



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

JUDICIAL REVIEW NO. 82 OF 2009

**IN THE MATTER OF APPLICATION BY SAMMY RUTO FOR LEAVE TO INSTITUTE
JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION AND IN**

**HE MATTER OF PRINCIPAL MAGISTRATE'S COURT AT MOLO IN LAND DISPUTE
TRIBUNAL NO. 2 OF 2009**

AND

IN THE MATTER OF LAND DISPUTES ACT NO. 18 OF 1990

AND

IN THE MATTER OF REGISTERED LAND CAP. 300

SAMMY RUTO.....SUBJECT

AND

REPUBLIC.....APPLICANT

AGAINST

OLE NGURUONE DISTRICT LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE COURT, MOLO.....2ND RESPONDENT

KIPROTICH CHEPKWONY.....3RD RESPONDENT

RULING

By his Notice of Motion dated and filed on 13th July 2009, one Sammy Ruto sought 3 prayers -

- (1) an order of certiorari to bring before this court for being quashed the decision of the Nakuru Land Disputes Tribunal Case No. 283 of 2008 in Molo Principal Magistrate's Court in Land Disputes Case No. 2 of 2009.
- (2) an order of prohibition prohibiting the implementation and/or execution of the decree issued on 2nd June 2009 in Molo Principal Magistrates Court Land Disputes No. 2 of 2009.
- (3) an order that costs be borne by the Interested Party, Kiprotich Chepkwony.

The Motion was premised upon the grounds on the face of it, the Statement of Facts and Affidavit Verifying the Facts sworn on 13th July 2009. It was opposed by the Interested Party, Kiprotich Chepkwony by his Replying Affidavit sworn and filed on 8th February 2009.

The issue in these Judicial Review matters is usually one whether or not the tribunal had jurisdiction to entertain the application. Mrs Ndeda who appeared for the Interested Party contended in her written

submissions that the application is bad in law, incompetent and abuse of the court process and should be dismissed with costs, that the 1st Respondent acted according to the powers conferred on it by the law in determining and solving disputes relating to boundaries. Counsel referred to Section 3 of the Land Disputes Tribunal Act, (*Cap. 303A, Laws of Kenya*), which confers upon tribunals the jurisdiction to determine disputes relating to the division of, or the determination of boundaries to land, including land held in common.

The decision being challenged is in these terms -

- (1) The boundary between the two plots, Nakuru Olenguruone/Cheptuech/111 and 490 shall be determined on the ground by a Registered Surveyor.
- (2) The Objector (i.e. Kiprotich Chepkwony) shall compensate the claimant on the claimant's position of the land used by the Objector at the rate of Ksh 2,000/= per acre per year from the date of use to date."

What is clear both from the *ex parte* proceedings before the Tribunal, and earlier before the District Land Registrar is that Sammy Ruto (*the ex parte Applicant*) is the beneficial owner of the land known as Title Number Nakuru/Olenguruone/Cheptuech/11 comprising 6.0 Ha while Kiprotich Chepkwony (*the Interested Party*) is the beneficial owner of the land known as Title Number Nakuru/Olenguruone 490 comprising 11.6 Ha.

The boundary disputes between the Applicant and the Interested Party appears to be a continuously boiling pot of tea. These parties first went before the District Land Registrar, Mr. Daniel K. Nyantika who visited the disputed parcels of land and in his Report made on 9th October 2008, but signed on 4th November 2008, found the present boundaries of the two parcels of land to be the proper boundaries, and directed the parties to maintain them in accordance with the provisions of Section 24 of the Registered Land Act, (*Cap. 300, Laws of Kenya*), and gave leave to appeal within 30 days for any party who was aggrieved by his decision.

Without considering whether or not there was any right of appeal under Section 23 of the RLA, instead of seeking such an appeal, the Interested Party went before the Olenguruone Land Disputes Tribunal, and obtained the decision and orders now being challenged.

Whereas I have no objection to the decision to refer the dispute to a Government Surveyor to determine the boundaries between the two plots the Tribunal, by ordering the Interested Party to compensate the *ex parte* applicant for alleged use of the *ex parte* applicants land, at the rate of Ksh 2,000/= per acre, assumed that the Interested Party had in fact encroached upon the *ex parte* Applicant's land. There was obviously no basis for such conclusion, and such decision is liable to be quashed on the grounds of being unreasonable, and I so find.

Secondly, the Land Disputes Tribunals Act 1990, gave no jurisdiction to its Tribunals to award compensation. Again, there was no basis of such compensation. What area had been encroached, and what was the basis of Ksh 2,000/= per acre compensation? Again, that decision too was unreasonable.

For those reasons, there shall be order of certiorari, calling upon for purposes of being quashed the decision of the Olenguruone Land Disputes Tribunal made on 12/02/2009, and adopted by the Principal Magistrate's Court at Molo, Land Case No. 2 of 2009, and all consequential orders relating thereto. There being nothing to prohibit, the prayer for an order of prohibition is declined.

In order to bring this perennial dispute to an end, I direct Kiprotich Chepkwony and Samuel Rutto, with the aid of their counsel on record to seek and pay for the services of a Registered Surveyor to carry out a survey of the respective parcels, and confirm the actual areas on the ground, and adjust the boundaries accordingly.

I further direct that this matter be mentioned in 90 days time, once the Surveyor's Report has been filed.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 24th day of February, 2012

M. J. ANYARA EMUKULE
JUDGE