



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

MISC. CIVIL APPLICATION NO. 33 OF 2008.

REPUBLICAPPLICANT.

VERSUS

KAPLAMAI LAND DISPUTES TRIBUNAL COMPRISING

OF:-

BEN SIMIYU)

ZIPPORAH NYONGESA) 1ST RESPONDENT.

ZABLON ATSWENJE)

CHIEF MAGISTRARTE, KITALE..... 2ND RESPONDENT.

ELISEBA JEMENJO KEINO.....INTERESTED PARTY.

WILSON BARNGETUNYEXPARTE.

R U L I N G.

1. The exparte applicant filed a notice of motion dated 19th May, 2008 seeking for an order of certiorari to remove to this court for purposes of quashing the decision by Kaplamai Land Disputes Tribunal in Tribunal Case No. 41 of 2007 which was adopted as judgment of the court in Kitale CM. Land Case No. 46 of 2007 on 25th June, 2007. This application is predicated on the grounds that the tribunal acted in contravention of the law. It had no jurisdiction to determine matters relating to a deceased person which are subject to succession proceedings. Moreover, the tribunal has no jurisdiction to determine matters touching on contract and finally the rules of natural justice were not observed by the tribunal.

2. These grounds giving rise to the relief sought by the exparte applicants are expounded in the statement in support of the application as well as the supporting affidavit sworn by Wilson Barngetuny on 19th May, 2008. According to the applicant, he obtained leave of this court on 29th April, 2008 to institute the judicial review proceedings. He annexed a copy of the award by Kaplamai Land Disputes Tribunal which was adopted and made the decree of the court.

3. This application was opposed. **Mr. Chebii**, learned counsel for the interested party submitted that the decision of the tribunal is legally sound because the claimant was directed to follow the issue of contract elsewhere as it was not a matter for the tribunal. It was further held that since the issues touched on the estate of a deceased person it was necessary for the objector to obtain the letters of administration. It is the expert applicant who had filed the matter before the tribunal thus it defeats logic that filed a matter before a tribunal that had no jurisdiction. It was further submitted the ex parte applicant had filed another Miscellaneous Application No. 1043 of 2007 before the High Court, Nairobi over the same subject matter.

4. In considering the remedies sought, I have perused the award by the tribunal that was adopted and made the decree of the court on 25th June, 2007. I agree with counsel for the interested party that there is no decision capable of being implemented arising from the award made by the tribunal. The tribunal held that the issue of contract did not fall within their mandate. They also opined that if the objector had sold a portion of land belonging to the estate of a deceased person, that sale would be null and void. Accordingly, there is no decision capable of being quashed. There is no material before the court to show that the tribunal exercised its powers in bad faith or outside the Land Disputes Tribunal Acts. I see no reason to quash a decision by a Tribunal that has made no orders except to direct the claimant to pursue their remedies before the appropriate forums.

5. I find this application unmeritorious especially because it was filed by the same applicant who was the claimant before the land dispute tribunal where he sought remedies from a tribunal that he knew had no jurisdiction.

The application is dismissed with costs to the interested party.

Ruling read and signed this 25th day of March, 2011

M. KOOME.

JUDGE.