



**REPUBLIC OF KENYA**

**High Court at Kericho**

**Miscellaneous Application 34 of 2011**

**BENJAMIN KIPKOSGEI RONO & 2 OTHERS.....APPLICANTS**

**VERSUS**

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

**THE PRINCIPAL MAGISTRATE BOMET.....2<sup>ND</sup> RESPONDENT**

**NICHOLAS BARIWOS.....3<sup>RD</sup> RESPONDENT**

**RULING**

**BENJAMIN KIPKOSGEI RONO, ALICE CHEPKURUI RONO, EDWIN NGENO** herein after Ex parte Applicants in their Notice of Motion dated 19<sup>th</sup> October 2011 seek this court's order of certiorari removing into this court for purposes of quashing an order dated 24<sup>th</sup> July 2011 together with the entire proceedings arising therefrom made by the Sigor Land Disputes Tribunal and thereafter adopted as judgment of the court by Bomet Principal Magistrate's Court in Land Case No. 5 of 2011.

In the matter, **EDWIN NGENO**, the 3<sup>rd</sup> Respondent filed a claim in Sigor Land Disputes Tribunal pursuant to the provisions of the **Land Disputes Tribunal Act No. 18 of 1990**. The subject matter was **Kericho/Sigor/520** land registered in the name of Kiprono Arap Mase (deceased). The verdict was in his favour. Thereafter it was adopted as Judgment of the court by the Bomet Principal Magistrate and a decree drawn thereto. The award in the opinion of the applicant being ultra-vires as it touched on a dispute over title he opted to file the application herein.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents on being served with the application disregarded it. The 3<sup>rd</sup> Respondent filed a replying affidavit acknowledging the fact that the ex parte applicants were dependants and beneficiaries of the estate of Kiprono Arap Mase who was the registered proprietor of the land, Kericho/Sigor/510. He purchased the said land per his averment and has been in occupation for 17 years. The applicant moved to occupy his land hence he sought redress from the tribunal. He called for striking out of the application as it disclosed no case against him.

At the hearing however, despite the fact that the 3<sup>rd</sup> Respondent was served with the hearing notice he did not turn up to respond to the application.

I have considered the application, the statements of facts, the affidavit in support and the reply thereto. Counsel for the ex parte applicants Mr. Orina submitted that the Land Disputes Tribunal lacked jurisdiction to reach the finding to alienate land as it was registered. He argued that the Tribunal only had jurisdiction to adjudicate upon a claim under customary law and according to the Judicature Act, customary law could only be applicable if not inconsistent with any written law.

In this case a perusal of proceedings that were before the Disputes Land Tribunal were in respect of Land Parcel **No. Kericho/Sigor/510**. Right at the outset, the members of the tribunal were aware that the land was registered under the Registered Land Act (cap 300). It was also within their knowledge that the land in which the 3<sup>rd</sup> Respondent claimed beneficial interest was registered in the name of a deceased person.

The issue having been title to land the Land Disputes Tribunal lacked the jurisdiction to adjudicate upon the claim. In the circumstances, their decision is null and void. That decision having been a nullity, the court which adopted it cannot be said to have legalized it. The Judgment entered by the court at Bomet, and the decree thereto are invalid.

Taking all these into consideration, I have no doubt that the Ex parte applicants have demonstrated a case for issuance of the order sought.

An order of certiorari shall therefore issue removing into this court, and quashing forthwith the order of the Sigor Land Disputes Tribunal dated 29<sup>th</sup> July 2011 with all proceedings arising therefrom pursuant to the award adopted as judgment of the court in the Bomet Principal Magistrate's Court Land Case No. 5 of 2011.

The 3<sup>rd</sup> Respondent shall bear costs of the application.

**DATED** at **KERICHO** this 28<sup>TH</sup> day of November 2012.

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**LILIAN N. MUTENDE**

**JUDGE**

**COUNSEL APPEARING**

Mr. Orina, for the Applicant

AG for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Nyaingiri & Co. for Interested party

Mr. R. Koech- court clerk