



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**Miscellaneous Civil Application 198 of 2009**

REPUBLIC .....RESPONDENT

-VERSUS-

LINA JEPKEMBOI LAGAT .....1<sup>ST</sup> APPLICANT

JOSPHAT KIMUTAI LAGAT .....2<sup>ND</sup> APPLICANT

ERNEST KIPKORIR ARAP OLBARA .....3<sup>RD</sup> APPLICANT

AND

DISTRICT COMMISSIONER ELDORET EAST DISTRICT - RESPONDENT 1

DISTRICT EXECUTIVE COMMITTEE ELDORET EAST DISTRICT- RESPONDENT 2

ELDORET EAST CONSTITUENCY DEVELOPMENT FUND ..... RESPONDENT 3

**JUDGMENT**

This is a motion seeking Judicial Review Orders of Certiorari and Prohibition for the Court to call for the decision of the District Commissioner Eldoret East District made on the 4<sup>th</sup> March, 2009 and expressed in a communication dated 9<sup>th</sup> March, 2009 to be brought before the court for purposes of quashing it and an order of prohibition prohibiting the first Respondent from constructing its offices on parcel numbers Eldoret Municipality Block 8/536,538 and 539 belonging to the applicants. In the statement the following are the grounds upon which the above reliefs are sought;-

*The Eldoret East District was established by Legal Notice Number 1006 of 2007 dated 12<sup>th</sup> day of October, 2007 under the Districts and Provinces Act No.5 of 1992. That by a Government Communication of 2008 the District Headquarter of the Eldoret East District is stated to be at Naiberi.*

***That in the District Executive committee meeting held on 4<sup>th</sup> March, 2009 the Committee instead of establishing its offices at Naiberi Centre decided to relocate its offices to a place next to Eldoret Hospice and the place happens to be located on parcels numbers Eldoret Municipality Block 5/536,538 and 539 which are private properties registered under the provisions of the Registered Land Act in the names of the Ex-parte Applicants. That there has been no action by the Central Government to compulsorily acquire the Ex-part applicants' parcels of land to wit parcel numbers Eldoret Municipality Block 8/536,538 and 539 nor have the said titles been revoked or cancelled or otherwise by the Central Government.***

And then the specific relief's sought are couched in the following words:-

*The applicants pray for the following orders:-*

- (i) This Honourable court do find it fit to grant orders of certiorari to bring to this court the decision of the first and second respondents made on 4<sup>th</sup> March, 2009 and communicated on 9<sup>th</sup> March, 2009 for purposes of the same being quashed.***
- (ii) An order of prohibition prohibiting the Respondents herein from using the funds of the second respondent to construct the Eldoret East District headquarters on the applicants parcels of land.***

The decision of the District Executive Committee of the 4<sup>th</sup> March, 2009 was not annexed to the application but the letter of the 9<sup>th</sup> March, 2009 communicating that there was such decision was annexed to the application. Submitting for the Exparte applicants learned Counsel Mr. Birech stated that the applicants parcels of land were private property registered under the registered Land Act and sections 27 and 28 of the said Law gave the applicants absolute proprietorship over the same and their rights were indivisible and as there was no compulsory acquisition then the District headquarters for Eldoret East District could not be constructed there.

The Respondents opposed the application and filed a Replying Affidavit sworn by Charles Mukele the District Commissioner Eldoret East District. He deponed therein that the suit land is Government Property known as Government house no. HG2 which was set aside as pool houses for the judiciary and it also has high grade houses for the Ministry of Roads and Engineers and therefore is not private property. That the properties were illegally alienated by the District Works Officer one Pauline Jemutai Olbara who sub-divided them to the applicants but that the exparte applicants were evicted from the said property which then reverted to the Government and it has always been in the possession and control of Government and that is confirmed by an official search which indicates a restriction on the grounds of being Public Property.

Submitting for the Respondents learned Senior litigation Counsel Mr. Eredi stated that the orders sought could not be granted as they were not appropriate.

From the above it is abundantly clear that the dispute is one of ownership of the suit land. The process of the decision of the District Executive Committee of the 4<sup>th</sup> March 2009 and the decision itself and those that made it and for whom it was meant for were not made known to the court. The communication of the 9<sup>th</sup> March, 2009 was from District Development office, Eldoret East District to the District Public Works Officer Eldoret East District and therefore inter-government officers communication and which did not touch on the exparte applicants as the Government considers the suit land government property. Be that as it may the issues herein are in my view of a civil nature touching on title to land and therefore not for this court to determine sitting in its Judicial Review Jurisdiction for judicial review proceedings are:-

***“Decisions of persons and bodies which perform public duties or function will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no such person***

*or body properly directing itself and the relevant law and acting reasonably could have reached the decision” as per the words of Lord Green MR in the case of ASSOCIATED PROVINCIAL PICTURE HOUSES –VERSUS- WENESBISTRY CORPORATION (1948) IKB 223.*

In this motion it was not the District Commissioner Eldoret East decision and that of the District Executive Committee that the suit land was Government property. That is the issue here as I see it, that of the ownership of the suit land. That position cannot be resolved by orders in judicial review but rather by a civil court which is the appropriate forum for resolving property ownership disputes such as the one before me now. Sitting as I do in Judicial Review jurisdiction I cannot determine to whom the suit land belongs. That is for me in my civil jurisdiction which is not what is asked of me to do now. This motion is in the wrong court, it is inappropriately brought and it must fail. I dismiss it for those reasons, with costs

It is so ordered.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 21<sup>ST</sup> DAY OF JULY 2010.**

**P.M. MWILU**

**JUDGE.**

In the presence of

**Birech** Advocate for exparte applicants

**No appearance** for Advocate for Respondents

**Paul Ekitela** Court Clerk

**P.M. MWILU. JUDGE.**