



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL MISC. APPLICATION NO. 1 OF 2010 (JR)

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE A MOTION ON JUDICIAL REVIEW FOR ORDERS OF CERTIORARI

BETWEEN

HENRY KIPRONO KAURIA.....APPLICANT

VS.

THE CHAIRMAN KIPKELION LAND DISPUTES TRIBUNAL.....

.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE, KERICHO.....2ND RESPONDENT

ROSEMARY CHERONO MUTAI.....3RD RESPONDENT

RULING

On 9/4/2009, the 1st Respondent, Kipkelion Land Disputes Tribunal, made a decision in the form of an award to the effect that land parcel **No. Kericho/Kaplaba/81** would be resurveyed and 10 acres comprised in the title transferred to Rosemary Cheronno Mutai, the 3rd Respondent and her husband. This decision was adopted as a judgment of the Court by the Resident Magistrate (Hon. M. O. Okuche) in Kericho SPM Court Misc. App. No. 61 of 2009 pursuant to **Rule 20** of the **Land Disputes Tribunal** (forms and procedure) Rules **1993** made under **Act No. 18 of 1990**.

The *ex parte* applicant obtained leave to file the Notice of Motion herein to apply for an order of certiorari to remove into this Court for quashing the said award and the judgment entered on the basis of that award by the Resident Magistrate as aforesaid on the ground that the Kipkelion Land Disputes Tribunal had no power to give the award or make the decision to have the said land or any part thereof transferred as purported.

Mr. E. M. Orina, learned Counsel for the *ex parte* applicant, Henry Kiprono Kauria, correctly submitted that **Section 3 (1)** of the **Land Disputes Tribunals Act, No. 18 of 1990** does not give a Land Disputes tribunal power to deal with title to land. He opined that the decision by the said Tribunal (1st Respondent) was null and void. The land in question is registered under the **Registered Land Act Cap 300** whose **Section 159** of clearly states that only the High Court (and where the value of the subject matter allows, a magistrate Court) can deal with issues of title to land under the said Act. It is plain to see that the decision of the 1st Respondent was without jurisdiction and was therefore null and void.

The 2nd Respondent purported to adopt a void decision on 10/12/2009. The judgment entered by the 2nd Respondent pursuant to the invalid award was also null and void and of no effect. Leave to quash the judgment was obtained within six months of adoption of the award and the provisions of **Section 9 (3)** were not breached.

The 3rd Respondent, Rosemary Cheron, swore and filed on 20/1/2010 a replying affidavit in which she explained her predicament with her husband. She failed to appreciate that the point raised in the suit was whether the decisions sought to be quashed were in law valid decisions or not. The 1st and 2nd Respondents did not file any replying affidavits in the application.

I have perused the Notice of Motion, the Verifying affidavit, and the Statements of Facts as well as the replying affidavit by the 3rd Respondent. During the hearing of the Notice of Motion on 16/2/2011 the 3rd Respondent submitted that all she wanted was the land she bought. It is my finding in this judicial review application that the award of the 1st Respondent and the judgment entered by the 2nd Respondent pursuant to the said award were null and void on the grounds that the award was made by a body that was not empowered to make an award touching on interest of title to land under the Registered Land Act and further, that the award was not capable of adoption as a judgment of the Court as it was null and void. Consequently, the purported judgment was invalid.

In these circumstances, I allow the Notice of Motion dated 8th January 2010 and order that an order of certiorari shall issue to remove into this Court for quashing the 2nd Respondent's judgment dated 10/12/2009 and the award of the 1st Respondent dated 23/11/2005. The costs in this case shall be borne by the 1st Respondent.

DATED at KERICHO this 6th day of April, 2011

G.B.M KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. E. M. Orina, Advocate, for *Ex parte* Applicant

3rd Respondent, present in Court

Mr. N. Bett, Court clerk