



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**MISC. CIVIL APPLICATION NO. 692 OF 2008 (ORIGINALLY NAIROBI CENTRAL  
REGISTRY NO. ELC 78 OF 2008)**

**IN THE MATTER OF APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW  
PROCEEDINGS FOR ORDERS OF CERTIORARI BY JOB KIPNANDI CHEBON AND IN THE  
MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA**

**REPUBLIC ..... APPLICANT**

**=VERSUS=**

**BARINGO LAND DISPUTES TRIBUNAL .....1ST RESPONDENT**

**KABARNET SENIOR RESIDENT MAGISTRATE ..... 2ND RESPONDENT**

**JULIUS SACHO TANDUI ..... INTERESTED PARTY**

**JOB KIPNANDI CHEBON ..... EX-PARTE  
APPLICANT**

**JUDGMENT**

Before me for determination is Notice of Motion dated 28th November 2007. It is supported by the affidavit of the Applicant, **Job Kipnandi Chebon** sworn on 12th November, 2007. The Applicant seeks an order of Certiorari to remove into Court and quash the decision of Baringo Land Disputes Tribunal (1st Respondent) made on 17th May, 2007 and adopted by the Senior Resident Magistrate's Court at Kabarnet as a judgment of the Court on the 22nd August, 2007.

It is important to point out that this matter was initially filed in Nairobi as **Judicial Review No. 78 of 2007** but was later transferred to Eldoret High Court and allocated serial number **692 of 2008**.

The Interested party, one **Julius Sacho Tandui** joined the proceedings by filing a Replying Affidavit and a Further Replying Affidavit sworn on 27th May, 2008 and 2nd July, 2010 respectively. The latter is in reply to the Ex-parte Applicant's Supplementary Affidavit sworn on 23rd February, 2009.

The Ex-parte Applicant's case is that sometime in the year 2002, the Interested party had a dispute against him purporting that his (Ex-parte Applicant) parcel of land **L.R. No. Baringo/Kapropita/698** forms part of his parcel No. L.R. No. **Baringo/Kapropita/781**. That the Interested Party then filed a suit against the Ex-parte Applicant vide Kabarnet Senior Resident Magistrate **Civil Case No. 13 of 2002** which was dismissed.

That the Interested Party, being dissatisfied with the Magistrate's decision filed the Baringo Land Disputes Tribunal Case, which the Elders ruled in his favour. That the award of the Elders was adopted as Judgment of the Court on 22nd August, 2007.

It is the contention of the Applicant that the title to this land is registered under the Registered Land Act, which accords him indefeasible title to the land. He submits that the the District Land Disputes Tribunal (hereafter the Tribunal) lacked jurisdiction and acted *ultra vires* its mandate in making the orders it did, which were to order the Applicant to vacate and remove his property from L.R. No. **Baringo/Kapropita/781**.

On his part, the Interested Party submits that the issue for determination before the Tribunal was one of trespass to land, that the tribunal ruled that the Applicant had trespassed into the Interested Party's land and accordingly issued orders that he vacates the former's land and that the Land Disputes Tribunal Act, No. 18 of 1990 gave powers to the tribunal to deliberate on issues touching on trespass to land.

The Interested Party also denies that the Tribunal deliberated on any issues touching on title to land and that it is misleading to aver that the tribunal awarded land No. **Baringo/Kapropita/689** to the Interested Party as its title is still in the name of the Applicant.

It was also the Applicant's contention that the award was signed by two strangers, namely, **David Kangwony** and **Raphael Kimuge** who did not participate in the actual proceedings during the hearing before the tribunal.

But on his part, the Interested Party submits that the two Elders properly sat in the Tribunal and were duly gazetted in that respect – vide gazette **No. 8344**.

On behalf of the Respondents, the office of the Attorney General filed grounds of opposition dated 27th October, 2008, in which it is stated that the application is misconceived, incompetent and bad in law. In their submissions, they concur with the Interested Party.

May I point out that other issues for determination were raised by the Ex-parte Applicant, but which I will make reference to upon determining whether the tribunal acted within its mandate in pronouncing the award it gave.

Under **Section 3 (1)** of the then **Land Disputes Tribunal Act, Act No. 3 of 1990**, a tribunal has powers to determine any of the following:-

- (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.

