



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

Miscellaneous Civil Application 239 of 2002

**IN THE MATTER OF AN APPLICATION BY ELIPHALET MWATHI MACHARIA FOR
LEAVE TO APPLY FOR AN ORDER OF PROHIBITION AND CERTIORARI)
AND**

**IN THE MATTER OF LAND DISPUTE CASE NO.4 OF 2001 BETWEEN ELIPHALET
MWATHI MACHARIA AND MOORE NAADAKKA AND ANOTHER AND THE DECISION OF
THE “THE TRIBUNAL COURT” SITTING AS LAND DISPUTES TRIBUNAL, MAU DIVISION**

AND

**IN THE MATTER OF NAROK SENIOR RESIDENT MAGISTRATE MISC. LAND
APPLICATION NO.3 OF 2002**

BETWEEN

**REPUBLIC.....EX-PARTE
VERSUS**

ELIPHALET MWATHI MACHARIA.....APPLICANT

AND

MOORE NAADOKILA.....1ST RESPONDENT

KATIMO OLE NKUKUU.....2ND RESPONDENT

RULING

The applicant brought a motion for judicial review seeking that the decision of the Land Dispute Tribunal, Mau Division made on 18th May, 2002 be quashed by an order of *certiorari*. It is noted at this stage that although in the chamber summons for leave to institute these proceedings the applicant also sought an order of prohibition to stop the Narok SRM court from adopting the decision of the Tribunal that relief is not included in the motion. The motion is based on the grounds that the Tribunal lacked or exceeded jurisdiction to entertain the dispute as the land in question was registered in the name of the applicant and that the Tribunal’s decision amounted to determining the ownership of the land; that the applicant was not given a hearing; that the Tribunal was not properly constituted.

Those named as the respondents who ought to have been joined as interested parties, are Moore Naadokila and Katimo Ole Nkukuu. Moore Naadokila, has through counsel raised a preliminary objection

in which it is argued that the reliefs sought are not available against the respondents without the Tribunal and the Senior Resident Magistrate, Narok being parties to the proceedings.

Parties filed submissions together with authorities. Counsel for the 1st respondent has raised three other points in the objection, namely:

- i) that the registrar was not served as required by order 53 rule 1(3) of the Civil Procedure Rules;
- ii) that the application was not brought in the name of the Republic and;
- iii) that the order of prohibition cannot be issued in vain.

Of all the four grounds, the one in my view that is capable of disposing this matter is the very first one, namely that the entities whose decisions are impugned are not parties in these proceedings. Both orders of *certiorari* and prohibition are public law reliefs available only against public bodies and tribunals inferior to the High Court. They are not available against individuals as individuals.

There are only two respondents. They are sued because the Tribunal awarded to them the parcel of land in question. They made no decision capable of quashing by *certiorari*. They cannot adopt that decision. It is only the magistrate's court that can. Without the Tribunal and the Senior Resident Magistrate being part of these proceedings the reliefs are incapable of being issued. It is noted that the notice of this objection was brought to the attention of the applicant's counsel way back in 2004 but they choose to face it instead regularizing the above anomaly.

On that ground alone, the objection is upheld and this application fails and is dismissed with costs.

Dated, Signed and Delivered at Nakuru this 3rd day of August, 2012.

**W. OUKO
JUDGE**