



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**MISC CIVIL APPLICATION NO. 25 OF 2011**

**TABUTANY MILGO.....1<sup>ST</sup> APPLICANT**  
**DAVID K. MILGO .....2<sup>ND</sup> APPLICANT**  
**REUBEN K. MILGO.....3<sup>RD</sup> APPLICANT**  
**JOSEPH K. MILGO.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**ALICE CHERONO BII.....1<sup>ST</sup> RESPONDENT**  
**THE CHAIRMAN LONDIANI LAND DISPUTES TRIBUNAL.....2<sup>ND</sup> RESPONDENT**  
**THE SENIOR PRINCIPAL MAGISTRATES COURT AT KERICHO.....3<sup>RD</sup> RESPONDENT**

**RULING**

By a Notice of Motion dated 26<sup>th</sup> May 2011 brought under Order 53 of the Civil Procedure Rules and Section 3 A of the Civil Procedure Act, the applicant seeks orders of **CERTIORARI**:

- a) To remove unto this honourable court for purposes of quashing the purported decision of the Londiani Land Disputes Tribunal reached without jurisdiction on 6/5/2010, purporting to determine the dispute relating to the ownership of two a half acres of land between the applicant and the 1<sup>st</sup> Respondent in respect of land registered under the Registered Land Act Cap 300 of the Laws of Kenya (repealed) which land parcel is comprised in L.R No KERICHO/LONDIANI/JOUBERT/KEDOWA BLOCK 11 KIMASIAN/237.
- b) To remove unto this honourable court for purposes of being quashed, the decision of the Londiani Land Disputes Tribunal reached without jurisdiction on 6/5/2010, purporting to award two and a half acres of land comprised in L. R No KERICHO/LONDIANI/JOUBERT/KEDOWA BLOCK 11 KIMSIAN /237 purporting to distribute the land registered in the name of the late Samwel Chepkwony (Deceased).
- c) To remove unto this honourable court for purposes of being quashed, the decision of the Magistrate’s court made on 28/7/2010 in PM Misc Civil Application No. 31 of 2010 purporting to adopt the unlawful decision of the Londiani Land Disputes Tribunal made on 6/5/2010 which will lead to the applicants being evicted from the estate of the said Samwel Chepkwony (Deceased).

The application is supported by the affidavit of Tabutany C. Chepkwony. The essence of the said affidavit is that the Londiani Land Disputes Tribunal purported to make a decision in a dispute touching on land parcel number KERICHO/LONDIANI/JOUBERT/KEDOWA BLOCK 11 KIMASIAN /237 which is registered in the name of the 1<sup>st</sup> applicant's late husband. The effect of the said decision, which was to dispossess the applicants by awarding two and a half acres of the suit land to the 1<sup>st</sup> respondent. The said decision was adopted by the court through Kericho CM Misc Civil Application no. 31 of 2010.

The Respondent have opposed the application and filed grounds of opposition. The 1<sup>st</sup> Respondent has also sworn a Replying affidavit in which she challenges the capacity of the applicants to institute this suit in the absence of a grant in respect of the estate of the late Samwel Chepkwony.

Counsel for the Applicant submitted that the Tribunal lacked the jurisdiction to determine disputes over registered land therefore acted contrary to the clear provisions of Section 3 of the Land Disputes Act No. 18 of 1990. He further submitted that adoption of the said illegal award by the court in CM Misc Civil Application No. 31 of 2010 was wrong. This is because the land belongs to a deceased person and no letters of administration had been taken out by any member of his family as provided for under the Law of Succession Act Cap 160. He further submitted that the said award contravened Section 6 of the Land Control Act as consent of the Land Control Board was not obtained within 6 months of the sale. It does not matter that the 1<sup>st</sup> Respondent has occupied the land for a period in excess of five (5) years as failure to obtain Land Control Board within six months from the date of the sale agreement renders the sale null and void. His only remedy lies in recovery of the purchase price. Execution of this court order would result in the applicants being wrongfully evicted from land which they are legally entitled to.

Indeed, the State Counsel who appears for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent conceded the application on the grounds the Londiani Land Disputes Tribunal lacked jurisdiction to deliberate over the matter.

Counsel for the Respondents submitted that the application was incompetent, frivolous and vexatious. He submitted that the applicants had no *locus standi* to institute this case as they had not taken out letters of administration in respect of the late Samwel Chepkwony who is the registered proprietor of the suit land. He further maintained that the Londiani Land Disputes Tribunal merely stated their opinion and not a decision after deliberating on the matter touching on the suit land. With respect to learned counsel for the Respondents, this is inaccurate as the Land Disputes Tribunal was not clothed with powers to issue advisory opinions. In any event if it was merely an opinion, there would have been no need to have it adapted by the court as happened in this case.

Two issues stand out for determination:

1. Whether the Londiani Land Disputes Tribunal had jurisdiction to entertain a matter relating to land that was registered under the RLA.
2. Whether the Applicants had locus standi to institute this suit.

The two issues mentioned above are both legal technicalities which have the potential to determine this matter to the detriment of both parties without doing substantive justice to them.

By dint of Section 3 of the Land Disputes Tribunal Act No 18 of 1990 (Repealed) the Londiani Land Disputes Tribunal had no jurisdiction to make a determination over registered land such as the suit land herein. Consequently, the court had no business adopting a decision that was made without jurisdiction.

The applicants herein lack the capacity to bring this suit which relates to the property of the late Samwel Chepkwony without having obtained a grant of letters of administration in line with the Law of Succession Act Cap 160 of the Laws of Kenya.

However, I am aware that this is a land matter which not only touches on the rights of parties but is also sensitive and emotive. I invoke the provisions of Section 3A which gives me inherent powers to make

such orders as may be necessary for the ends of justice, and Article 159 1 (d) of the Constitution of Kenya, 2010 which enjoins me to exercise my judicial authority without undue regard to procedural technicalities.

I therefore allow the application and direct as follows:

a) That an order of CERTIORARI is hereby issued removing unto this Honourable Court and quashing the purported decision of the Londiani Land Disputes Tribunal reached without jurisdiction on 6/5/2010, purporting to determine the ownership dispute in relation to two and a half acres of land between the applicants and the 1<sup>st</sup> Respondent in respect of land registered under the Registered Land Act, which parcel is comprised in L.R. No KERICHO/LONDIANI/JOUBERT/KEDOWA BLOCK 11/ KIMASIAN/237.

b) That an order of CERTIORARI is hereby issued removing unto the Honourable Court and quashing the decision of the Londiani Land Disputes Tribunal made on 6/5/2010 without jurisdiction purporting to award two and a a half acres of land comprised in L.R No. KERICHO/LONDIANI/JOURBERT/KEDOWA BLOCK II (KIMASIAN)/237, purporting to distribute the land registered in the name of the late SAMWEL CHEPKWONY (DECEASED).

c) That an order of CERTIORARI is hereby issued removing unto this Honourable court and quashing the decision of the Magistrate's court made on 28/07/2010 in the Misc. Civil Application No. 31 of 2010, purporting to adopt unlawful decision of Londiani Land Dispute Tribunal made on 06/05/2010 which will lead to the applicants being evicted from the estate of the said Samwel Chepkwony (Deceased).

d) I make no order as to costs.

Dated, signed and delivered this 12<sup>th</sup> day of April 2017.

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**JANE M. ONYANGO**

**JUDGE**

**In the presence of;**

1. Mr. Oboso for Miss Kitur for the Applicant.
2. No appearance for the Respondents.
3. Court assistant- Rotich