



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

Civil Case 105 of 2009

***IN THE MATTER OF AN APPLICATION BY LEMPASO OLE KIRUTI FOR JUDICIAL REVIEW***

**AND**

***IN THE MATTER OF THE LAND DISPUTES TRIBUNALS ACT, 1990***

**AND**

***IN THE MATTER OF THE REGISTERED LAND ACT, CAP 300***

**AND**

***IN THE MATTER OF THE LAND CONTROL ACT, CAP 302***

**BETWEEN**

**REPUBLIC .....APPLICANT**

**AND**

**1. LAND DISPUTES TRIBUNAL, NGONG DIVISION**

**2. DISTRICT LAND REGISTRAR, KAJIADO**

**3. SENIOR RESIDENT MAGISTRATE,  
KAJIADO.....RESPONDENTS**

**JOYCE SILANKE .....INTERESTED  
PARTY**

**J U D G E M E N T**

1. This is an application for judicial review under **Order 53, rule 3 (1)** of the old **Civil Procedure Rules** (the **Rules**) brought by **notice of motion** dated **4<sup>th</sup> May 2009**. Leave was granted on 22<sup>nd</sup> May 2009 (Lenaola, J).

The main reliefs sought are-

(i) An order of **certiorari** be issued to bring to this court for the purpose of being quashed the decision of the 1<sup>st</sup> Respondent made on the 27<sup>th</sup> November, 2008 to the effect that the Ex Parte Applicant’s parcel of land **KAJIADO/KITENGELA/25163** (hereinafter referred to as “the suit land”) be transferred to the

Interested Party.

(ii) An order of **certiorari** be issued to bring to this court for purposes of being quashed the decision of the 1<sup>st</sup> Respondent made on 27<sup>th</sup> November 2008 in Tribunal case No. 039/07/08 for the Ex Parte Applicant to sign all relevant documents and transfer the land to the Interested Party, and in default the court at Kajiado to appoint and order its execute officer to sign transfer documents on behalf of the Ex Parte Applicant.

(iii) An order of **certiorari** be issued to bring to this court for purposes of being quashed the decision of the 2<sup>nd</sup> Respondent made on 1<sup>st</sup> December 2008 to register a restriction against L.R. KAJIADO/KITENGELA/25163.

(iv) An order for **prohibition** be issued forbidding the 2<sup>nd</sup> Respondent from receiving, processing and registering the transfer documents in respect to KAJIADO/KITENGELA/25163 and causing the title deed to issue in favour of the Interested Party.

(v) An order for **prohibition** be issued prohibiting the 2<sup>nd</sup> Respondent from accepting any and at all government costs, fees, charges with regard to any transaction in respect of the Land KAJIADO/KITENGELA/25163 and in particular, any stamp duty for the processing and or registration of any and at all documents with respect to the land.

(vi) An order for **prohibition** be issued against the 3<sup>rd</sup> Respondent prohibiting it from confirming and/or adopting the award granted by Kajiado Land Disputes Tribunal or making any or further orders in respect of Land Tribunal Application No. 8 of 2009 at the Senior Resident Magistrate's Court, Kajiado.

2. The main grounds for the application are-

(i) That the Tribunal lacked jurisdiction and mandate to determine the dispute involving title to land, more especially purchase and sale of land.

(ii) That the decision by the Tribunal was made without hearing the Ex Parte Applicant or giving him an opportunity to be heard.

(iii) That the Tribunal was biased in arriving at its decision, as it comprised a spouse and brother of the Interested Party.

(iv) That the District Land Registrar Kajiado acted capriciously and arbitrarily in registering a restriction against the applicant's land.

3. I have read the statement of facts and verifying affidavit that accompanied the application for leave. There is also another verifying affidavit annexed to the substantive application, which I have also read. The decision dated 27<sup>th</sup> November 2008 of the Ngong Division Land Disputes Tribunal (hereinafter called the Tribunal) is exhibited in this affidavit.

4. At the hearing of the application there was no appearance for the Respondents or the Interested Party. They had been duly served with the application and hearing notice. I have considered the submissions of the learned counsel for the *Ex Parte* Applicant, including the cases cited.

5. The decision of the Tribunal that is challenged in this judicial review application was as follows-

“(i) The Objector (Ex Parte Applicant) do transfer to the Claimant (Interest Party) the above land parcel KJD/KITENGELA/25163.

(ii) The Objector to sign all relevant documents and transfer the land to the Claimant. If he fails to sign the Hon Court can appoint its officer to sign (on his) behalf.

(iii) The District Land Registrar to register the transfer document in favour of the Claimant and issue (her with) the title deed.

(iv) The Claimant to pay all Government stamp duty for processing of the document.

(v) Each party to meet its own costs.”

6. Before making the decision the Tribunal had summarized the dispute before it as follows-

**“The parties entered into (an) agreement for the buying and selling of the mentioned land, of which both parties agreed on the price, and the buyer who is the Claimant paid the whole amount agreed upon as per the document submitted to the Tribunal.**

**“The Objectors have agreed (to) selling the land to the Claimant who paid money to the family through their lawyer, Kabiru and Company, Advocates, to enable (him) to ...(apply for) the prohibitory order (to be) lifted in regard to KJD/KITENGELA/2095 being the land (belonging) to the family (wherein it) was agreed that the Claimant (would) be given 5 acres as stated in the agreement after the case is over...”**

7. It is thus clear that in its decision the Tribunal was purporting to enforce a contract for sale of land and ordered specific performance of the same.

8. The powers of land disputes tribunals were set out in the **Land Disputes Tribunals Act, No 18 of 1990** (since repealed). **Section 3(1)** of that Act provided as follows -

**“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 common;**

**(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. The jurisdiction of the Tribunal in the present case simply did not include power to enforce contracts of sale of land, and the Tribunal did not have jurisdiction to order specific performance and grant other attendant orders. The decision of the Tribunal was thus made without, or in excess of, jurisdiction and was illegal *ab initio*.

10. I will therefore allow the application by notice of motion dated 4<sup>th</sup> May 2009 and grant the judicial review orders sought. The Ex Parte Applicant shall have costs of these proceedings as against the Interested Party. It is so ordered.

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

**DATED AT NAIROBI THIS 7<sup>TH</sup> DAY OF AUGUST 2012**

**H.P.G. WAWERU**

**JUDGE**

**COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28<sup>TH</sup> DAY**

**OF SEPTEMBER 2012**

**ASIKE-MAKHANDIA**

.....

**JUDGE**