



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. CIVIL APPLICATION NO.428 OF 2006**

**IN THE MATTER OF AN APPLICATION BY COMMITTEE MEMBERS TOLMO PRIMARY SCHOOL FOR AN ORDER OF CERTIORARI**

**REPUBLIC.....APPLICANT**

**VERSUS**

**ELDAMA RAVINE LAND DISPUTES TRIBUNAL.....RESPONDENT**

**AND**

**THE COMMITTEE MEMBERS**

**KIBIAS PRIMARY SCHOOL.....INTERESTED PARTY**

**AND**

**THE COMMITTEE MEMBERS STOLMO PRIMARY SCHOOL.....SUBJECT**

**RULING**

Pursuant to leave granted on 4<sup>th</sup> August, 2006, the applicant brought the instant motion for an order of *certiorari* to quash proceedings and decision of the Eldama Ravine Land Dispute Tribunal on the grounds that the Tribunal proceeded to hear and determine the reference without hearing the owner of the land in dispute; that the Tribunal acted without jurisdiction and that the Tribunal entertained a claim which was statute-barred.

The interested party through Joseph Chebii, its chairman, has deposed that the decision of the Tribunal is valid until overturned on appeal; that the Tribunal had jurisdiction to entertain the dispute; that the application is defective for failing to comply with the provisions of law, namely **Section 8(2)** of the **Law Reform Act** and **Order 53** of the **Civil Procedure Rules**, in that those provisions of the Law Reform Act have not been cited in the application while the heading of the application has not been properly formatted.

Both the applicant and the interested party have filed lengthy affidavits in which they sought to demonstrate the merits of their respective claims. The remedy of judicial review is not concerned with such issues but the decision-making process.

The issue before this court is simply to determine whether the impugned decision of the Tribunal was made without or in excess of jurisdiction or whether the rules of natural justice were complied with. See **Kenya National Examination Council V. Republic Ex parte Geoffrey Gathenji Njoroge & 9 others,**

Civil Appeal No.266 of 1996. The dispute before the Tribunal concerned plot No.1 (Cheplelu) whose ownership was being claimed by Joseph Chebii and Kibias Primary School Committee (the interested party herein) on the one hand and Wilfred Tarus and Tolmo Primary School Committee (the applicant herein) on the other hand.

Without going into the background of how each party to the tribunal claim to have acquired the property, it is sufficient to look at the decision of the tribunal which is the subject of this application . After hearing the parties and their witnesses, the tribunal made the following pronouncement:

**“(i) Plot number 1 (Cheplelu) should be sub-divided into**

**equal portions as it was before and each should get 10 acres.**

**(ii) Though the land is now occupied by Cherumbes family, the District Surveyor should curve 10 acres from the said piece of land and transfer it to Kibias Primary School.....”**

The jurisdiction of the Land Dispute Tribunal was defined by **Section 3(1)** of the **Land Disputes Tribunal Act** (now repealed) to include determination of disputes involving:

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

The interested party has argued that the dispute before the Tribunal related to (b) above – a claim to occupy or work land.

In their observation (ix), the Tribunal members found that the applicant illegally took possession of the whole land (20 acres) at Cheplelu and exchanged with the late Kipkorir Cherumbe (23 acres) instead of taking their rightful share of 10 acres as agreed. The order that the suit property be subdivided into equal parts and shared between the applicant and the interested party constitutes determination of ownership, particularly considering that the Tribunal appreciated that the property was occupied by the family of the owner. To that extent the Tribunal exceeded its jurisdiction.

Learned counsel for the interested party has raised several technical matters regarding the affidavits accompanying the chamber summons, verifying affidavit, the failure to cite **Sections 8 and 9** of the **Law reform Act** and the entitlement of the application. The authorities cited support the proposition that failure to comply with some of these matters is fatal to application for judicial review.

It must, however, be remembered that all these authorities pre-date the promulgation of the Constitution. Although rules of procedure are designed to facilitate fair administration of justice and are the hand maid of justice, today they remain so, but at the same time, the court must be guided by the desire to do justice without undue regard to procedural technicalities and not the zeal to dismiss or strike out cases on technical grounds.

For the reasons state earlier, the decision of the Tribunal having been made without jurisdiction is hereby quashed by an order of *certiorari*.

Costs to the applicant.

**Dated, Signed and Delivered at Nakuru this 24<sup>th</sup> day of February, 2012.**

**W. OUKO**

**JUDGE**