



**IN THE MATTER OF: AN APPLICATION BY THE APPLICANT FOR LEAVE TO APPLY FOR ORDER OF CERTIORARI AND**

**PROHIBITION CAP 21 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: ORDER LIII OF THE CIVIL PROCEDURE RULES, SECTION 8 & 9 OF THE LAW REFORM ACT,**

**SECTION 27 AND 28 OF THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: IRONG/ITEN/1438**

**AND**

**IN THE MATTER OF: KEIYO LAND DISPUTE TRIBUNAL LAND DISPUTE NO. 12 OF 2006**

**AND**

**IN THE MATTER OF: RESIDENT MAGISTRATE'S COURT, ITEN, LAND TRIBUNAL DISPUTE NO. 22 OF 2006**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**CHAIRMAN KEIYO LAND TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**RESIDENT MAGISTRATE, ITEN.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**DISTRICT SURVEYOR .....4<sup>TH</sup> RESPONDENT**

**EXPARTE:-**

**JAMES KIPNGETICH KIPSITEI**

**AND**

**GILBERT NYUMU.....INTERESTED  
PARTY**

**JUDGMENT**

This is an application under the provisions of Order 53, Rules 1, 2 and 3 and Sections 7 and 8 of the Law Reforms Act, Cap 26 Laws of Kenya for judicial review orders in the following terms:-

- 1. That an order of Certiorari do issue to remove into the High Court to quash the award dated 30<sup>th</sup> May 2006 by Keiyo Land Dispute Tribunal and the subsequent Decree of Honourable Nathan Shiundu granted on 4<sup>th</sup> July 2006 in Resident Magistrates Court, Iten Land Dispute Tribunal No. 22 of 2006.**
- 2. That an Order of Prohibition do issue restraining the Respondents herein either by themselves or through their servants, agents, representatives or any other person acting for them in whatever capacity and however manner from alienating, encroaching upon selling, shifting the boundaries thereof and/or acting in any manner as to deprive or disposes the Applicant from legal occupation and ownership of the suit property parcel number IRONG/ITEN/1438 measuring 0.10 HA or thereabouts until the final hearing and determination of this suit.**
- 3. That the issuance of order 1 and 2 above to act as stay.**
- 4. Costs in the cause.**

After hearing the application and after considering the submissions by Counsels, I find that there is one issue to be determined by the Court. The issue is whether the Land Disputes Tribunal had jurisdiction to adjudicate on a dispute touching on registered land and the preent dispute over land ownership or over boundary.

The Applicant filed a verifying affidavit sworn on 31<sup>st</sup> June 2006 together with the Statutory Statement filed in Court on 31<sup>st</sup> July 2006. His affidavit is verifying the facts relied upon by the applicant. The applicant annexed a copy of the decision of the Keiyo Land Dispute Tribunal to the said Verifying Affidavit and marked as Exhibit No. "JKK-2".

It is not in dispute that parcel of land known as IRONG/ITEN/1438 is registered in the name of the Applicant. Title Number IRONG/ITEN/600 is registered in the name of the Interested Party. The Interested Party's title does not have the land size on its face but has on the property section. This court has not been called to determine the validity of either title deed because that is not what the dispute is about and is beyond the jurisdiction of a judicial review court. I have no doubt that Land Dispute Tribunals have no jurisdiction to decide on matters of title and ownership to land. However, it is my considered view that the dispute before this court is not over ownership of a land. The Tribunal was dealing with boundary dispute between two adjoining neighbours.

Mr. Rotich counsel for the Applicant and Mr. Limo on behalf of the Interested Party appeared before me on 17.3.2009.

Mr. Rotich Counsel for the Applicant submitted that the decision of the Tribunal issued on 30<sup>th</sup> May 2006 and adopted by the Resident Magistrate Iten on 4<sup>th</sup> July 2006 be quashed. He urged that the Tribunal's order that part of land of the Applicant be curved will lead to excision of land which changes the dispute from dispute over land instead of a dispute in respect of boundary. He further submitted that the effect of such action will result in the reduction of the size of the Applicant's land. The Applicant's title deed will

have to be surrendered for rectification.

He reiterated that the Tribunal does not have jurisdiction to deal with ownership and title of registered land. He cited Section 27 and 28 of the Registered Land Act Cap 300, Section 143 of the same Act which in essence provides that it is only the High court which has jurisdiction and power to order the rectification of a title.

He referred the court to its earlier decision in the case of **HCC MISC APPL. NO. 195 of 2005** **EXPARTE ERNEST K.A. KIRIONG** in which I held thus:-

***“The property herein has at all material times been registered in the name of the Applicant. It still is. The effect of the decision is that the Tribunal would have adjudicated on a dispute touching on registered land and ownership. This it cannot do. The law on this issue is clear, that the Land Disputed Tribunals have no jurisdiction to decide on matters of title and ownership to land. The claim of the interested parties herein is based on a claim of trust. This can only be litigated in the civil courts with appropriate jurisdiction.”***

I have not changed my position on the same. However, this case can be distinguished from that case. This case is about a dispute over a common boundary and not about ownership or title to land.

Mr. Limo on the other hand opposed the application urging that the Tribunal did not order rectification. He noted that the Resident Magistrate decision has been annexed to the Interested Party’s Replying Affidavit and is marked Exhibit “GN4” clearly showing the area of dispute at the common boundary between the two plots. He further urged that the matter before the Tribunal was a boundary dispute which it has powers to deal with.

Mr. Limo referred the Court to Section 143 of the Registered Land Act which talks of a court. The matter is simply one of boundary. There are no disputes to the ownership of the Applicants and Interested parties’ respective land. The parties only have a common boundary dispute. The decree does not result in rectification of the Applicant’s title deed. He further submitted that the conditions in Order 53 have not been satisfied by the applicant whose application must fail.

It is my considered view that the subject matter of the Tribunal’s decision and decree by the Resident Magistrate is limited to resolving dispute over a common boundary. The Applicant and the interested parties share a common boundary. All that is required is a qualified Surveyor to verify the beacons of the parcels of land registered as IRONG/ITEN/1438 and IRONG/ITEN.600. The Decree orders for the ascertainment of the boundaries between the two plots. The Exhibit show where the encroachment may have occurred. I am guided also by the decision of the Tribunal as adopted by the Honourable Magistrate which read in part as follows:-

**“2. That the Surveyor of Kenya to visit the site and ascertain the boundary.**

**3. That the disputed boundary is along the border of plot No. IRONG/ITEN/1438 AND NO.IRONG/ITEN/600.”**

It is in the interest of both parties that they resolve the boundary dispute so that they can make best use of their land. However, the Tribunal and the Honourable Magistrate did not address the issue of costs of identifying and replacing any missing beacons by the surveyor. It may be advisable that the parties share the cost of the surveyor and related expenses/outlay.

I will not belabour on this matter any further. The Tribunal has jurisdiction to deal with matters regarding the verification of the common boundaries of two adjoining plots. I will therefore dismiss the Application with costs. Orders accordingly.

**Dated AND Signed At Nairobi This 23RD Day Of AUGUST 2012.**

**M. K. IBRAHIM**  
**JUDGE**

**DATED AND Delivered at Eldoret on this 27TH day of SEPTEMBER 2012.**

**ABIGAIL MSHILA**  
**JUDGE**

Delivered in the presence of: Mutai for Interested Party

Ngumbi for Respondents

N/A for Ex parte applicant