



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**JUDICIAL REVIEW NO. 93 OF 2009**

REPUBLIC.....APPLICA  
 NT

VERSUS

THE LAND DISPUTES TRIBUNAL, KOIBATEK DISTRICT.....1<sup>ST</sup>  
 RESPONDENT

THE RESIDENT MAGISTRATE’S COURT AT ELDAMA RAVINE.....2<sup>ND</sup>  
 RESPONDENT

AND

WILLIAM K. CHEBII.....INTERESTED  
 PARTY

**EX-PARTE**  
**FLORENCE CHEPKURUI**  
 CHEPKWONY.....SUBJECT

**RULING**

On 7/10/09, the Ex-parte applicant, Florence Chepkurui Chepkwony filed this Notice of Motion seeking orders against the Land Disputes Tribunal, Koibatek District, the Resident Magistrate’s court, Eldama Ravine, as follows:-

- (a) An order of certiorari to remove to the High Court and quash the Resident Magistrate’s Court at Eldama Ravine’s decree issued on 20/7/2009 in Eldama Ravine Magistrate’s Court, Land Disputes Tribunal No. 1 of 2009.**
- (b) An order of prohibition to prohibit the Resident Magistrate’s court Eldama Ravine from dealing or enforcing its decree issued on 20/7/09 in Eldama Ravine Magistrate’s Court Land Disputes Tribunal No.1 of 2009.**

The grounds upon which the application is brought are that the applicant is the proprietor of **Baringo/Mumberes/161** since 15/2/1995 as evidenced by the Title Deed (FCCI). In 2004, the Interested Party, William K. Chebii alleged that he bought 3 acres of the land from one Joshua Chepkwony in 1994

and that 3 acres had to be carved therefrom. She deponed that the land never belonged to the said Chepkwony neither has she been involved in any transaction to sell the land. The Interested Party filed a case at the Land disputes Tribunal, Koibatek. The Tribunal found in favour of the Interested Party, to the effect that he had bought three acres from the late Joshua Chepkwony and that 3 acres should be excised from the suit land and given to the Interested Party. The Interested Party was ordered to pay the balance of the purchase price of Kshs.1,160/- to the applicant (FCC 3 & 4). The Resident Magistrate's Court adopted the said award and the IP is threatening to execute as she was invited to take her pin number and passport on 8/9/09 to the Land Control Board. It is the applicant's contention that the decision of the Tribunal and ultimately that of the court are a nullity; that the tribunal acted ultra vires its powers, and disregarded rules of natural justice and lastly; that the Tribunal lacked jurisdiction to determine the claim. The application was supported by a statutory statement and verifying affidavit sworn by the applicant on 23/9/2009. Mr. Kiplenge, counsel for the applicant filed submissions on 4/2/2011.

A replying affidavit had been filed by Mr. Tengekyon advocate, on behalf of the Interested Party (IP). He did not attend the hearing though the court confirmed that he was aware of the hearing date, having been represented on 8/12/2010, when the hearing date was taken. The hearing proceeded ex-parte but the court will go ahead to consider the replying affidavit, nevertheless. In his affidavit, the IP deponed that it is indeed true that the applicant is the registered owner of the suit land which was previously owned by Joshua Chepkwony (now deceased) who was the husband of the applicant. He deponed that he purchased 3 acres from the deceased in 1974 and was given possession and has been for the last 36 years. He could not trace the applicant till 18/3/96 when he met her in Nakuru. They did not meet again till 28/4/2003 when the applicant went to the land and sent a message that he IP move out of the land. He reported the matter to the Chief. The matter was deliberated upon and the Land Disputes Tribunal ruled in his favour. He deponed that though counsel has informed him that the Land disputes Tribunal had no jurisdiction to determine the issue of title, the Tribunal ordered that 3 acres be carved out of the disputed land and therefore the whole award should not be quashed. He also contends that having been in possession for 36 years, he has acquired proprietary rights by operation of law.

I have considered the application before me and the prayers sought. **Order 53 Rule 4(1)** of the **Civil Procedure Rules** requires that the relief sought in the Notice of Motion be similar to that in the statement. That provision reads as follows:-

***“4(1) Copies of the statement accompanying the application for leave shall be served with the notice of motion and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the aid statement.”***

In the instant case, the prayers in the statement differ from those in the Notice of Motion save for the prayer for prohibition. First of all, it is noteworthy that whereas the statement seeks three reliefs, the Notice of Motion seeks only two reliefs. In the statement, the applicant seeks two prayers for an order of certiorari to quash the decision of the Tribunal and Resident Magistrate's Court dated 4/5/09 and 7/7/09 respectively. The prayer in the Notice of Motion totally differs from the above prayer because it seeks to quash the Resident magistrate's Court's decree dated 20/7/09. The prayers are significantly different and this court cannot grant any of them. In judicial Review, it is a requirement that the prayers be specific so that the court does not quash the wrong orders or decrees. In this case, the prayers are a mix up and cannot be granted. It is only the prayer for prohibition that is contained both in the statement and Notice of Motion. Without granting the other prayers for certiorari, the court would be acting in vain by granting an order of prohibition alone.

Further to the above, in the Notice of Motion, the applicant does not seek to quash the decision of the Land Disputes Tribunal. Even if the court were to grant the prayer seeking to quash the Resident Magistrate's decision, or decree, the land Disputes Tribunal's decision would still subsist. With the above scenario, I find that his application is incompetent and the court will not go on to consider the merits of the Notice of Motion. So that the applicant is not locked out of the seat of justice due to the mistakes of her counsel who filed an incompetent application, I will strike out the application so that if the applicant wishes, she can bring a competent application. The applicant will bear the costs of this application.

**DATED and DELIVERED this 25<sup>th</sup> day of February 2011.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Ms Muthoni for the applicant.

N/A for the respondents.

N/A for the Interested Party.

N/A for the subject.

Kennedy – Court clerk.