The award of the Tribunal was in the following words:-

**“ Therefore going by the above findings, this Court is convinced beyond any reasonable doubts that the portion in dispute falls under plot No. 781 which is registered under the name of Julius Sacho Tandui, and therefore the land to remain the property of Plaintiff Julius Sacho Tandui. The Respondent is ordered to remove his structures and vacate the parcel unconditionally. Any party who feels aggrieved has been given 30 days to appeal to Provincial Land Dispute Tribunal Court for redress from the date of reading this judgment”**

In adopting the award as a judgment of the Court, the following decree was accorded by the Honourable Magistrate:-

- 1. The award of the Tribunal be and is hereby adopted as the judgment and decree of the Honourable Court in its true purport and entirety;**
- 2. That Land plot No. 781 is ordered to remain the property of the Plaintiff, Julius Sacho Tandui;**
- 3. That the Respondent to remove his structures and vacate the parcel of land herein unconditionally;**
- 4. That any party aggrieved be allowed to appeal to the Provincial Land Disputes Tribunal Court within 30 days from the date herein.**

My analysis of the foregoing clearly demonstrates that the dispute revolved around alleged trespass of the Interested Party's Land by the Applicant. Indeed it is clear that the Applicant was claiming a portion of land that formed part of the Interested Party's land. The latter's parcel of land is **plot number 698** while that of the former is **plot No. 781**. The order of the tribunal was clearly that the Interested Party remains with his parcel of land No. **781** and that the Applicant do vacate that portion of land he occupied that belonged to the Interested party.

The Tribunal did not go an extra mile to order the hiving off of the Applicant's parcel for transmission to the ownership of the Interested Party.

Effectively, upon delivery of the judgment by the Honourable Magistrate, all that was required of the parties was to call a Surveyor to clearly mark the boundaries so that each party remained with his distinct and marked portion.

It is also clear that the Applicant does not claim any portion of the land out of L.R. No.

**Baringo/Kapropita/781.** Therefore, once the boundaries are clearly marked, each party should be satisfied to retain its parcel.

My clear understanding of the award was that the Tribunal found that the Applicant had crossed into and/or trespassed into the parcel belonging to the Interested Party as a result of which it ordered that he vacates from the parcel that did not belong to him. This did not amount to deliberating on anything touching on title to land.

Effectively, the Tribunal did not act outside or *ultra vires* its jurisdiction as it restricted itself to issues pertaining trespass on land.

And as rightly submitted by the Interested party and the Attorney General, the Tribunal did not curtail the Applicant's indefeasible title to his land as envisaged under Land Registration Act, Act No. 3 of 2012 formerly the Registered Land Act Cap. 300, Laws of Kenya. Indeed, the net effect of the award was that each party was to retain its title.

I therefore find that the tribunal acted within its mandate and jurisdiction as was provided by the Land Disputes Tribunal Act.

As to the Constitution of the members of the tribunal, I find the same without merit as the said members of the tribunal were duly appointed and gazetted vide Kenya Gazette **No. 8344 of 21st November, 2003** to act as members of the tribunal.

It was the submissions of the Applicant that the 1st Respondent was biased in the manner in which it conducted its proceedings. My observation is that no iota of evidence has been produced to demonstrate the alleged bias. In the verifying affidavit, the applicant alludes to bad faith on the part of the 1st Respondent and that the latter colluded with the Interested Party. This is a generalized statement which, unless it is substantiated, Court cannot rely on. Moreover, from the record of the tribunal hearings, each party was accorded an opportunity to be heard. Thus, rules of natural justice were applied. It is my view accordingly, that the tribunal acted fairly and without bias leaned towards any particular party. As such, fair hearing was accorded to each party and I accordingly dismiss the Applicant's assertion that he was not given a fair hearing or that the tribunal was biased against him.

In the result, the Ex-parte Applicant's Notice of Motion dated 22nd August, 2007 is dismissed with costs to the Respondents and the Interested Party.

**DATED and DELIVERED at ELDORET this 19th day of June, 2013.**

**G. W. NGENYE – MACHARIA**

**JUDGE**

**In the presence of:**

No appearance for the Applicant

No appearance for the Respondents

Kipnyekwei holding brief for Chebii for the Interested Party