



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

Miscellaneous Civil Cause 279 of 2008

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

AND

IN THE MATTER OF THE REGISTERED LAND ACT, CAP 300

REPUBLIC.....APPLICANT

V E R S U S

KAJIADO LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

KENNEDY LEMOYIAN.....INTERESTED PARTY

***EX PARTE*..... KOILEKEN OLE TUPET**

J U D G M E N T

1. The *Ex Parte* Applicant herein obtained leave on 16th December 2008 to apply for judicial review, having sought it by chamber summons dated 11th December 2008. He filed the substantive application on 24th December 2008 by **notice of motion dated 23rd December 2008**.
2. An order of **prohibition** is sought to prohibit the Kajiado Land Disputes Tribunal “from hearing, further hearing, determining or in any other manner howsoever dealing with Tribunal Case No. 470/8/08”.
3. The notice of motion was accompanied as required by rules of procedure, by the statement of facts and verifying affidavit that had been filed together with the application for leave. It will be noted that in the statements of facts it was indicated that an order of **certiorari** “to quash the entire proceedings, rulings, decisions and orders of the Kajiado Land Disputes Tribunal made in Tribunal Case No. 470/8/08” as well as an order of prohibition, would be sought, and leave was granted for both. But in the notice of motion only prohibition is sought. Apparently it turned out that the Tribunal had not made any decision when the *Ex Parte* Applicant came to court. The court ordered that the leave granted do operate as a stay of the proceedings before the Tribunal.
4. The grounds upon which the relief is sought as set out in the statement of facts include –

(i) That the Ex Parte Applicant is co-registered as proprietor of the suit parcel of land L.R. Kajiado/Lorngosua/1230 with one Lemoyian Lemomo (now deceased, hereafter called the Deceased).

(ii) That the Interested Party who is a son of the Deceased, lodged a claim with the Kajiado Land Disputes Tribunal for distribution of the suit land among its beneficiaries “with the sole ulterior motive of depriving the (*Ex Parte*) Applicant of his lawful property”.

(iii) That the Tribunal has no jurisdiction to entertain disputes over ownership of land registered under the Registered Land Act (Cap 300) or the administration of the estates of deceased persons.

(iv) That the Tribunal has also refused to accord the *Ex Parte* Applicant a hearing despite protests from him.

(v) That the proceedings before the Tribunal are therefore “contrary to law, in breach of the rules of natural justice, capricious and unreasonable”.

5. The Respondent (Kajiado Land Disputes Tribunal) filed grounds of opposition dated 17th May 2010 through the Attorney-General. Those grounds include -

(i) That the Tribunal has jurisdiction “to consider issues relating to title and any interest in registered land pursuant to sections 3 and 12 of the Land Disputes Tribunals Act as read together with section 159 of the Registered Land Act”.

(ii) That the grant of the orders sought will be contrary to public policy and interest.

(iii) That the application is incompetent, bad in law and fatally defective.

6. No papers appear to have been filed by the Interested Party in response to the application. There was no appearance for him at the hearing despite due service.

7. I have considered the submissions made by the learned counsels for the *Ex Parte* Applicant and the Respondent. The Respondent’s learned counsel did not oppose the application at the hearing thereof. He conceded, properly so in my respectful view, that the Tribunal had no jurisdiction as the dispute before it relates to title to land.

8. The jurisdiction of Land Disputes Tribunals is set out in **section 3(1) of the Land Disputes Tribunals Act, No. 18 of 1990** which provides-

“3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to-

(a) the division of, or the determination of boundaries to, land, including land held in commons;

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

(c) trespass to land,

shall be heard and determined by a Tribunal established under section 4.”

9. Clearly the jurisdiction of Land Disputes Tribunals does not extend to disputes over title to land, including the severance of any joint title, or disputes over administration of estates of deceased persons. The Tribunal in this suit exceeded its jurisdiction by entertaining the disputes submitted to it by the Interested Party.

10. In the circumstances, I must allow the notice of motion and grant the order of prohibition sought with costs to the *Ex Parte* Applicant. It is so ordered.

11. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now regained my full health.

DATED AT NAIROBI THIS 21ST DAY OF AUGUST 2012

H.P.G. WAWERU
JUDGE

COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28TH DAY OF SEPTEMBER 2012

ASIKE-MAKHANDIA
.....
JUDGE