



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.42 OF 2010

**IN THE MATTER OF AN APPLICATION BY KIPRONO A. CHEROP UNDER ORDER LIII OF
THE CIVIL PROCEDURE RULES**

AND

IN THE MATTER OF THE REGISTERED LAND ACT CAP 300

AND

IN THE MATTER OF LAND DISPUTES ACT NO 18 OF 1990

REPUBLIC APPLICANT

VERSUS

AND

**NAKURU MUNICIPALITY LAND DISPUTES TRIBUNAL 1ST
RESPONDENT**

**ELIZABETH KOBILO CHEPKUTO.....2ND
RESPONDENT**

**THE RESIDENT MAGISTRATE NAKURU.....3RD
RESPONDENT**

AND

**KIPRONO A. CHEROP.....
SUBJECT**

RULING

1. Pursuant to leave granted on 22nd October, 2010 to commence Judicial Review Proceedings, the *ex parte* Applicant filed a notice of motion on 9th November 2007 dated 7th November, 2010 seeking the following orders:

(i) An order of certiorari to remove to the High Court and quash the proceedings and decision made

by the Nakuru District Land Disputes Tribunal on 10th April, 2007 in respect to title No. Dundori/Mugwathi Block 2/300 (hereinafter referred to as the suit property).

(ii) An order of certiorari to remove to the High Court and quash the proceedings and judgement made by the Nakuru Resident Magistrate on 6th September, 2007 in respect of the suit property.

(iii) An order of prohibition against the respondents from executing the decree issued on 6th September, 2007 in Nku LD No. 37/07 in respect to the suit property.

(iv) Costs

2. The application is supported by the affidavit of the applicant/ subject sworn on 7th November, 2007 in which reference is made to the statement of facts accompanying the application for leave, the affidavit verifying the facts and the order of the court granting him leave to apply for Judicial review.

3. The application is premised on the grounds:

(a) That the award of the tribunal exhibits an error on the face of the record

b. That the order is defective and not in accordance to the laws applicable thereto

(c) That the award was made in excess of jurisdiction

d. That the Resident Magistrate adopted an award which was defective in the first instance

(e) That the subject herein had been granted leave by the honourable court to institute the present application.

4. The subject, Kiprono A. Cherop contends that in 1980 he bought 50 shares from members of Kalenjin Enterprises and was subsequently allocated Dundori/ Mugwathi Block 2/229 and Dundori/Mugwathi Block 2/300 and took possession of the two parcels.

5. In 2007, the 2nd respondent filed a dispute No. 1/2007 before the Nakuru Dispute Land Tribunal claiming to be the lawful owner.

6. After hearing the claim the tribunal issued an award as follows:

(i) Plot Dundori/ Mugwathi Block 2/300 (Koelel) measuring approximately 0.6 Ha. belonged to the plaintiff Elizabeth Kobilo Chepkut.

(ii) The defendant Kiprono A Cherop, must vacate the plot within 30 days. He must also remove the caution he placed on the title deed for plot Dundori/ Mugwathi Block 2/300 (Koelel)

(iii) The defendant Kiprono A Cherop should pay to the plaintiff, Elizabeth Kobilo Chepkuto Kshs. 10,000/= as costs of the dispute.

7. The award of the Tribunal was subsequently adopted by the Resident Magistrate's court Nakuru as judgment of the court on 6th September, 2007 which is the subject of challenge in this judicial review.

8. The applicant on his part, filed submissions which his counsel chose to fully rely on. In summary, she submitted that the 1st respondent lacked jurisdiction to try a matter relating to ownership of land: That the tribunal exceeded its mandate stated in section 3(1) of the Land Disputes Tribunal Act: that the adoption of the award of the tribunal by the Magistrates court was improper as the court was adopting something that did not exist due to lack of jurisdiction and therefore the court should issue an order of prohibition against the respondents from executing the decree issued on 6th September, 2007 in respect to

the suit property.

9. She relied on the following authorities which I have read and considered:-

1. **Republic vs. Chairman Land Disputes Tribunal Mwingi District & Another**
2. **Republic vs. Chairman Makueni District land Disputes Tribunal & Anor. (2004) eKLR**

10. The application was not opposed. The respondents did not enter appearance or file any response to the application.

11. From the pleadings and the submissions filed by the subject I find the sole issue for determination to be whether the decision of the Nakuru District Land Tribunal was unlawful, and if so, whether the applicant is entitled to orders of judicial review as prayed.

12. The question arising on the issue for determination is whether the tribunal had power to hear and determine a claim touching on ownership of the land. If the decision was made in excess of the tribunal's power, it matters not that the decision was the right decision in the circumstances. If the decision was *ultra vires*, unlawful, unreasonable and/or against the rules of natural justice, this court will have no option but to quash the decision. See **Kenya National Examination Council V. Republic Ex parte Geoffrey Gathenji Njoroge and others.**

13. The remedy of judicial review is concerned not with the private rights or merits of the decision being challenged but with the decision making process. Its purposes is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See **Republic V Secretary of state for Education and Science (Exparte) Avon County Council (1991) I ALL ER 282 at 285.** The point is more succinctly made in the English case of **chief Constable of North Wales Police Vs Evan (1982) I W.L.R 1155, by Lord Hailsham of St Marlebone.**

Thus:

“the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court”

14. Therefore, a decision of an inferior court or public authority may be quashed (by an order of certiorari made on application of Judicial review) where the court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where these rules are applicable, or where there is an error of law on the face of the record or the decision is unreasonable in the Halsbury sense.

15. Under Section 3 of the Land Disputes Tribunals Act, the Tribunal's jurisdiction is restricted to hearing and determining cases involving-

- (a) **the division of, or determination of boundaries to land, including land held in common;**
- (b) **a claim to occupy or work land; or**
- (c) **a claim on trespass to land.**

16. Disputes relating to title or the possession of land registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) were the preserve of the High Court or the Resident Magistrate's courts depending on the monetary value of the suit property. Section 159 of the Registered Land Act Cap 300 states:

" Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a

lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act."

17. There is no doubt that the issue before the Tribunal and subsequently before the Resident Magistrate's Court Nakuru related to ownership of the suit property. In determining the issue of ownership of the suit property, the Tribunal no doubt exceeded its jurisdiction. Any action done without jurisdiction is in law a nullity, that is to say of no legal force. As such it could not and was not validated by its adoption by the lower court.

18. Having found the order of the Tribunal to have been a nullity in law, permitting it to continue forming the record of the Tribunal or the lower court is, in my view, a violation of the subject's rights.

19. It is on these grounds that the court quashes the decision of the Nakuru Land Disputes Tribunal. There shall therefore issue an order of certiorari to bring to this court, and quash the decision of the Nakuru Land Disputes Tribunal dated 10th April 2007, and adopted by the Nakuru Resident Magistrate on 6th September 2007.

20. An order of prohibition is also issued against the respondents from executing the decree issued on 6th September, 2007

21. No order is made as to costs as the respondents and interested parties did not enter appearance.

Dated, Signed and Delivered at Nakuru on this 4th day of April 2014.

L N WAITHAKA

JUDGE

Present

Ms Ndeda for the applicant

Ms Katambi for the 3rd and 4th Respondent

N/A for 1st and 2nd Respondent

L N WAITHAKA

JUDGE