking a declaration that he is the rightful owner. It is for that reason that I find that the application for leave dated 18th January 2010 must fail and the same is hereby dismissed and the costs thereof are awarded to the 1st and 2nd respondents.

Dated, signed and delivered at Meru this 20th day of January 2011.

MARY
JUDGE

KASANGO