



REPUBLIC OF KENYA

IN THE HIGH COURT

AT ELDORET

Civil Appeal 736 of 2008

REPUBLIC.....APPELLANT

VERSUS

THE MARAKWET DISTRICT LANDS DISPUTES TRIBUNAL.....1ST RESPONDENT

**THE RESIDENT MAGISTRATE'S COURT AT ITEN2ND
RESPONDENT**

**THE KEIYO/MARAKWETLAND REGISTRAR.....
3RD RESPONDENT**

AND

**JOSEPH CHEPKWONY.....
.....INTERESTED PARTY**

**SUSANA CHEPKURUI.....EX-
PARTE APPLICANT**

JUDGMENT

This Notice of Motion is by **Susan Chepkurui** (hereinafter "**the applicant**") and seeks two orders expressed as follows:-

1. An Order of **Certiorari** to remove into the High Court and quash forthwith the proceedings and award of the Marakwet District Land Disputes Tribunal (hereinafter "**the 1st respondent**") dated 5th August, 2008 and the Proceedings, Judgment, Order and Decree of Iten Resident Magistrate's (Court hereinafter

“the 2nd respondent”) in Land Disputes Tribunal Case No. 25 of 2008.

2. An Order of **Prohibition** to prohibit the 1st, 2nd and 3rd respondent, (the **Keiyo /Marakwet District Land Registrar**) in respect of the proceedings and award of the Marakwet District Land Disputes Tribunal dated 5th August, 2008 and the proceedings, judgment, decree and orders of the Resident Magistrate’s Court Land Disputes Case No. 25 of 2008 over parcel number E/Marakwet/Kapsowar/434 (hereinafter “**the Suit Land**”).

The Notice of Motion is accompanied with copies of the Chamber Summons seeking leave to bring these proceedings; the Statutory Statement and the Verifying Affidavit together with the annexures thereto. The main grounds of the application are that:-

- . The claim before the 1st respondent, which claim was lodged by **Joseph Chepkwony** (hereinafter “**the interested party**”), was statute barred under the Limitation of Actions Act (Cap 22);
- . That the 1st and 2nd respondents had no jurisdiction to entertain the Interested Party’s claim; and
- . That the Rules of Natural Justice were offended.

In the affidavit verifying the Statutory Statement, reliance is placed upon the said statement.

The application is opposed and there is a replying affidavit sworn by the Interested Party. It is deponed in the affidavit, *inter alia*, that the allegations by the applicant in his supporting documents are untrue in that the 1st respondent had jurisdiction to entertain the dispute which dispute was not Statute barred and that the Rules of Natural Justice were not offended. The Interested Party further challenged the competence of the verifying affidavit, of course, on advice of his counsel.

The application came up before me for hearing on 20th March, 2012 but only counsel for the applicant and the respondents attended. I was satisfied however that counsel for the Interested Party had been served with a hearing notice. The application therefore proceeded in the absence of representation for the Interested Party.

Counsel for the respondents did not oppose the application. On his part, counsel for the applicant reiterated the averments in the Statutory Statement and the verifying affidavit. He emphasized that the applicant is the registered proprietor of the suit land and was not given an opportunity to be heard and call witnesses. He further stated that the Interested Party’s claim was Statute barred and should not have been entertained by the 1st respondent.

Having considered the application and the supporting documents and further having considered the replying affidavit and the submissions of Counsel, I take the following view of the matter. I think the starting point is the ruling of the respondent. It reads as follows:-

“ RULING/AWARD

After perusing keenly on the above statements, the Chairman and his members reached the decision that the boundary be followed along the stream, Kerelwa tree, Simotwo tree – Morutich tree – Tilak. The Surveyor to amend the registry indexing (sic) map to tally with the actual ground. Costs to each party”

It is plain that although the 1st respondent appeared to be considering an issue of a boundary, the final decision that the Surveyor amends the registry index map to tally with the actual ground removed the dispute from the realm of a boundary dispute. The effect of the decision was in reality to award a portion of the subject land to one of the parties. The decision would not be implemented without altering the register and the registry index map. In the premises, the Interested Party’s claim was a claim for a portion of the suit Land disguised as a boundary dispute.

The jurisdiction of a Land Disputes Tribunal is circumscribed by section 3(1) and 8 (1) of the Land Disputes Tribunals Act No. 18 of 1990 (now repealed). The section reads as follows:-

“Subject to this Act, all cases of a civil nature involving a dispute as to:

(a) The division of or determination of boundaries to land including land held in common;

(b) A claim to occupy or work land; or

(c) Trespass to land, shall be heard and determined under section 4.”

Given the above provisions, it cannot be gainsaid that the Interested Party’s claim could not be entertained by the 1st respondent. The 1st respondent had no jurisdiction to entertain a claim to the suit land and order a change in the registry index map and the relevant register. The decision of the 1st respondent was therefore a nullity and so was the decision of the 2nd respondent. I am not therefore surprised that the learned State Counsel, who represented the respondents, did not oppose the Notice of Motion.

The result is that the Notice of Motion dated 17th December, 2008 is allowed as prayed.

I make no order as to costs.

It is so ordered.

DATED AND DELIVERED AT ELDORET

THIS 2ND DAY OF MAY, 2012.

F. AZANGALALA
JUDGE

Read in the presence of:-

Mr. Barasa holding brief for **Mr. Cheptarus** for the applicant.

F. AZANGALLA
JUDGE

2/5/2012.