



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISCELLANEOUS CIVIL APPLICATION NO. 132 OF 2006

**IN THE MATTER OF: AN APPLICATION BY KIPKEBE LIMITED FOR JUDICIAL REVIEW
(CERTIORARI AND PROHIBITION)**

AND

IN THE MATTER OF: LAND DISPUTES TRIBUNAL ACT, NO. 18 OF 1990

AND

IN THE MATTER OF: BORABU LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF: SENIOR PRINCIPAL MAGISTRATE’S COURT AT KISII

AND

IN THE MATTER OF: KISII CMCC MISC. APPLICATION NO. 12 OF 2006

BETWEEN

REPUBLIC APPLICANT

VERSUS

BORABU LAND DISPUTES TRIBUNAL 1ST RESPONDENT

THE SENIOR PRINCIPAL

MAGISTRATE’S COURT AT KISII 2ND RESPONDENT

AND

NEMWEL ARANI ONDIEKI INTERESTED PARTY

EX-PARTE

KIPKEBE LIMITED

RULING

The ex-parte applicant’s application dated 2nd August, 2006, seeks the following substantive orders:

1. An order of certiorari to remove into this court and quash the proceedings and decision of the 1st respondent dated 8th March, 2006, vide Tribunal Cause No. 11 of 2005 whereby the 1st respondent decreed that the interested party be awarded 25 acres out of Kipkebe Estate, belonging to the ex-parte applicant.
 2. An order of prohibition to prohibit the 1st respondent or any other Tribunal from hearing, deliberating upon or in any other way whatsoever dealing with issues pertaining to ownership of Kipkebe Estate or any portion thereof.
 3. An order of prohibition to prohibit the 2nd respondent from hearing, deliberating upon and/or entertaining Kisii CMCC Misc. Application No. 41 of 2006, seeking to adopt the decision of the 1st respondent dated 8th March, 2006.
1. 4. Costs of this application.

The application was supported by a statement of facts, affidavit in verification of the statement and a further affidavit sworn by **Samuel**

A.O. Owino, the Legal Officer of the ex-parte applicant. He stated that the interested party had hitherto filed **Kisii HCCC No. 204 of 1996** against the ex-parte applicant and the said suit was dismissed on 11th February, 2003. Thereafter the interested party filed a suit against the ex-parte applicant before **Borabu Land Disputes Tribunal, case No. 11 of 2005**. The Tribunal purported to award the interested party 25 acres out of Kipkebe Estate which belongs to the ex-parte applicant. The 1st respondent had no jurisdiction to do so and the decision was therefore a nullity *ab initio*, the deponent stated.

The interested party was unrepresented. He did not file any replying affidavit. He only filed a bundle of correspondence relating to the suit land as well as copies of pleadings in respect of various matters regarding the same land. His basic argument was that in 1946 the land in question, measuring 25 acres, was given to his late father by a certain European Settler who previously owned the expansive land that now forms Kipkebe Estate. That his late father was buried there and thereafter he continued to live on the land together his family members. He had however lost the letter vide which the land was given to his late father. In his view, the 1st respondent's decision of awarding him the 25 acres was proper.

Much as I sympathize with the interested party, the law is against him. There is no dispute that the ex-parte applicant is the registered proprietor of an expansive parcel of land known as **L.R. 941/10**. The power of the 1st respondent is donated to it by the provisions of **section 3 (1) of the Land Disputes Tribunal Act, No. 18 of 1990**. Such a tribunal does not have power to entertain disputes regarding ownership of land. The 1st respondent, in purporting to hear the interested party's case and to award him on behalf of his deceased father, 25 acres out of the ex-parte applicant's estate, acted without jurisdiction. In **KARANJA -VS- ATTORNEY GENERAL**, Civil Appeal No. 310 of 1997 at Nyeri, the Court of Appeal held that:

“Any order made without jurisdiction is a nullity and no amount of legal ingenuity can turn that into a valid order.”

In **ASMAN MALOBA WEPUKHULU & ANOTHER -VS- FRANCIS WAKWABUBI BIKETI**, Civil Appeal No. 157 of 2001, the Court of Appeal reiterated that a Land Disputes Tribunal lacks jurisdiction to determine a dispute relating to ownership of land.

Prior to filing his claim before the Borabu Land Disputes Tribunal, the interested party had filed Kisii HCCC No. 204 of 1996 claiming a portion of the ex-parte applicant's land by way of adverse possession. The suit was dismissed vide an order issued on 11th February, 2003. The interested party did not file an appeal against that decision. The subsequent complaint before the 1st respondent was therefore *res judicata*. There was no valid decision capable of adoption by the 2nd respondent.

In view of the foregoing, the prayers sought by the ex-parte applicant are granted. The 1st respondent shall bear the ex-parte applicant's costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 17TH DAY OF SEPTEMBER, 2010.

D. MUSINGA
JUDGE.

17/9/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Oguttu for the Ex-parte Applicant

Interested party present

N/A for the Respondents

Court: Ruling delivered in open court on 17th September, 2010.

D. MUSINGA
JUDGE.