



**REPUBLIC OF KENYA**

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

**Miscellaneous Civil Application 111 of 2011**

**IN THE MATTER OF AN APPLICATION BY PAUL MUTAI FOR ORDERS OF JUDICIAL  
REVIEW IN THE NATURE OF CERTIORARI**

**AND**

**IN THE MATTER OF LAND DISPUTE TRIBUNAL, ACT NO. 18 OF 1990**

**AND**

**IN THE MATTER OF TRANSMARA LAND DISPUTE TRIBUNAL**

**AND**

**IN THE MATTER OF THE SENIOR RESIDENT MAGISTRATE'S COURT AT KILGORIS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**-VERSUS-**

**TRANSMARA LAND DISPUTE TRIBUNAL .....1<sup>ST</sup> RESPONDENT**

**THE SENIOR RESIDENT MAGISTRATE AT KILGORIS .....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT**

**AND**

**KIPROTICH CHEPKWONY ..... INTERESTED PARTY**

**AND**

**PAUL MUTAI ..... EXPARTE APPLICANT**

**RULING**

The ex-parte applicant sought and obtained leave of the court to bring the present judicial review proceedings against the respondent. The court also stayed the proceedings and decision of the 1<sup>st</sup> respondent pending the substantive application.

The applicant subsequently filed the substantive motion seeking orders that:-

1. *The Honourable court be pleased to issue a writ and/or order of judicial review in the nature of certiorari, to remove into the high court and quash, the proceedings and decision of Trans-Mara Land Disputes Tribunal dated the 12<sup>th</sup> day of August, 2011, whereby the 1<sup>st</sup> respondent irregularly and illegally awarded the ex parte applicant's land LR No. Transmara/Olosakwana/31, to the interested party herein one, Kiprotich Chepkwon.*
2. *The Honourable court be pleased to issue a writ and/or order of Judicial Review in the nature of certiorari, directed unto the Senior Resident Magistrate's court, Kilgoris removing into the high court and quashing, the proceedings and decision/degree of the subject court dated the day of November, 2011, whereby the subject court adopted the award of the 1<sup>st</sup> respondent as its judgment and issued a decree of even date which it now seeks to enforce, vide Kilgoris SRMC Miscellaneous land case no. 6 of 2011.*
3. *The applicant be at liberty to apply to the honourable court for all necessary and/or consequential orders that, the honourable court may deem fit to grant.*
4. *Costs of this application do abide the substantive application for judicial review.*

The background to the application is that the interested party lodged a claim with the 1<sup>st</sup> respondent over **LR No. Transmara/Olosakwana/31** on the ground that the ex parte applicant (then respondent) had hived the same out of plot no. 29 belonging to the interested party. The first respondent found in favour of the interested party and ordered the ex-parte applicant to surrender the same.

The interested party then moved to this court seeking an order of certiorari on the ground that the Tribunal acted *ultra vires* its mandate by entertaining a claim affecting registered land. When the application came up for hearing before me, **Ms. Aliongo**, learned state counsel representing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, conceded the application save for costs.

The Interested Party who was unrepresented asked or time to get legal representation to pursue his claim over the suit land.

I have considered the submissions by all the parties. I make the following orders:-

- i. The application is allowed in terms of prayer 1 and 2, to wit:-
  - a. *An order of judicial review in the nature of certiorari, to remove into the high court and quash, the proceedings and decision of Trans-Mara Land Disputes Tribunal dated the 12<sup>th</sup> day of August, 2011, whereby the 1<sup>st</sup> respondent irregularly and illegally awarded the ex parte applicant's land LR No. Transmara/ Olosakwana/31, to the interested party herein one, Kiprotich Chepkwon.*
  - b. *An order of Judicial Review in the nature of certiorari, directed unto the Senior Resident Magistrate's court, Kilgoris removing into the high court and quashing, the proceedings and decision/degree of the subject court dated the day of November, 2011, whereby the subject court adopted the award of the 1<sup>st</sup> respondent as its judgment and issued a decree of even date which it now seeks to enforce, vide Kilgoris SRMC Miscellaneous land case no. 6 of 2011.*
- ii. The application is allowed without costs.
- iii. The Interested Party may file a substantive suit to pursue his claim over the suit land.

Orders accordingly.

**Ruling dated, signed and delivered** at Kisii this 21<sup>st</sup> day of September, 2012.

**R. LAGAT-KORIR**  
**JUDGE**

**In the presence of:**

..... for applicant

..... for respondent

..... court clerk

**R. LAGAT-KORIR**  
**JUDGE**