



**REPUBLIC OF KENYA**

**High Court at Kericho**

**Miscellaneous Application 24 of 2010**

**KIKWAI A. MAGERER.....APPLICANT**

**VERSUS**

**CHAIRMAN BOMET LDT.....1<sup>ST</sup> RESPONDENT**

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

**SAWE A. MAGERER.....3<sup>RD</sup> RESPONDENT**

**RULING**

**KIKWAI A. MAGERER** an ex parte applicant seeks an order of certiorari removing into this court and quashing the decision of Bomet Land disputes tribunal's award which was read and adopted by the Kericho Principal Magistrate hence forming Judgment of the court in Miscellaneous Civil Application No. 15 of 2010.

The Background of the matter is that one **Sawe A. Magerer**, the 3<sup>rd</sup> Respondent in the matter filed a claim against the Ex parte Applicant before the Bomet Land Disputes Tribunal (Bomet Land Disputes Tribunal Claim No. 16/7/VIIL/87 of 2010). Despite the fact that the Ex parte Applicant is the registered proprietor of **L.R. Kericho/ Kongotik/702**, the tribunal made a finding that the land belonged to the 3<sup>rd</sup> Respondent. The award by the tribunal dated 12<sup>th</sup> April 2010 was subsequently read and adopted as judgment of the court by the Principal Magistrate Kericho.

He averred in his affidavit that the tribunal had no jurisdiction to arbitrate on matters of title to land as well as contract the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failed and or neglected to reply to the application.

A reply thereto was filed by the 3<sup>rd</sup> Respondent.

It was his averment that he purchased land parcel – **Kericho/Kongotik/702** in 1956 from one Kiprotich Arap Mwangoris and mandated his brother, the applicant to reside thereon. While away at his place of duty this applicant registered himself as the owner of land in the course of adjudication. He averred that

the tribunal was seized of jurisdiction to deal with the dispute and urged the court to dismiss the application.

The 3<sup>rd</sup> Respondent though duly notified of the hearing date of the application did not turn up.

I have duly considered the application, submissions thereto and the replying affidavit. In making the award, the subject matter of this application, the Tribunal which is a public body handled a matter in respect of **Kericho/Kongotik/702**.

**Section 3** of the **Land Disputes Tribunal (Act No. 3 of 1990)** spells out the jurisdiction of the tribunal.

It stipulates as follows:-

*“Subject to this Act, all cases of a civil nature involving a dispute to –*

*(a) the division of, or the determination of boundaries to land, in dividing land held in common;*

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

*(c) trespass to land;*

*shall be determined by a Tribunal established under Section 4”.*

**Section 4** established the tribunal that heard the matter.

The land in issue is registered under the now repealed Registered Land Act (Cap 300).

The matter in issue was title to land. The Land Disputes Tribunal had no jurisdiction to deal with matters of title to land. The decision of the Land Disputes Tribunal was beyond the powers donated to it by statute.

In the circumstances it was null and void. The Magistrate’s court adopted the award on being filed pursuant to **Rule 20** of the **Land Disputes Tribunal (Forms and Procedure) Rules 1993**. The said adoption does not however legalise what was illegal.

This makes the judgment a nullity as well. In the premises the ex-parte applicant is entitled to the orders sought.

Accordingly, I do grant the ex parte applicant, an order of certiorari to remove into this court and quash the decision of the Bomet Land Disputes Tribunal dated 12<sup>th</sup> April, 2010 together with the entire proceedings arising therefrom, that was adopted as judgment of the court in Kericho Principal Magistrate Misc. Civil Application No. 15 of 2010.

Costs of the application shall be borne by the 2<sup>nd</sup> Respondent.

It is so ordered.

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

.....  
**LILIAN N. MUTENDE**

**JUDGE**

**COUNSEL APPEARING**

Mr. Orina, for the Ex parte Applicant

No Appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Mr. R. Koech- court clerk