



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT KITALE.**

**MISC. CIVIL APPLICATION NO. 1 OF 2003.**

**REPUBLIC .....APPLICANT.**

**VERSUS**

**SABOTI LAND DISPUTES TRIBUNAL .....1<sup>ST</sup> RESP.  
SENIOR PRINCIPAL MAGISTRATE .....2<sup>ND</sup> RESP.  
ANTHONY WANYONYI CHELOTI..... 1<sup>ST</sup> INT. PARTY.  
BERNARD ALBERT WAMBULA .....2<sup>ND</sup> INT. PARTY.  
MARTIN WEPUKHULU .....3<sup>RD</sup> INT. PARTY.**

**MERCIA MULIRO )**

**SELVESTER J. WAFULA ) ..... EXPARTE.**

**VINCENT MASINDE )**

**RULING.**

**1.** Pursuant to an order of leave granted to the exparte applicant on 14<sup>th</sup> December, 2002, the applicants filed a Notice of Motion on 8<sup>th</sup> January, 2003. The applicants are seeking for an order of certiorari to call to the High Court for quashing, an award by the Saboti Land Dispute Tribunal as adopted by the order of SPMC Land Case No. 53 of 2002 which was adopted on 3<sup>rd</sup> December, 2002. This application is based on the grounds that the award is *ultra vires* the provisions of Act No. 18 of 1990. The tribunal is also faulted for acting beyond the statutory jurisdiction as the award is also alleged to have contravened section 6 of the Land Control Act. The tribunal also adjudicated on a matter that is **subject** as there is are pending suits; **being HCCC. NO. 92 of 2000 at Kitale and HCCC. No. 84 of 1985 at Eldoret.** This application is also supported by matters deposed to in the affidavit of **Sylvester Juma Wafula** sworn on 8<sup>th</sup> January, 2008 as well as the verifying affidavit and the statement of particulars.

2. Briefly stated, it is the ex parte applicant's case that the Saboti Land Disputes Tribunal acted without jurisdiction and their decision contravenes the provisions of the law. The applicants contend that they were not issued with summons to attend the tribunal. They were not also served with the particulars of the complaint as provided for under the Land Disputes Tribunal Act. It is further alleged that the tribunal determined the issue of specific performance of a contract, regarding a registered land. The tribunal is further faulted for determining a matter involving parties who had filed a suit regarding the same subject matter against **Masinde Muliro**. The matter therefore being *subjudice* could not have been determined by the tribunal. The above grounds were reiterated by the applicants counsel in their submission.

3. This application was opposed; Counsel for the interested parties relied on the replying affidavit as well as grounds of opposition filed on 13<sup>th</sup> March, 2003 on behalf of the interested parties. It is contended that the decision by the tribunal is within the confines of the provisions of the Land Disputes Tribunal Act as it only determines the issues of the rights of occupation by the interested parties. The ex parte applicants were served and the issue was dwelt with by the tribunal. It was further argued that the applicant should have filed an appeal before the Provincial committee and also this application for judicial review was not filled within 6 months. The order by the tribunal was issued on 20<sup>th</sup> February, 2002 and this application was filed on 8<sup>th</sup> January, 2003 which is outside the period provided for under Order 53 of the Civil Procedure Rules. It was also pointed out that the chamber summons that sought for leave, the verifying affidavit and the notice to the Registrar are not annexed which indeed lends credence to the argument that leave was not properly obtained. The respondents bought land from the interested party. They have been in occupation and quashing the decision of the tribunal will cause the respondents irreparable harm.

4. This application seeks for orders of judicial review. In considering whether or not to grant the orders sought, the principles to bring to bear are well settled in some long line of authorities settled by the Court of Appeal and also the High Court. Key among them, is the case of; **Kenya National Examination Council vs. Republic Civil Appeal No. 266 of 1996**. The court is supposed to consider firstly, how the decision sought to be quashed was arrived at, otherwise establish whether there was procedural improprieties. Secondly, whether the tribunal that passed the decision had jurisdiction to do so, or to determine whether there are illegalities. Lastly, the court is also supposed to establish whether the rules of natural justice were observed and whether the decision took into account relevant matters such as fairness were taken into account in order for the court to rule out irrationalities.

5. The applicant is seeking an order of certiorari to quash the decision by the Saboti Land Dispute Tribunal which was adopted by the SPM in case No. 53 of 2002 under the provisions of Order 53(2) of Civil Procedure Rules, it is provided that:-

***“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”***

6. The issue raised by the respondents regarding the actual date when leave was sought by the ex parte applicant is a valid issue. Secondly, the issue of whether the rules of natural justice were followed by the tribunal that is whether the applicants were summoned and given an opportunity to present their case. Lastly, the issue of whether the tribunal acted outside its jurisdiction. By the wording of the notice of motion the decision sought to be quashed is the order of the Senior Principal Magistrate which was issued **on 3<sup>rd</sup> December, 2002**. According to the order granting leave the application was made in court on or about 16<sup>th</sup> December, 2002 which is within the time frame provided for under order 53.

7. This now takes me to the 2<sup>nd</sup> issue on whether the tribunal had jurisdiction to deal with the matter. In other words, whether the tribunal's decision is ultra vires the mandate given under section 3 of the Land Dispute Acts which provides as follows:-

*“Subject to this Act, all cases of a civil nature involving a dispute as to:-*

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

*(b) A claim to occupy or work land,*

*(c) Trespass to land*

*Shall be heard and determined by a Tribunal established under Section 4.”*

8. The decision of the tribunal is given in the following words:-

**“RECOMMENDATION:-**

***The Saboti Farmers Co-operative Society members should occupy the Wesakulila Farm of L.R. No. 9491, 485 acres, and the 22 squatters to remain on 22 acres of Wesakulila farm since we have no power to remove the squatters.***

***The farm should be occupied by the owners because they land rent, income tax and they paid their money a sum of Ksh. 1,350,000/= to the late Masinde Muliro. Since we summoned the chairman Wesakulila and Mrs. Mercia Muliro and they never turned up, we fell they ignored our summons, and they know whom the farm belongs to.***

**AWARD PASSED ON 15/7/2002.**

***The farm belongs to Saboti Farmers Co-operation Society members and they should be allowed to occupy it with the 22 squatters occupying 22 acres of the same farm.”***

9. I have considered the above decision against the provisions of the Land Disputes Tribunal Act. In my humble view to say that the tribunal acted outside its jurisdiction is like splinting hairs. I am not persuaded that the decision of the tribunal is outside the provisions of the Act. In my view it is a mere declaration of who should occupy the land. The award is also not capable of being implemented or executed because the person seeking to execute would have to go to court for such orders. The next issue is whether the tribunal failed to observe the rules of natural justice by failing to summon the ex parte applicant. The proceedings show that the chairman of **Wesakulila** and **Mrs. Mercia Muliro** were summoned to attend the tribunal but they failed to do so. In the circumstances they cannot blame the tribunal for failing to hear their side of the story when they ignored the summons. The record in this file also shows other suits being **HCCC. NO. 84 of 1985, Eldoret** and **HCCC. No. 93 of 200, Kitale** were withdrawn therefore the rule of *subjudice* was not breached.

**10.** In the upshot I find the application lacking merit and it is hereby dismissed with costs to the respondents.

**Ruling read and signed this 25<sup>th</sup> day of February, 2011.**

**M.K.KOOME.**

**JUDGE.**