



**REPUBLIC OF KENYA**

**High Court at Kericho**

**Miscellaneous Application 42 of 2011**

**IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT 18 OF 1990**

**AND**

**IN THE MATTER OF CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF KONOIN LAND DISPUTE TRIBUNAL**

**AND**

**IN THE MATTER OF SOTIK PRINCIPAL MAGISTRATE'S COURT LAND DISPUTES  
TRIBUNAL AWARD NO. 18 OF 2010**

**AND IN THE MATTER OF THE LAW REFORM ACT (CAP 26) SECTION 8 & 9**

**BETWEEN**

**WILSON BII.....APPLICANT**

**VS.**

**DISTRICT MAGISTRATE SOTIK.....1<sup>ST</sup> RESPONDENT**

**KONOIN LAND DISPUTE TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**KIPNGENO ARAP CHEPKWONY.....INTERESTED PARTY**

**JUDGMENT**

1.The application before me brought by the Applicant, Wilson Bii, through a Notice of Motion dated 5<sup>th</sup> December 2011 seeks reliefs of a judicial review nature. The application is expressed to be brought under Order 53 Rule 3(1) of the Civil Procedure Rules, Section 3 of the Civil Procedure Act and Sections 8 and 9 of the Law Reform Act cap 26 of the Laws of Kenya as well as all other enabling provisions of the law.

2.Through the application, the Applicant seeks the following orders:

***1) An order of certiorari to move unto the High Court and quash the proceedings and decisions of the Konoin Land Dispute Tribunal dated 23<sup>rd</sup> September 2011 and lodged in court on 23<sup>rd</sup> September 2011 whereby the said Land Dispute Tribunal awarded to the interested party Kipng'eno Arap Chepkwony the mandate to seek services of the Government/registered surveyor of ascertain measurements of land he occupies (inclusive of land he was later given);***

**2) An order of prohibition to issue prohibiting the Sotik Principal magistrate Law Court of co-ordinate and competent jurisdiction from hearing deliberating, adopting and/or in any way whatsoever and/or howsoever dealing with any determination and/or decision from Konoin Land Dispute Tribunal or such other tribunal, concerning and/or in respect of L.R. No. Kericho/Mogogosiek/1005**

**3) Costs of the application.**

3.The application is based on grounds set out in a statutory statement and a verifying affidavit of the Applicant both filed in court.

4.Leave to bring the judicial review application herein was granted by this court on 15<sup>th</sup> November 2011.

5.The essence of the application is that the Konoin Land Disputes Tribunal was moved to arbitrate disputes relating to L.R. No. Kericho/Mogogosiek/1005 (hereinafter called “the suit property”) when it had no jurisdiction to hear and deliberate on a matter touching on Title. Similarly, the District Magistrates Court Sotik adopted the award of the Konoin Land Disputes Tribunal when it had no jurisdiction to do so. The Applicant contends that in both instances, such jurisdiction was vested in the High Court.

6.None of the Respondents filed any replies to the application in spite of service. At the oral canvassing of the application, counsel for the Applicant Mr. Motanya informed the court that the 3<sup>rd</sup> Respondent/interested party had since been deceased.

7.I have carefully considered the application and the supporting papers placed before me.

8.It is trite law that the essence of judicial review is not to review the soundness or otherwise of administrative action but to scrutinize whether or not such action is taken in conformity with the laid down law and procedure. In the matter before me therefore, my task is not to review the merits of the decision of Konoin Land Disputes Tribunal but rather to establish if the Tribunal had jurisdiction to deal with the dispute before it and to make the award it made.

9.In the matter before me, the question is not whether or not the Konoin Land Disputes Tribunal arrived at the right decision or not. Rather, the issue is whether or not the Tribunal had jurisdiction to entertain the dispute relating to the title to the suit property. This in turn would answer the question of whether or not there was a valid decision which the Sotik Magistrates Court could adopt as a judgment of the court.

10.Section 159 of the Registered Land Act is explicit that civil suits and proceedings relating to title to or

possession of land shall be tried by the High Court. The minutes of the Konoin Land Disputes Tribunal dated 21<sup>st</sup> September 2010 show that the dispute placed before the Tribunal related to possession of land, which land was titled. The Tribunal therefore clearly lacked jurisdiction to entertain the dispute. In the event, the ensuing award of the Tribunal was a nullity in law and has to be quashed. Similarly, the adoption of the award by the Sotik District Magistrates Court as a judgment of the court is of no legal effect in view of the nullity of the award itself.

11. In any event, the Respondents having failed to reply to the application, have denied this court the chance to consider any contrary view on jurisdiction of the Tribunal, should any have been asserted.

12. Consequently, I am inclined to allow the Notice of Motion application by the Applicant dated 5<sup>th</sup> December 2011 in terms of prayers 1 and 2 with no order as to costs.

**IT IS SO ORDERED.**

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 13<sup>TH</sup> DAY OF MARCH 2013.**

**J.M. MUTAVA**  
**JUDGE**