



REPUBLIC OF KENYA

High Court at Machakos

Miscellaneous Civil Application 243 of 2010

IN THE MATTER OF NAIPONI ENE SAMPEKE TO APPLY FOR AN ORDER OF CERTIORARI

AND

IN THE MATTER OF KAJIADO NORTH LAND DISPUTE TRIBUNAL

AND

IN THE MATTER OF LAND DISPUTES TRIBUNAL'S ACT 1990

AND

IN THE MATTER OF LAND ARBITRATION CASE N. 066/02 OF 2009

REPUBLIC APPLICANT

VERSUS

JOSEPH CHARLES NDUNGU KINUTHIA RESPONDENT

EX PARTE: NAIPONI ENE SEMPEKE alias NAIPONI ENE KAMPEL

R U L I N G

The **Notice of Motion** dated 23/11/2010 is premised under **Order LIII Rule 3** of the **Civil Procedure Rules, Section 3A** of the **Civil Procedure Act, Section 3** of the **Land Disputes Tribunal Act** and all other enabling provisions of the law.

The application seeks the following orders:-

1. "THAT an order of certiorari to remove into the High Court and quash the decision of Kajiado North Land Dispute Tribunal made on 13th May 2010 in Tribunal Case No. 066/02 of 2009 to have inter alia land amounting to 5 acres comprising of Kajiado/Olchoro-Onyore/2342 which parcel is to be excised from the land legally owned by the Applicant and the title thereto to be registered in the names of the Respondent to issue.

2 THAT costs of this application be provided for."

The application is supported by the affidavit of **Naiponi Ene Sempeke** the Applicant herein.

The gist of the Applicant's case is that the Tribunal acted *ultra vires* in deciding that the Respondent was entitled to two acres of land to be excised from the Applicant's land parcel **Kajiado/Olchoro-onyore/2342**.

In opposition to the application, the Respondent swore a replying affidavit on 6/10/2011. The Respondent stand is that he had bought ten acres of land from land parcel No. **Kajiado/Olchoro-onyore/1657** which was registered in the name of **Sampeke Ole Matura** the deceased husband of the Applicant. That land parcel No. **Kajiado/Olchoro-onyore/2342** which was the subject of the case before the Tribunal is a subdivision of land parcel No. **Kajiado/Olchoro-onyore/1657**.

The Respondent accused the Applicant of moving to this court with unclean hands after failing to transfer the land to him.

The **Kajiado North Land Disputes Tribunal** in case No. **066/09** made the following decision *inter alia*:

“The District Surveyor to enter the land and excise 5 acres for the Claimant.”

It also ordered **“the District Land Registrar to register the transfer document in favour of the Claimant and issue him with a Title Deed.”**

This was a decision on transfer of land. The Tribunal had no jurisdiction to make such orders.

Under Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990, the jurisdiction of the Tribunal is spelt out as follows:-

“Subject in this Act, all cases of the 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.”

The decision of the Tribunal was *ultra vires*. The application is therefore allowed. Each party to meet their own costs.

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B. THURANIRA JADEN
JUDGE

Dated and delivered at Machakos this **25th** day of **April** 2013.

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B. THURANIRA JADEN
JUDGE