



1. Judicial Review Proceedings.
2. Subject of main application.
 - I. Land Disputes Tribunal
 - a) LR Inder Farm 68
 - b) Land Originally owned by Joseph Kiptanui Cherotuk (deceased) comprising 70 acres.
 - c) Dispute with another, resolved on 5th February 1985
 - d) Two sons of deceased David Tanui – Elder son (1st Son) Wilson Seronei - younger Son (2nd Son)
 - e) Land shared at
 - 40 acres to 1st Son
 - 30 acres to 2nd Son
 - f) 1st son files Tribunal Lands Dispute case (No.1/2004)
 - g) 1st Son protest but tribunal award apportionment of land equally 35:35
 - h) Award part of the judgment of court (Eldoret CMCC NO. 24/2005 on 16/1/2006)
 - i) 1st son files Judicial Review Proceedings on 30 January 2006.
3. Procedure
 - j) Leave granted 30th January 2006 Ibrahim J.

- k) Notice of Motion dated 10th February 2006 filed 14th February 2006
- l) Replying affidavit by Interested party on 24th March 2006
- m) Attorney General Served - absent
- n) Interparte hearing 23rd October 2007
- o) Ruling reserved for 29th November 2007 (Bauni J.)
- p) Hon. Judge passes away
- q) Ruling prepared 2010 - order 17 r 10 Civil Procedure Code

4. Background

- i. Out of 70 acres only 50 acres was in dispute
- ii. 50 acres divided equally at 25 acres each amongst the two brother
- iii. Remaining 20 acres divided 15:5 acres
- iv. Elders held apportionment be equal

5. Findings

- i. Role of the lands disputes tribunal is distinct.
- ii. It does not include division of land title.
- iii. No letter of grant was taken out for deceased father estate.

6. Case Law

- 7. Advocate - Nil

Applicant in person

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

MISSCELLENIOUS APPLICATION NO. 34 OF 00

IN THE MATTER OF JUDICIAL REVIEW PROCEEDINGS

IN THE MATTER OF THE LAND DISPUTES INTERNAL ACT NO. 18 OF 1999

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, KAPSABET LAND DISPUTE TRIBUNAL.....1ST
RESPONDENT

THE ATTORNEY GENERAL.....2ND
RESPONDENT

INTERESTED PARTY.....WILSON
SERONEI

APPLICANT.....DAVID K.
TANUI

RULING

I. Procedure

1. The judicial review proceeding before this High Court was filed sometime in January 2006. It involved land parcel Inder Farm 68 consisting of 70 acres. The original owner, one Joseph Kiptanui Cherotuk (now deceased) (passed away sometime in 1984) had a dispute over the parcel of land this dispute was finalized and concluded in farm of the deceased.
2. The two sons of the deceased David Tanui (herein referred to as the 1st son) and Wilson Seronei (herein referred to as the 2nd son) shared the land equally for the 50 acres. Namely each obtained 25 acres. The remaining 20 acres was still to be claimed. When this was so done, the first son took 15 acres and took a total of 40 acres whilst the second son was given by the first son (brother) 5 acres making a total of 30 acres. The second son was not

satisfied and wanted an equal share namely an approximate of 35 acres each. The first son filed a land disputes tribunal reference case.

3. The first son later protested against the land disputes tribunal case on grounds of biasness. The panel of members to the tribunal gave an award regardless and stated that the land be apportioned equally amongst the two sons. The tribunal consulted the mother to the two sons, though it was not clearly indicated that she gave evidence.

4. ing dissatisfied with the decision of the tribunal the first son filed judicial review proceedings on the 30 January 2006. This was after the award was adopted by the Magistrates Court CMCC 24/2005 on the 16th January 2006

5. Leave to bring judicial review proceedings was granted on 30th January 2006 (Ibrahim J). A notice of Motion was filed on 14th February 2006 dated 10th February 2006. A replying affidavit was filed on 24th march 2006. The Attorney General was served but was absent (possibly on grounds that he was not named.)

6. Interparte hearing was held on 23rd October 2007 and ruling reserved for 29th November 2007 before Bauni J. (as he then was). Unfortunately the Hon. Judge passed away. The said matter had been pending between 2007 to 2010. This is highly regreted. Directions being that under Order 17 r 10 Civil Procedure Rules, together with directions from the office of the Hon. The Chief Justice, having recently come to this High Court Station, through the Principal Judge, I proceed to write this judgment.

II. Background

7. The arguments put forward by the advocate for the applicant is that the tribunal was biased in its decision attempts to stay the tribunal was futile. Secondly, the said interested party (second son and brother to the applicant) was never interested in the said land; the decision of the tribunal ought to be quashed.

8. In reply the second son and brother to the applicant stated that according to the customary law the apportionment of land must be equal. At the time of filing the reference the applicant had no locus to file the same.

III. Findings

9. The Lands Disputes Tribunal Act outlines the role of the Tribunal Act outlines the role of the tribunal. This role being that the tribunals task is to hearing disputes touching on a claim to occupy and work land, trespass to land division or demarcation of boundary inter alia. This does not include the division of the land.

10. The interested party admits that there was no locus by the said applicant to bring the reference. The reasons being

that no letter to the estate had been taken out if this is the case then this matter really should have first been dealt with through the estate of their late father.

11. There is quite a lot of anomaly in this matter.

12. The findings of this court is from the proceedings before it is that the Lands Disputes Tribunal in essence lacked jurisdiction in dealing with the dispute in question. Jurisdiction goes to the root of all cases. As they lacked that Jurisdiction, the decision of the tribunal is hereby quashed. The orders of certiorari are hereby granted.

Dated this 29th day of September 2010 at ELDORET

M. A. ANG'AWA
JUDGE

Advocate - Nil
Applicant in person