



Case Number:	Miscellaneous Application 53 of 2009
Date Delivered:	01 Dec 2009
Case Class:	Civil
Court:	High Court at Kitale
Case Action:	Ruling
Judge:	n/a
Citation:	In Re The Matter of An Application by Musa Ariongusiwa & another [2009] eKLR
Advocates:	-
Case Summary:	Judicial Review-application for leave
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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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. 16 OF 1998.

HELD:

By an ex parte chamber summons dated 21st day of July 2009, pursuant to the provisions of order LIII rule 1(1) (2) and (4) of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act (Cap 20) Laws of Kenya, the applicant seeks orders:

1. That the applicants MUSA ARIONGUSIWA and MANA PALOKAPEL be granted leave by the honourable court to apply for an order of certiorari, to remove into this honourable court and quash the decision of Cheongor Land Disputes Tribunal and which was read and adopted as a judgment of the court on the 11/02/2009 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 infact they had been invited as defendants.
 - (c) That the Tribunal violated the rules of Natural Justice in that:
 - (i) The 1st applicant was not served with any hearing notice for 3/4/09 and consequently he was condemned unheard.
 - (ii) The notice of six (6) 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.
 - (d) 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.
 - (e) 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 this honourable court and quash the decision of Cheung Land Disputes Tribunal which was read and adopted as a judgment of the court on the 11/02/2009 vide Kipangura Principal Magistrate's Court Land Case No.2 of 2009.

3. That the grant of leave is appropriate as a matter of enforcement/execution of the award of Cheung Land Disputes Tribunal which was read and adopted as a judgment of the court on 11/02/2009 vide Kipangura Principal Magistrate's Land Case No.2 of 2009.

4. That the costs 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 affidavit of Musa Ariongusiwa and Maria Paliakpet.

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 in fact 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 3rd April 2009 and in the premises he was condemned unheard.

(ii) The notice of six (6) 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 Woodworth JJ Exp RDAJ (1942) 14 B 267). "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 3rd April 2009, the award was adopted as a judgment of the court on 11th June 2009, and the application filed on 20th July 2009, a period of less than six (6) months as envisaged by the provisions of order LII Rule 2 of the Civil Procedure Rules. I note that all other requirements of order LII 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 LII Rule 2 of the Civil Procedure Rules.

Dated and delivered at Nairobi this 1st day of December, 2009.

N.S.O.MBIA

JUDGE

Mr. Kare to Applicant.



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