



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

JUDICIAL REVIEW MISCELLANEOUS CIVIL APPLICATION NO. 27 OF 2011

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL
REVIEW FOR ORDERS OF CERTIORARI**

AND

**IN THE MATTER OF: THE LAND DISPUTES TRIBUNAL ACT
(NO. 18 OF 1990)**

AND

**IN THE MATTER OF: THE CIVIL PROCEDURE ACT AND
RULES**

AND

**IN THE MATTER OF: THE LAND DISPUTES APPEALS
COMMITTEE**

AND

**IN THE MATTER OF: KERICHO CHIEF MAGISTRATE'S
COURT MISC. CIVIL APPLICATION NO. 93 OF 2010**

AND

**IN THE MATTER OF: THE LAW REFORM ACT CAP 26 OF THE
LAWS OF KENYA**

**IN THE MATTER OF: LAND PARCELS KNOWN AS
KERICHO/KIPTERE/1621 & KERICHO/KIPTERE/318**

BETWEEN

REPUBLIC.....APPLICANT

AND

THE CHAIRMAN LAND DISPUTES APPEAL COMMITTEE...1ST RESPONDENT

THE CHIEF MAGISTRATE, KERICHO.....2ND RESPONDENT

ESTHER CHEPKEMEI SOI.....3RD RESPONDENT

EX PARTE:

KIPKURUI ARAP SOI

JUDGMENT

KIPKURUI ARAP SOI who is the ex parte applicant in this cause states that he is the registered proprietor of the properties which are known as **KERICHO/KIPTERE/1621** and **KERICHO/KIPTERE 318** ('the suit lands'), which measure 50 acres and 25 acres respectively. This fact is not disputed.

He also states that his wife **ESTHER CHEPKEMEI SOI** filed a claim against him in the Provincial Land Disputes Appeal Committee ('the Committee'), being Land Disputes Appeal Committee Case No. 63 of 2010; that the said Committee heard and determined the dispute on 6/5/2011 and ordered that the suit lands be divided into three portions.

Although he names his wife as the 3rd respondent, she is ideally an interested party, mainly because she was not party to the decision making process that is the issue in this application.

Be that as it may, he claims that though that decision was unprocedural, the said award was nevertheless adopted by **THE CHIEF MAGISTRATE** at **KERICHO** ('the 2nd respondent'), as a judgment of the court in C. M. C. Misc. Application No. 93 of 2010 on 8/6/2011.

Being of the view that the said Committee thus lacked the relevant jurisdiction to arbitrate on matters touching on the ownership of land or even on matters pertaining to family issues, and being aggrieved by the aforesaid decision, he has now moved this court by way of a Notice of Motion in which he prays for an order of certiorari to remove into this court for purposes of being quashed forthwith, the 2nd respondent's aforesaid together with the entire proceedings arising there from and or connected therewith pursuant to the afore mentioned award by the 1st respondent, which was read and adopted as a judgment as aforesaid.

He also prays for costs.

He thus relies mainly on the grounds that the tribunal's award is ultra vires as the Committee had no jurisdiction to adjudicate on a dispute relating to registered land; that the award is incompetent and fatally defective and that unless the orders herein are granted the respondent (sic) may proceed to execute the impugned judgment.

Mr. Orina, who appeared for the ex parte applicant was pointed out that though the suit properties are registered in his client's name under the Registered Land Act ('RLA') the Committee set out to determine the issue of ownership after which it ordered that the same be subdivided against the owners wish, and it was thus his submission that Committee lacked the relevant jurisdiction to deal in the manner that it did and that in the circumstances, its award was thus ultra vires and the subsequent adoption by the 2nd respondent was void ab initio.

Though the 1st and 2nd respondents have not opposed this application, **ESTHER CHEPKEMOI SOI**, who as stated earlier is wrongly named as the 3rd respondent, is opposed to it, for in her view, the Committee made a fair decision.

I have considered this matter and I must at the outset point out that the order of certiorari, which the ex parte applicant urges this court to issue, will issue to quash a decision which is ultra vires, by bringing up into this court the decision of an inferior tribunal such as the Committee so that it may be investigated and if found wanting, it is quashed.

Needless to say this court is being called upon to investigate the decision making process, not the decision itself, and in applications of this nature, the issue of the jurisdiction of the said inferior body is paramount, for it is imperative and expected that it acts within their limits.

I find that the Committee acted without jurisdiction as it has no powers to deal with issues pertaining to title especially where the subject properties are already registered as was, in the case before it, and that being the case then, it acted ultra vires and the proceedings were thus null and void and this would apply to all subsequent proceedings.

But **ESTHER CHEPKEMOI SOI** deposes in reply that it was the ex parte applicant who actually initiated this action by filing the dispute in the Sigowet Land Disputes Tribunal; that, that tribunal's award was adopted on 24/11/2010; that being dissatisfied with the award she only referred the matter to the Committee; that given the circumstances, he cannot now be heard to claim that the Committee lacked the relevant jurisdiction to hear and determine the matter.

In my humble opinion, neither the tribunal at the first instance nor the Committee at the appellate level had jurisdiction to deal with issues pertaining to ownership and title to registered land. Needless to say, it is trite that parties cannot confer jurisdiction where none exists.

I do allow this application and grant the ex parte applicant an order of certiorari and do remove into this court and hereby quash the 2nd respondent's order of 8/6/2011, together with all the entire proceedings arising there from and or connected therewith pursuant to the 1st respondent's award dated 6/5/2011, which was read and adopted as a judgment of the court in C. M. C Misc App. No (Kericho) 93 of 2010.

The 1st and 2nd respondents shall bear the costs of this application.

Dated and delivered at Kericho this 27th day of March 2012.

JEANNE GACHECHE
Judge

Delivered in the presence of:-

For the ex parte applicant- Mr. Kiprono holding brief for Mr. Orina

For the 1st and 2nd respondents – No appearance

For the '3rd respondent' – No appearance

