



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Miscellaneous Application 21 of 2008

IN THE MATTER OF: AN APPLICATION BY JOHN

ODHIAMBO LEO FOR JUDICIAL

REVIEW (CERTIORARI AND PROHIBITION)

AND

IN THE MATTER OF: LAND DISPUTES TRIBUNAL ACT,

NO. 18 OF 1990

AND

IN THE MATTER OF: LAND DISPUTES TRIBUNAL

(URIRI DIVISION)

BETWEEN

REPUBLIC APPLICANT

VERSUS

URIRI LAND DISPUTES TRIBUNAL RESPONDENT

AND

JAMES OWINO AKUMU INTERESTED PARTY

AND

EX-PARTE

JOHN ODHIAMBO LEO

RULING

This application was not opposed, despite the fact that the respondent and the interested party were duly served. The interested party instructed M/s Omoya & Company Advocates who filed a Notice of Appointment of Advocates on 29th August, 2008. However, no affidavit was filed in reply to the ex-parte applicant's affidavit.

The application is for an order of certiorari to remove into this court and quash the proceedings of the respondent emanating from Land Dispute Case No. 0011 of 2007 concerning the ex-parte applicant's land known as **KANYAMKAGO/KAWERE I/1815** hereinafter referred to as "**the suit land.**"

The application also seeks an order of prohibition to prohibit the respondent and/or such other tribunal from hearing, further hearing, deliberating and/or in any other way dealing with issues pertaining to ownership of the suit land.

The ex parte applicant was registered as the proprietor of the suit land on 7th June, 2005 and thereafter issued with a title deed. In 2007 the interested party filed the aforesaid land suit before the respondent claiming that he is the owner of the land or a share thereof.

The respondent has commenced proceedings with a view to determining the issue of ownership of the suit land.

The respondent does not have jurisdiction to hear such kind of a claim. See **WAMWEA –VRS- CATHOLIC DIOCESE OF MURANGA REGISTERED TRUSTEES** [2003] KLR 389. Its jurisdiction is clearly defined under **section 3 (1)** of the **Land Disputes tribunals Act.**

If the interested party believes that he has a valid claim over the suit land or any portion thereof, he should file the same in the High Court of Kenya. The proceedings before the said tribunal are a nullity.

I allow this application. The interested party shall bear the costs of the application.

DATED, SIGNED AND DELIVERED AT KISII THIS 16TH DAY OF DECEMBER, 2009.

D. MUSINGA

JUDGE.

16/12/2009

Before D. Musinga, J.

Mobisa – cc

Mr. Ochwangi for the applicant

N/A for the respondents

Court: Ruling delivered in open court on 16th December, 2009.

D. MUSINGA

JUDGE.



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