



**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**JUDICIAL REVIEW CASE NO.30 OF 2009**  
**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF**  
**CERTIORARI AND PROHIBITION**

**BETWEEN**

**ELIMA JERUTO KIPSIREN .....APPLICANT**

**AND**

**KOIBATEK LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**RESIDENT MAGISTRATE, ELDAMA RAVINE LAW COURTS.....2<sup>ND</sup> RESPONDENT**

***EX PARTE***

**CHRISTINE C. CHANGWONY .....INTERESTED PARTY**

**RULING**

The applicant having obtained leave brought a motion for the quashing by *certiorari* the proceedings and award of the Koibatek Land Dispute Tribunal in case between the applicant, Elima Jeruto Kipsiren and the interested party, Christine Chepkirui Changwony. The motion further seeks to prohibit the Resident Magistrate, Eldama Ravine Law Courts from adopting as judgment the award of the Tribunal. The motion is premised on the ground that the Tribunal had no jurisdiction to make the decision it made in this dispute; that the dispute arose from a breach of a written contract; that the award amounted to an order of specific performance; that the award amounted to an order of specific performance; that the suit land had been transferred and registered in the name of the applicant's son.

In opposing the application, the interested party averred that the applicant was indeed the one who had breached the sale agreement as she failed to invite the interested party to attend the Land Control Board but instead caused part of the suit property to be registered in the name of her (the applicant's) son. The reply does not challenge the applicant's assertion that the tribunal lacked jurisdiction to entertain the dispute. I have considered the application as well as counsel's submissions which I will revert to shortly.

Although the application to the tribunal is not part of this record, the cause of action in this dispute from what can be gleaned from the pleadings is that on 28<sup>th</sup> May, 2003, the applicant and the interested party entered into a written agreement for the sale of 6 acres of land, being a division of BARINGO/RAVINE/102-247. The consideration was KSHS.840,000/= out of which Kshs.400,000/= was paid leaving a balance of Kshs.440,000/= which was to be paid on or before 31<sup>st</sup> October, 2004. The

sum was deposited with the advocate. The applicant and her son became aversive and hostile.

The interested party stated before the Tribunal as follow:

**“Cash balance Kshs.280,000/ and this was to be paid after going to the Land Control Board as agreed with the seller.**

**Noah Chebii at this time did not agree that we go to the Land Control Board. He even told me that he was not in the position to sell the land.....**

**Only 4 acres will be sold hence breaking the first agreement. Mr. Noah wrote a letter that he did not want the balance of money and that the buyer to remain with 4 acres due to failure in paying the balance in time.....”**

The interested party’s claim clearly arose from her disagreement with the applicant and the applicant’s son with regard to the sale agreement. I have stated that according to the sale agreement, the interested party was to get 6 acres at a consideration of Kshs.840,000/=. The applicant (read her son Noah Chebii) was only ready to transfer 4 acres on the ground that the interested party had breached the agreement by not making the last instalment payment within the time stipulated or at all. The tribunal made the following observations:

**“1. That there was a land agreement deal between Mrs. Elima Jeruto Kipsirem (the seller) and Mrs. Christine Chepkurui Chengwony (the buyer) on 28/05/2003 on 6.00 acre land deal (sic) through Raymond K. Kipkenei (Advocate). The purchase price agreed was Kshs.140,000/= per acre totaling to Kshs.840,000/=.....**

**6. That the breach of agreement was altered (sic) because of not meeting the balance payment of Kshs.440,000/=”**

The Tribunal, in what it called verdict, decided that:

**“1. Mrs. Christine Chepkurui Changwony as per the agreement in 2003 should be given the 4.00acres equivalent to Kshs.562,000 she had paid.**

**2. Mrs. Christine should be given to live (sic) in the place shown, lived and developed since 28/05/2003.**

**3. ....”**

It has been submitted for the interested party that the claim and indeed the award are in conformity with **Section 3(1)** of the **Land Dispute Tribunal Act**; that the dispute was about the division of land, a claim to occupy or work land, and trespass to land. With respect and in view of what I have set out and stated in the foregoing paragraphs, that is stretching the interpretation of **Section 3(1)** aforesaid too far. The Tribunal embarked on the interpretation of a contract and decided on the ownership of the suit property. The dispute did not come within the provisions of the **Land Dispute Tribunal Act**.

The application is allowed with the result that there will be orders of certiorari and prohibition in terms of prayers (a) and (b) of the Notice of Motion.

**Dated, Delivered and Signed at Nakuru this 17<sup>th</sup> day of February, 2011.**

**W. OUKO**

**JUDGE**