



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

MISC CIVIL APPL NO. 158 OF 2010.

**IN THE MATTER OF AN APPLICATION BY ELIUD WAFULA SICHANGI FOR
LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW OF PROHIBITION AND
(CERTIORARI).**

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990

AND

IN THE MATTER OF REGISTERED LANDS ACT CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF CIVIL PROCEDURE ACT 21 LAWS OF KENYA

AND

IN THE MATTER OF LAW REFORM ACT CAP 26 LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

AND

THE CHAIRMAN WEBUYE LAND

DISPUTES TRIBUNAL.....RESPONDENT

ELIUD WAFULA SICHANGI.....EXPARTE – APPLICANT

VERSUS

PHOEBE ALUOCHI WAFU.....INTERESTED PARTY

RULING

[1]. This application is brought under order L III rule 3(1). The applicant prays that the decision of the Webuye Land Disputes Tribunal which was read and adopted as the Judgment of the court on 14th September 2010 by the Webuye Magistrates court in Land case No. 23 of 2010 be quashed further that

the court to issue a prohibition order against the Webuye Land Disputes Tribunal from Hearing the matter subject to Land parcel No. Ndivisi/Makuselwa/1903 in future. The application is grounded on reasons stated in the Six grounds therein and the affidavit of Eliud Wafula Sichangi the applicant.

[2]. The Attorney General was duly served and he filed his grounds of opposition on 7/11/2016. In his grounds of opposition, he argues that the proceedings before Webuye Land Disputes Tribunal were properly done. That the application is bad in law, incompetent and does not lie against the respondent. That the Tribunal had jurisdiction as provided by Act No. 18 of 1990 now repealed.

[3]. The interested party never filed any grounds of objection and or a replying affidavit at all.

[4]. The parties were served with a hearing notice to attend the Court on 30/3/2017. The affidavit of service was filed in court on 23/11/2016. On the hearing date neither the Attorney General nor the interested party attended the court. The applicant was in court and told the court that the application was not opposed. I set a date of the ruling on 26/4/2017.

[5]. The application was of course opposed by the Attorney General. It was however not opposed by the interested party. The Attorney Generals reasons for opposing the application cannot be maintained. The law in place as mandated by Act No. 18 of 1990 did not give the elders jurisdiction to determine title to land. Many authorities abound to that proposition from the High Court and Court of Appeal. It was argued that the Principal Magistrate should be made a party. The applicant does not have to make the Principal Magistrate who entered Judgment as a party to this suit. The law does not sanction such a proposition. Once a court has no jurisdiction everything else that followed was a nullity. The Attorney Generals grounds of opposition are clearly without merit.

The interested party who was served did not contest the application.

The application is therefore allowed with no orders as to costs.

It is so ordered.

Ruling read in open court before Mr. Situma.

DATED at BUNGOMA this 26th March day of March, 2017.

S. MUKUNYA

JUDGE.

In the presence of:

Coram: Hon. S. Mukunya (Judge)

Gladys: Court Assistant

Ruling for Exparte Applicant