



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC. APPLICATION NO. 20 OF 2009
(Formerly NBI JR. APPL. NO. 754 OF 2007)

IN THE MATTER OF APPLICATION FOR ORDER OF CERTIORARI
BY CHELIMO CHEPYEGON
AND
IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT OF 1990
IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA
BETWEEN
REPUBLICPLAINTIFF
=VERSUS=
BARINGO LAND DISPUTES TRIBUNAL.....1ST DEFENDANT
KABARNET SENIOR RESIDENT MAGISTRATE.....2ND DEFENDANT
KISORIO CHEPNGENO.....INTERESTED PARTY
EXPARTE : -CHELIMO CHEPYEGON.....SUBJECT

JUDGMENT

The Applicant, **CHELIMO CHEPYEGON**, has come to this Court, seeking Judicial Review. In particular, he seeks an order of Certiorari, to remove into this Honourable Court and to quash the decision made by the **BARINGO LAND DISPUTES TRIBUNAL** on 25th January, 2007; which decision was thereafter adopted as a Judgment of the Senior Resident Magistrate's Court, Kabarnet, on 18th May, 2007.

The basis for that claim was that the Tribunal lacked jurisdiction to determine a dispute involving title to land. Therefore, by purporting to deliberate over and to determine the dispute involving the title to the land in issue, the Tribunal is said to have acted *ultra vires*.

When the case came up for hearing on 5th December, 2013, the Applicant was represented by **Mr. Tarus**, whilst the Respondents were represented by **Miss Maina**, learned State Counsel.

The Interested Party and his advocate, **Messrs Kipkemei & Company Advocates**, were absent, although there was proof that the said law firm had been duly served with an appropriate Hearing Notice.

Miss Maina, learned State Counsel, conceded the application. The basis for the said concession was that the Tribunal had lacked jurisdiction to entertain the matter as it was in relation to land whose title was issued in the name of the Applicant.

I have perused the record of the proceedings before the Tribunal. The Plaintiff was **KISORIO CHEPNGENO**, whilst the Defendant was **CHELIMO CHEPYEGON**.

In his evidence, the Plaintiff told the Tribunal that the Defendant was:

“Pestering me with cases from Court claiming that the land parcel belongs to him.”

Thereafter, the Defendant told the Tribunal that he obtained a Title Deed in 1969, for 39.4 acres.

After analyzing all the evidence tendered before it, the Tribunal delivered the following;

“ CONCLUSION

The Court is of the opinion that Chelimo Chepyegon does not rightly own the parcel of land No. 357 in the disputed land. The number was imposed through the encroachment of Mr. Kisorio Chepngeno's land.”

Thereafter, the Tribunal proceeded to award the land to **Mr. Kisorio Chepngeno**,

“ as the rightful owner.”

It is clear that the issue which the Tribunal determined was one of ownership of land. The Respondent submitted that it was not open to the Applicant to plead the lack of jurisdiction, on the part of the Tribunal, because the Applicant had not objected to the proceedings before the Tribunal. Indeed, the Applicant was reminded that he actively participated in the said proceedings, where he not only gave his own evidence, but he also called witnesses.

In the considered opinion of the Respondent herein, the Applicant was now *estopped* from pleading that the Tribunal lacked jurisdiction.

As far as the Respondent was concerned, the Tribunal had done justice, by giving back to him the land which was rightfully his.

Having given due consideration to the issue before me, I first note that the jurisdiction of the Land Disputes Tribunal was derived from **Section 3 (1) of the Land Disputes Tribunal Act**, which provides as follows:-

“ Subject to this Act, all cases of civil nature involving

a dispute as to -

(a) the division of, or the determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land; shall be heard and determined by a Tribunal established under Section 4.”

By specifying the issues that the Tribunal would have jurisdiction over, the statute implied that any issue which was not included in Section 3 (1) of the Land Disputes Act, was beyond the jurisdiction of the Tribunal.

Questions regarding the ownership of land was not one of those that were included in that statutory provision. Accordingly, it follows that the Tribunal lacked jurisdiction to hear and determine any dispute over the ownership of land.

The fact that the two parties participated in the proceedings before the Tribunal, willingly and actively, could not confer jurisdiction on the Tribunal.

Jurisdiction is conferred by law. When a court or a tribunal has jurisdiction, parties cannot deprive it of the said jurisdiction.

The converse is equally true; that when a court or a tribunal lacks jurisdiction, parties cannot confer jurisdiction upon it.

In this case, the tribunal heard both parties. Neither of the parties has alleged any coercion or compulsion, that forced them to participate in the proceedings before the tribunal. But that is not enough, to confer jurisdiction on the tribunal.

Accordingly, I find and hold that the tribunal acted without jurisdiction. Therefore the decision it arrived at was a nullity. The same is therefore quashed.

It also follows that what the Senior Resident Magistrate's Court adopted was a nullity. The Judgment flowing from the said adoption of the Tribunal's judgment is, therefore, also quashed.

The parties will each bear his own costs. I so order because the mistake that has been corrected was made by the tribunal, together with the parties who willingly participated in the proceedings. Secondly, this judgment does not resolve the main dispute between the two protagonists. They still have to move the appropriate court of law to determine the issue of ownership of the parcel of land.

DATED, SIGNED AND DELIVERED AT ELDORET, THIS 17TH DAY OF JANUARY, 2014.

.....

FRED A. OCHIENG

JUDGE.