



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR ORDERS OF CERTIORARI FOR THE PURPOSE OF QUASHING THE DECISION
OF THE OLENGURUONE LAND DISPUTE TRIBUNAL IN LAND DISPUTE NO.77 OF 2006

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF PROHIBITION DIRECTED AT
THE SENIOR RESIDENT MAGISTRATE'S COURT AT MOLO PREVENTING IT FROM
READING AND/OR ADOPTING THE AWARD IN OLENGURUONE LAND DISPUTE
TRIBUNAL NO.77 OF 2006

AND

IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT NO.18 OF 1990 AND THE
REGISTERED LAND ACT CAP.300 LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

OLENGURUONE LAND

DISPUTE TRIBUNAL.....1ST RESPONDENT

SNR. RESIDENT MAGISTRATE

COURT AT MOLO.....2ND RESPONDENT

AND

ALEXANDER K. ROTICH.....INTERESTED PARTY

EXPARTE

ANN CHEROTICH CHIRCHIR.....SUBJECT

RULING

Pursuant to leave granted on 16th November, 2006 in Nakuru H. C. Misc. Application No.408 of 2006, the applicant has brought this motion under the provisions of **Order 53 rule 3** of the **Civil Procedure Rules** and **Sections 8 and 9** of the **Law Reform Act** for orders of *certiorari* and prohibition against the respondents.

It is the applicant's contention that the 1st respondent, the Olunguruone Land Dispute Tribunal's decision in awarding to the interested party parcel of land No.NAKURU/TINET/SOTIK/2417 in the Tribunal Claim No.77 of 2006 was made without jurisdiction. The applicant, for that reason is seeking that that decision be quashed by an order of *certiorari* and secondly that the Tribunal and the Senior Resident Magistrate, Molo (the 2nd respondent) be prohibited from acting on, executing, adopting or in any way dealing with the said decision of the Tribunal. The applicant has further averred that following the decision of the Tribunal, she filed Civil Appeal No.34 of 2006 in the Rift Valley Provincial Appeals Committee, which is pending determination.

The respondents and the interested party were served but failed to enter appearance or respond to this application. I have considered the application as well as the skeleton arguments and authorities on behalf of the applicant.

The only issue before me is whether the Tribunal had jurisdiction to entertain the dispute over the suit property. I have observed that the applicant has preferred an appeal to the Appeals Committee. Is it in order to invoke this court supervisory jurisdiction under the **Law Reform Act** and **Order 53** of the **Civil Procedure Rules**? Under normal circumstances, once a party elects to proceed under a particular regime of law, it would be irregular to simultaneously invoke another procedure. However, this court's jurisdiction to supervise inferior tribunals and other decision making bodies is constitutional. So that, where the High Court is satisfied that an inferior tribunal or court has acted in excess of or without jurisdiction, the High Court will, as it were, step in and not shy away merely because a party has invoked any other jurisdiction. The fact that the applicant's appeal is pending before the Appeals Committee does not oust this court's supervisory jurisdiction where it is apparent that the tribunal has overstepped its mandate.

Turning to this application, there is no dispute that the suit property is registered in the name of the applicant under the **Registered Land Act** and title deed issued to her on 12th October, 2005.

When the 1st respondent referred the dispute to the Tribunal, his claim was that the suit property was allocated to him in 1997; that he developed it and has since been living in the said property; that he was surprised that the applicant had been issued with the title deed.

According to the proceedings before the Tribunal, the applicant also asserted that her clan allocated to her the suit property in 1997. The dispute degenerated with the 1st respondent being arrested for trespass but was released after giving an undertaking to let the applicant enjoy quiet possession. He has since maintained that he gave the undertaking through duress.

The Tribunal made the following decision after hearing the parties and their witnesses:

“Having heard and considered the representations of both parties and their witnesses and having considered all documents submitted to us, we hereby decide as follows:

“THAT the objector, Mrs. Ann C. Chirchir shall sign transfer forms to effect a valid transfer of the plot NAKURU/KERINGET /TINET/SOTIK/2417 to the claimant, Mr. Alexander Kipkemoi Rotich. In default, the Land Registrar shall sign the forms on her behalf.”

All the authorities to which this court was referred by learned counsel for the applicant are unanimous that in terms of **section 3(1)** of the **Land Dispute Tribunals Act, No.18 of 1990**, the Tribunal has no jurisdiction to entertain a dispute relating to ownership of land; that it

similarly, in terms of **section 159** of the **Registered Land Act**, cannot entertain a dispute relating to land registered under that Act. See **Republic Vs Nandi District Land Dispute Tribunal, Exparte Alfred K. Kabus**, Eldoret H.C.Misc. Application No.134 of 2003, **Emmanuel Obwonya Alutseshe Vs. Henry Kombo Alutseshe**, Kakamega H.C. Civil Appeal No.62 of 2001 and **Beatrice M'Marete Vs. Republic & 3 Others**, Civil Appeal No. 259 of 2000 (Nyeri C.A.).

An order of *certiorari* is employed by the High Court to quash a decision by an inferior court or tribunal if that decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with. The Tribunal in directing the applicant to transfer the suit property to the interested party while it was clear to it that the former is the registered owner under the **Registered Land Act**, delved into the issue of title or ownership of the suit property. The decision was not in consonance with **section 3** of the **Land Dispute Tribunal Act**.

For that reason, it is ordered that by an order of *certiorari*, the decision be and is hereby quashed. The applicant has further averred that the interested party has fixed the decision to be adopted by the Senior Resident Magistrate's court at Molo. Prohibition will also issue against the Senior Resident Magistrate, Molo to prohibit him from adopting the Tribunal's decision as a judgment of the court as that decision was reached without jurisdiction. No prohibition can however issue against the Tribunal as it is *functus officio*. I award costs of the application to the applicant.

Dated, Signed and Delivered at Nakuru this 29th day of January, 2010.

W. OUKO
JUDGE