



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CIVIL CASE 66 of 2011

REPUBLIC.....APPLICANT.

AND

CHERANGANI L.D.T.

C.M, KITALE)

ATTORNEY GENERAL).....RESPONDENT.

RICHARD TOROITICH.....INT. PARTY.

MIKE KIPTOO LELMEL.....EX-PARTE APPLICANT.

R U L I N G

This application sought for orders on the grounds that:-

1. Cherangany Land Disputes Tribunal overstepped their statutory mandate and acted ultra vires by entertaining a dispute touching on an estate of a deceased person.
2. The tribunal lacked jurisdiction.
3. The panel of elders entertaining the dispute was not properly constituted and not gazetted as required by law.
4. The proceedings were defective in substance and form.
5. The tribunal exhibit manifested biasness against the applicants linking the fair chance of being heard together with their witnesses.

This is an application seeking for Judicial Review for orders of certiorari to quash the decision of Cherangany Land Disputes Tribunal made in respect of Plot No.664/4 Kapkingo Farm and filed as Kitale Chief Magistrate Land Case No. 15/2010.

The applicants are arguing that by the time they appeared before the Tribunal their father had passed on. That they were not given a fair hearing.

The Respondents argued that both parties were heard and a fair and justice decision was reached.

There is no doubt that there was a sale agreement. There is also no doubt that there is a Death Certificate – indicating the date of death as 20th May, 2005.

Section 3 of the Land Disputes Tribunal Act gives the jurisdiction of the then tribunals:

- a) The division of or the determination of boundaries to land including land held in common.
- b) A claim to occupy or work land or
- c) Trespass to land shall be heard and determined by a tribunal as established under section 4.

This does not include estates of dead people.

The Tribunal therefore acted ultra-vires.

The Court will quash the decision.

Each party to bear their own costs.

Time for filing any suit if the Respondents wish to file any suit to start running from now.

Nothing to happen on the disputed 5 acres till after 60 days. If by then no suit has been filed, these orders to lapse. To arrive at this, this Court has involved Section 63 (e) of the Civil Procedure Code, that a consent may ***“make such other interlocutory orders as may appear to the Court to be just and convenient”***

SIGNED

S. M. MUKETI

JUDGE

Read, dated and signed in the Open Court this 20th day of December, 2011.

Mr. Wanjala for the interested Party.

The firm of Limo for the Applicant.

SIGNED

S. M. MUKETI

JUDGE