



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

JUDICIAL REVIEW APPLICATION NO. 43 OF 2011

**IN THE MATTER OF: AN APPLICATION OF 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 KNOWN AS
KERICHO/KABARTEGAN/211**

AND

**IN THE MATTER OF: THE RORET LAND DISPUTES
TRIBUNAL**

AND

**IN THE MATTER OF: THE KERICHO CHIEF
MAGISTRATE'S COURT MISC. APPLICATION NO. 47 OF 2011**

AND

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

BETWEEN

**REPUBLIC
.....APPLICANT**

AND

**THE CHAIRMAN RORET LAND DISPUTES TRIBUNAL.....1ST
RESPONDENT**

**THE CHIEF MAGISTRATE'S COURT KERICHO.....2ND
RESPONDENT**

**JOHN CHEPKWONYINTERESTED
PARTY**

EX PARTE:

PAUL KIPLANGAT CHEPKWONY

JONAH K. CHEPKWONY

OBOT TECKLA CHERENDET

JUDGMENT

According to **Paul Kiplangat Chepkwony** who is one of the ex parte applicants in this cause, he is one of the sons of the late **KIPKEMOI CHEPKWONY METO** who was the registered proprietor of the properties known as **KERICHO/KABARTEGAN/211** and **KERICHO/KABARTEGAN/ 349**, which I shall now refer to as the suit properties; that **JOHN CHEPKWONY** ('the interested party) filed a claim in the Roret Land Disputes Tribunal ('the Tribunal'), which tribunal on 24/3/2011, delivered its verdict, which was read and adopted as a judgment of the court in C .M C. Misc. App. No. (Kericho) 47 of 2011.

The other ex parte applicants are **JONAH K. CHEPKWONY** and **OBOT TECKLA CHERENDET**

Being aggrieved by the said verdict the three have now preferred this application in which they seek the following orders against **THE CHAIRMAN RORET LAND DISPUTES TRIBUNAL** as the 1st respondent, **THE CHIEF MAGISTRATE'S COURT KERICHO** as the 2nd respondent and the aforementioned **JOHN CHEPKWONY**:-

a. That this Honourable court may be pleased to issue an order of certiorari removing unto this Honourable court for purposes of being quashed forthwith the 2nd respondent's order dated 23/9/2011 together with all the entire proceedings arising there from and or connected therewith pursuant to the 1st respondent's award dated 24/3/ 2011 which was read and adopted as a judgment of the court in Kericho Chief Magistrate's Court Misc. Civil Application No. 47 of 2011.

b. Costs of this application

The three rely on the grounds that:-

a. The Tribunal award is ultra vires as the tribunal had no jurisdiction to adjudicate on a dispute relating to registered land.

b. That the award and its subsequent adoption as a judgment of the court is void ab initio.

c. *That the award is incompetent and fatally defective.*

d. *That unless the orders herein are granted the impugned judgment respondent may be executed.*

The order of certiorari, which the ex parte applicant urges this court to issue in his favour, 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 Land Disputes Tribunal so that it may be investigated and if found wanting, it shall be quashed.

Needless to say the 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 such bodies act within their limits.

The ex parte applicants have established that their father, the late **KIPKEMOI CHEPKWONY METO**, was the registered proprietor of the suit properties and that being the case then, the Tribunal, had no jurisdiction to deal with the matter pertaining to land which was already registered and which also belonged to a deceased person. Indeed the Tribunal seemed to appreciate those facts when it ordered that the parties do commence succession proceedings.

Not having had the relevant jurisdiction the tribunal acted ultra vires, when it proceeded to hear and determine the matter, it thus acted ultra vires, and its proceedings were thus a nullity and all further proceedings were a nullity ab initio.

I therefore allow this application in terms of prayer a.

The respondents shall bear the ex parte applicants costs of this cause.

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

JEANNE GACHECHE

Judge

Delivered in the presence of:-

For the ex parte applicants – Mr. Kiprono holding brief for Mr. Orina

For the respondents – No appearance

For the interested party - No appearance