



IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.80 OF 2010

**IN THE MATTER OF APPLICATION BY JAMES BETT FOR JUDICIAL REVIEW ORDERS
OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF THE SENIOR RESIDENT MAGISTRATE'S COURT AT ELDAMA
RAVINE IN LAND DISPUTE APPEALS**

COMMITTEE CASE NO.2 OF 2010

AND

IN THE MATTER OF LAND DISPUTE NO.18 OF 1990

AND

IN THE MATTER OF THE REGISTERED LAND ACT CAP 300

BETWEEN

KIPTUM PRIMARY SCHOOL

JAMES BETT.....APPLICANT

VERSUS

**LANDS DISTRICT APPEALS COMMITTEE-KOIBATEK.....1ST RESPONDENT
THE SENIOR RESIDENT MAGISTRATE'S COURT ELDAMA RAVINE.....2ND RESPONDENT
AFRICAN INLAND CHURCH.....3RD RESPONDENT**

AND

KIPTUNO AIC SAMUEL KIPROR.....3RD RESPONDENTS

RULING

At some point in time, Kiptuno Primary School, the applicant (the School) and the African Inland Church, Kiptuno, the 3rd respondent (the church) carried out their respective activities from one parcels land, known presently as No.LEMBUS/KIPTUNO/151, the suit land. A disagreement arose between the school and the church culminating in the later being excluded from the suit land and prompting it to seek redress from the Land Dispute Tribunal, Koibatek.

In what was clearly a protracted controversy where a total of 29 witnesses testified, the sole question before the tribunal was whether the church was entitled to part of the suit land. After considering the testimony of all the said 29 witnesses, the tribunal made the following observations before rendering its decision:

“1) Both the church and the school are public utilities

2) The A.I.C. church and the primary school both belong to Kiptuno Community.

3) The land disputes tribunal visited the site on 22nd June, 2007 and noted that:

- i. there was a structure which was used as a church (A.I.C. church);**
- ii. that the structure was recently destroyed by unknown arsonist;**
- iii. that the area where the structure stood had been ploughed and maize planted;**
- iv. that the entrance to the site had been completely closed by the school management;**
- v. that the church had been shown to be praying and worship under a big tree within the school compound;**
- vi. the aerial map of East Africa (Kenya) which was aerialled before land demarcation indicated church sign, that is (+ch) as in exhibit no.1 (Map)”**

In its decision, the tribunal found that:

“VERDICT

- The District Land Disputes Tribunal has reached a decision that the A.I.C. church be given half an acre (½ acre).**
- The church be allocated at the corner next to the health centre**
- The surveyor is asked to go and survey the given area as soon as possible.**
- These (sic) panel of elders strongly appeal to the community to continue living in harmony and let PEACE prevail.**

- **Any party that is not satisfied with this ruling is given 30 days to appeal to provincial land dispute tribunal (sic) from the date of this judgment (sic)."**

It is this decision that aggrieved the school hence this application for orders of *certiorari* to quash that decision and prohibition to prohibit the Senior Resident Magistrate, Eldama Ravine (the 2nd respondent) from adopting the Tribunal's decision as its judgment.

The application is premised on the ground that the tribunal exceeded its jurisdiction by ordering that the school's land be excised and transferred to the church.

In reply, the church through its counsel has deposed that the application is fatally defective and bad in law; that the decision of the tribunal was within its mandate. Both the tribunal and the Senior Resident Magistrate, Eldama Ravine did not participate in this matter despite service. Having duly considered these arguments along with the authorities cited by counsel for the applicant, I find that the application raises only two issues namely, whether or not the tribunal had jurisdiction to entertain the dispute and whether the application as drawn is competent. Starting with the last point, it is contended for the 3rd respondent that the applicant, Kiptuno Primary School, being a public school can only be sued, by dint of **section 10(2) of the Education Act**, through its Board of Governors. It should be noted that instead this application has been brought by:

"KIPTUNO PRIMARY SCHOOL

JAMES BETT"
as the applicants.

According to the statement of facts which ordinarily would contain, among other things, the names and description of the applicant, the applicant is described as:

**"...male adult of sound mind and reasonable disposition residing and working for gain in Eldama Ravine and/or elsewhere in the republic of Kenya and his address of service shall be care of.....
....."**

Indicated above as the applicants, are the school and one James Bett. It is not clear whether the above description is in reference to the school or Bett. But by the description of the applicant as a male adult, reference can only be to Bett. The capacity in which he brought the application has not been specified

Under the **Education Act**, actions can only be instituted on behalf of schools by the board of governors or school committees. There is no mention in this application of any of the two bodies. Kiptuno Primary School and/or James Bett have no capacity to bring an action on behalf of those in charge of the running of the school.

Similarly, the 3rd defendant, described as:

**"KIPTUNO AIC
SAMUEL KIPKOR"**

cannot be sued without stating in what capacity they are sued. The Constitution of the church is clear that the church assets are held by the Board of Trustees. It follows that only the Board of Trustees can sue and be sued. It is immaterial that those were the parties in the tribunal.

As the Court of Appeal stated in the case of **P.C. Desai Vs. Harin M. Patel T/A Sandpipers Construction & Civil Engineering Services and others**, Civil Appeal No. 178 of 2000, it served no purpose to have on record and in the proceedings wrong parties. The court said:

“But when it is clear that wrong parties are sued and when the correct party to be sued is known, no purpose could be served by letting the wrong party remain on record. A court has a right to stop an action at a stage when it is known that a wrong is sued rather than allow the plaintiff to vex such party with litigation.”

The other issue concerns the 1st respondent, again named as:

“LANDS DISTRICT APPEALS COMMITTEE, KOIBATEK”

No such a body exists in the **Land Disputes Tribunal Act**. The two bodies in the Act, apart, of course, from the High Court are the Land Disputes Tribunals and the Land Disputes Appeals Committee. The body whose decision is being challenged in this application is the Land Disputes Tribunal, Koibatek. Thirdly, the application seeks an order of prohibition to prohibit the 2nd respondent, the Senior Resident Magistrate from adopting the decision of the tribunal without satisfying the court that indeed there is any application pending before the magistrate.

For all these anomalies in the application, no purpose will be served in considering whether or not the tribunal exceeded its jurisdiction. The application is dismissed with costs to the 3rd respondent.

Dated, Delivered and Signed at Nakuru this 6th day of May, 2011.

**W. OUKO
JUDGE**