



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

-

MISC.APP. 21 OF 2008

REPUBLIC ===== APPLICANT

VERSUS

CHERENGANY L.D.T. Comprising of 4 Others =====1ST RESPONDENT

RESIDENT MAGISTRATE – ITEN COURT ===== 2ND RESPONDENT

KIMISOI CHEMWETICH & OTHERS ===== 3RD RESPONDENT

EX-PARTE – KIPLAGAT CHEMWETICH

RULING

The applicant, Kiplagat Chemwetich, made an ex parte application to this court on 5/3/2008 seeking under order LIII Rule I leave to apply for an order of certiorari to remove into this court for quashing the decision of Cherengany Land Disputes Tribunal which was read and adopted as a judgment of the court on 6th February 2008 in Iten Senior Resident Magistrate’s Court L.D.T Case No.7 of 2007.

The court in considering an application of this nature is not called upon to go into the matter in depth. The principles to be applied are that if on the material made available to the court finds that there is prima facie evidence of an arguable case, the court will normally grant the leave sought. To be able to do this, the applicant must first show that there is in existence a decision that is amenable to the remedy of judicial review.

In this case, the decision of Cherengany Land Disputes Tribunal ceased to exist on 21/1/2008 when it was adopted as a judgment of the court.

There is not now in being an award which the court can quash by an order of certiorari following the adoption of the award as a judgment of the court pursuant to the provisions of section 7(2) of the Land Disputes Tribunals Act 1990.

I observe that the application was wrongly framed, as it does not heed the decisions in **Mohamed Ahmed r. R (1957) E.A 323 and Farmers Bus V. Transport Licencing (1959) E.A 779.**

In the result, it is my finding that the applicant has failed to show existence in law of a decision that the court can quash by an order of certiorari and consequently has failed to establish that there is prima facie evidence of an arguable case.

In the circumstances, I have no alternative but to dismiss the application which I hereby do.

Delivered at Kitale on 11/3/2008.

G.B.M KARIUKI

JUDGE

11/3/2008



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