



REPUBLIC OF KENYA

High Court at Eldoret

Judicial Review 8 of 2013

REPUBLICAPPLICANT

VS

CHAIRMAN MARAKWET LAND DISPUTES TRIBUNAL1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

JOSEPH MATHIAS BIWOTT.....INTERESTED PARTY

WILLIAM CHERONO

JOSEPH CHERONOEX-PARTE APPLICANTS

JOHN CHERONO

(Application for leave to file judicial review application to seek orders of certiorari; applicants intending to quash award of the Land Disputes Tribunal and subsequent decree of the Magistrate's Court; award issued in February 2011; decree of Magistrate's Court issued in June 2011; application for leave filed in February 2013; time within which an application for leave must be filed; application for leave dismissed for being out of time)

RULING

I have before me an ex-parte application brought under the provisions of Order 53 Rule 1(1)(2)(3) and 2 of the Civil Procedure Rules 2010, Section 3 and 3A of the Civil Procedure Act (CAP 21), Sections 8 and 9 of the Law Reform Act (CAP 26). It is an application seeking leave to the ex-parte applicants to file a notice of Judicial Review for an order of Certiorari calling for the award of Marakwet Land Disputes Tribunal adopted by the Senior Resident Magistrate at Iten as the judgment of the court on 15th June 2011 and the same to be quashed. The application also seeks order that the leave granted operate as a stay pending the hearing and the determination of the main motion. The application is based on the grounds :-

- (i) *That the subject matter in the dispute before the MARAKWET LAND DISPUTE TRIBUNAL NO. 17 OF 2010 was Land Parcel No. LR.CHERANGANY/KORONGOI/72 situated ad Kapchepsar sub-location in Markwet West District (the suit property).*
- (ii) *That the suit property is the property of LEBO CHERONO, now deceased.*
- (iii) *That Lebo Cherono died intestate on 13th March 1998 and Grant of Letters of Administration*

Intestate have been issued to WILLIAM CHERONO on the 27th July 2011.

(iv) That the Tribunal failed to take into account that at all material time during the proceedings before it, LEBO CHERONO had died and legal representatives of the estate had not been appointed by a competent court, and it had no jurisdiction to direct that 25 acres out of the suit property be transferred to JOSEPH MATHIAS BIWOTT the Interested Party herein.

(v) That the Marakwet Land Dispute Tribunal lacked jurisdiction to hear and determine this dispute, and acted ULTRA VIRES its powers for the following reasons:-

- i. The legal representatives of the deceased had not been appointed by a competent Court during the proceedings before it.*
- ii. The dispute before it related to ownership of the suit property and succession to the said estate.*

The said application is supported by the verifying and supporting affidavit of the ex-parte applicants, William Cheron, Joseph Cheron and John Cheron.

The application was canvassed before me on the 16 April 2013. Miss. Mufutu counsel holding brief for Mr. Etyang for the applicants urged me to grant the leave as prayed.

I have considered the application and submissions of counsel. It is trite law that one cannot proceed to file the substantive application for judicial review before leave to so file is granted. In this application, the applicants have sought the said leave so that they can proceed to file their substantive application seeking orders of certiorari. The applicants wish to have the the award of the Marakwet Land Disputes Tribunal in Land Dispute Case No.17 of 2010 and the judgement of the Iten Senior Resident Magistrate in Land Districts Tribunal Case No. 4 of 2011 which adopted the award quashed. Their view is that the Tribunal did not have jurisdiction to entertain the matter.

The award which the ex-parte applicants wish to quash was signed on 22 February 2011 by one of the elders and on 23 February 2011 by two of the elders. It was adopted by the Senior Resident Magistrate at Iten on 15 June 2011 and a decree was duly issued. The present application for leave was filed on 8 February 2013.

Order 53 Rule 2 provides as follows with regard to the time for filing applications for leave to file a motion for judicial review :-

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

It will be noted from the above provision that any applicant must make his application no later than six months from the date of the judgment or decree sought to be quashed, or within such shorter period as may be prescribed by any Act. The cut off period for which one must make an application for leave is therefore six months. It is discernable that the present application for leave was filed about 21 months after the decree sought to be quashed. It is therefore clearly out of time. The avenue of judicial review became shut six months after the decree was passed. It is upon the ex-parte applicants to now find other ways of having relief but not through the judicial review route.

In the circumstances, I am unable to grant the leave sought by the ex-parte applicants. I dismiss the application for leave with no orders as to costs.

DATED and DELIVERED THIS 18TH DAY OF APRIL 2013

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT & LAND COURT AT ELDORET

Delivered in the presence of :

Miss C.N. Mufutu holding brief for Mr. Etyang of M/s A.G.A. Etyang & Co Advocates for the ex parte applicants.