



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITALE**  
**Miscellaneous Application 53 of 2009**

IN THE MATTER OF AN APPLICATION BY MUSA ARIONGUSIWA & MANA PALOKAPEL FOR LEAVE

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1996.

**CALLING**

By an ex parte chamber summons dated 21<sup>st</sup> day of July 2009, pursuant to the provisions of order L18 rule 1(1) (2) and (4) of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act (Cap 26) (Laws of Kenya), the applicant seeks orders:

1. That the applicants MUSA ARIONGUSIWA and MANA PALOKAPEL be granted leave by this honourable court to apply for an order of certiorari, to remove into this honourable court and quash the decision of Cheongoi Land Disputes Tribunal and which was read and adopted as a judgment of the court on the 11/6/2009 vide Kapenguria Principal Magistrate's Court Land Case No. 2 of 2009 on the grounds:
  - (a) That the Tribunal lacked jurisdiction to entertain, hear and determine a dispute that was commenced in a manner contrary to the provisions of the Land Disputes Tribunal Act, in that there was no written statement of claim or a defence filed by any party.
  - (b) That the Tribunal lacked jurisdiction to entertain, hear and determine the dispute in that the applicants, and who were shown in the proceedings as the claimants, had never lodged any claim in the Land Disputes Tribunal and since they had been invited as defendants.
  - (c) That the tribunal violated the rules of natural justice in that:
    - (i) The 1<sup>st</sup> applicant was not served with any hearing notice for 3/8/09 and consequently he was condemned unheard.
    - (ii) The notice of an (8) days to parties who did not know the nature of the complaint was unreasonably short.
    - (iii) The applicants were not accorded a chance to present their positions.

(5) That the proceedings were undertaken in a manner contrary to the provisions of the Land Disputes Tribunal Act in that the evidence of the parties was not recorded or properly recorded and the facility of cross-examination was not accorded to the parties.

(6) That the Tribunal lacked jurisdiction to entertain, hear and determine the claim since the land in question was not agricultural land.

2. That the applicants confirm that what is stated in this statement of particulars is true, and that the relief sought is an order of certiorari to remove into His honorable court and quash the decision of Cheesego Land Disputes Tribunal and which was read and adopted as a judgment of the court on the 11/6/2009 vide Kiapungu Principal Magistrate's Court Land Case No.2 of 2008.

3. That the grant of leave to do operate as stay of enforcement/execution of the award of Cheesego Land Disputes Tribunal and which was read and adopted as a judgment of the court on 11/6/2009 vide Kiapungu Principal Magistrate's Court Land Case No.2 of 2008.

4. That the cause of this application be in the cause.

The application is based on the grounds set out in the joint statement of particulars and the verifying affidavits of Musa Ariongusiwa and Maina Patrickipai.

On behalf of the applicant it was argued that the Tribunal lacked jurisdiction to entertain, hear and determine a dispute that was commenced in a manner contrary to the provisions of the Land Disputes Tribunal Act, in that:

(i) There was no written statement of claim or defence filed by any party.

(ii) The applicants who were shown in the proceedings as claimants had never lodged any claim in the Land Disputes Tribunal and that hence they had been treated as defendants.

(iii) The suit land was not agricultural land.

Moreover, the Tribunal violated the rules of natural justice in that:

(i) The first applicant was not served with any hearing notice for 27<sup>th</sup> April 2009 and in the premises he was condemned unheard.

(ii) The notice of an (ii) days to the parties who did not know the nature of complaint was unreasonably short.

(iii) The applicants were not accorded a chance to present their position.

Last but not least the proceedings were undertaken in a manner contrary to the provisions of the Land Disputes Tribunal Act. This is by reason of the fact that the evidence adduced by the parties was not recorded or properly recorded not to mention the fact that the opportunity for cross-examination was not accorded to the parties.

The law relating to leave is now well settled (*See R v Wandsworth JJ Ex parte READ (1962) 1 K.B. 261*). "The statement" should contain nothing more than the relief sought, and the grounds on which it is sought.

In the case of certiorari, the leave shall not be granted, unless the application for leave is made not later than six (6) months after the date of the proceedings or such shorter period as may be prescribed by any Act.

The decision complained of was made on 27<sup>th</sup> April 2008, the award was adopted as a judgment of the court on 11<sup>th</sup> June 2008, and the application filed on 20<sup>th</sup> July 2008, a period of less than six (6) months as required by the provisions of order LIII Rule 2 of the Civil Procedure Rules. I note that all other requirements of order LIII Rules 1(2) and 1(3) have been complied with.

Accordingly, I grant the application in terms of prayer 1 and 3 and 4 of the application.

By way of direction, the applicant shall file the Notice of Motion within 21 days from the date of this order as prescribed by order LR Rule 2 of the Civil Procedure Rules.

Dated and delivered at Kisumu this 1<sup>st</sup> day of December, 2009.

N.D. OMBUJA

JUDGE

Mr. Kiame for Applicant.



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)