



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Civil Misc Appli 31 of 2004

**IN THE MATTER OF AN APPLICATION BY JUSTUS WELEMBA AND
GEORGE
ENOCK OGUNDA FOR ORDERS OF JUDICIAL REVIEW**

A N D

**IN THE MATTER OF THE DECISION OF LURAMBI LAND DISPUTE TRIBUNAL
IN CASE NO. 164 OF 2003 DATED 26TH JUNE 2003, AND READ TO THE
PARTIES**

**ON 1ST MARCH 2004 CONCERNING LAND PARCEL
NO.BUTSOTSO/SHIBEYE/1906**

A N D

IN THE MATTER OF KAKAMEGA CHIEF MAGISTRATE MISC. AWARD No.183 of 2003.

B E T W E E N

REPUBLIC

.....**APPLICANT**

V E R S U S

LURAMBI LAND DISPUTE TRIBUNALRESPONDENT

A N D

JULIUS ATIRAINTERESTED PARTY

R U L I N G

On 25.3.2004, the Applicants' Justus Welemba Omusikoyo, and George Enock Ogunda obtained leave to apply for the orders of certiorari to bring into this court for quashing the proceedings and award of Lurambi Land Disputes Tribunal in case No.164 of 2003 relating to a dispute over Land title No. Butso/So/Shibeye/1906. On 14.4.2004, the Notice of Motion was filed pursuant to Rule 3(1) of Order 53 of the Civil Procedure Rules. The relief sought in the motion was an order of certiorari to quash the decision of Lurambi Land Disputes Tribunal made on 26.6.2003 in Land Disputes Tribunal case No. 164 of 2003 relating to land parcel No. Butso/So/Shibeye/1906 and its subsequent adoption in an unspecified date in Kakamega Misc. Award No.183 of 2003.

In judicial review proceedings, the reliefs sought in the statement under Rule 1(2) of Order 53 must be identical to the orders prayed for in the Notice of Motion. This was not the case in the present application where the relief sought in the statement was ***“the applicants seek orders of certiorari to quash the Decision of the Lurambi Land Disputes Tribunal in case No.164 of 2003.”*** Quite apart from failing to cite the date of the decision in the case the prayer for relief was not couched in the same manner as the order prayed for in the Motion. The two were not in pari materia. The statement also included a heading titled “Facts relied on” which are not provided for under Rule 1 sub rule 2 of Order 53. If the statement was proper in other respects and the motion was good enough to be heard I would normally strike out the offending parts of the statements and proceed to hear the merits of the case. But the statement in this case was also defective in that the relief stated did not harmonize with the relief sought in the Motion. The statement was fatally defective.

But more importantly, the decision sought to be quashed was made on 26.6.2003 according to the Motion. Rule 2 of Order 53 and Section 9(3) of the Law Reform Act Cap 26 clearly stipulates that leave shall not be granted to apply for an order of certiorari to remove into this court for quashing any judgement, order, decree, conviction, or other proceedings unless the application for leave is made not later than 6 months after the date of the proceeding or such shorter period as may be prescribed by any Act. Quite clearly, leave should not have been granted in this cause as the statutory period of 6 months from the date of the decision sought to be quashed had elapsed when leave was sought. The application for leave did not bring out the date of the decision sought to be quashed by an order of certiorari, and this is precisely the reason the court granted leave. That date came to the force with the filing of the Motion.

I agree with Mr. Nyikuli for the Interested party that leave ought to be set aside. I am also persuaded by Mr. Nyikuli that the statement is defective and the same cannot but be struck out.

It is my finding that the leave granted on 25.3.2004 went against Section 9(3) of the Law Reform Act Cap 26 and Rule 2 of Order 53. The leave is set aside.

In the result, the Motion is struck out with costs.

Dated at Kakamega this 6th day of October, 2004.

G. B. M. KARIUKI

J U D G E

6/10/2004

Coram: G. B. M. Kariuki, J.

Mudoto, c/clerk

Mr. Maende for Nyikuli for Interested parties.

Mr. Wamae for Applicant.

Ruling read in open court on 6.10.04 in the presence of both counsel.

G. B. M. KARIUKI

J U D G E

6/10/04



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