



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
MISC CIVIL CASE NO. 32 OF 2010

REPUBLIC.....APPLICANT

VERSUS

1. KAPLAMAI LAND DISPUTES TRIBUNAL COMPRISING
 - (A) BEN M. SIMIYU – (CHAIRMAN)
 - (B) ZIPPORAH NYONGESA).....1ST RESPONDENT
 - (C) EVANS WILLIE KIBOROM)
2. THE CHIEF MAGISTRATE KITALE COURTS.....2ND RESPONDENT
3. EVANS WILLIE MAKOKHA.....3RD RESPONDENT

JUDGMENT

1. Pursuant to an order of leave granted to the applicant on 30th June, 2010 the *ex parte* applicant filed a notice of motion dated 8th July, 2010. The applicant is seeking for an order of *certiorari* to remove into the High Court and quash the decision of Kaplamai Land Disputes Tribunal which was read and adopted as judgment of the court on 13th January, 2009 vide Kitale CMCC No. 106 of 2008. This application is supported by the affidavit of the *ex parte* applicant; **James Thare** sworn on 8th July, 2010. A statutory statement and another affidavit sworn on 2nd June, 2009.

2. The applicant is challenging the decision by Kaplamai Land Disputes Tribunal dated 24th November, 2008. According to the applicant, the tribunal determined issues which were beyond their statutory jurisdiction, the jurisdiction of the land disputes Tribunal is clearly spelt out Under Section 3 of the Act which provides as follows:...

(a) **The division of, or determination of boundaries of land, including land held in common**

(b) **A claim to occupy or work land**

(c) **Trespass to land**

3. Further the tribunal was also faulted for making an order requiring the *ex parte* applicant to pay costs to the interested party according to the advocate's remuneration order; this is despite the fact that the

interested party is not an advocate of the high court. Counsel for the applicant submitted that although the decision of the Tribunal was made on 24th November, 2008, it was not available to the parties until it was read to them by the court and adopted as the judgment of the court therefore the six months period provided for under the provisions of order 53 of the CPR started to run from 13th January, 2009 when the order was adopted as the judgment of the court.

4. This application was opposed Mr. Wasike learned counsel for the interested party. He challenged this application for failure to state the grounds upon which it is predicated. Secondly, he submitted that the decision of the Tribunal has already been adopted by the court, it is therefore a judgment of the court and not available for quashing. Moreover, the applicant filed an appeal before the Provincial Tribunal and at the same time filed this application which is an abuse of the court process.

4. Counsel for the interested party submitted that there was nothing wrong with the decision of the tribunal all the parties participated in the determination of the matter of the boundary which is within the province of the Land Disputes Tribunal Act. Issues of trespass to land are also within the jurisdiction of the Tribunal. This was decided in the case of **Republic Vs Chairman, Lands Disputes Tribunal Kirinyaga District & another Exparte Peter Maru Kariuki {2005} eKLR**. The principles set out in that judgment confirms that the Land Dispute Tribunal Act provides for an appeal before the Provincial Appeals Committee if one is dissatisfied with the decision of the Land Disputes Tribunal.

5. This application seeks for an order of *certiorari* which can be granted on the basis of clear evidence of abuse of power by an inferior tribunal, excess of jurisdiction, or on the grounds that the tribunal that made the decision did not observe the rules of natural justice. Firstly, I will address myself to the issues raised by the interested party regarding the shortcomings in this notice of motion. It is correct the notice of motion is not supported by grounds but it is clearly stated that the motion is supported by the affidavit of the applicant, the statements and the verifying affidavit sworn on 2nd June, 2009 that affidavit is titled "Supporting and Verifying Affidavit" and the question I have asked myself is whether these discrepancies have caused any prejudice to the interested party. The answer is in the negative because the grounds are founded in the affidavits and also the statement.

6. This now leads me to the substantial issue of whether the applicant should be granted the order of *certiorari* to quash the decision of the Kaplamai Land Disputes Tribunal. The decision by the Tribunal was passed on 24th November, 2008. The ex parte applicant contends that he was not aware of the decision Tribunal until the 13th of January, 2009 when it was made the order of the court, thus the six months period runs from 13th of January to 2nd of June 2009 when he filed the application for leave. In this case, the applicant claim is that the Tribunal exceeded its jurisdiction and the mandate given under section 3 of the Land Disputes Act when they determined the ownership of the land in dispute. The order by the Tribunal is as follows:-

1. "The reducing of the road did not alter the boundary on the ground. All that took place was creation of some land along the Siyoi side. Siyoi side belongs to Siyoi SFT. If the created land had belonged to Chematich the objector should have been affected hence listed under the above Gazette Notice failure to list either the Claimant or Objector clearly showed that they were not affected. The Tribunal therefore directed that the objector should not cross over from Chematich to Siyoi SFT.

2. The objector James Koech Arap Tare to pay the costs to the claimant at the advocate's remuneration order.

7. Looking at the above orders of the tribunal against the interpretation of the jurisdiction of the tribunal under section 3 of the Act, it is obvious the Tribunal over stepped their mandate when they ordered the objector not to cross over from **Chematich to Siyoi SFT** and when they ordered the objector to pay costs to the claimant according to the advocate's remuneration order. The Tribunal is supposed to make a finding on whether there is trespass, interference with boundary or whether one has a right to work on the land. The tribunal cannot make an order that touches on the title that is for a party to file a substantive suit

in the High Court and seek for orders touching on the title.

8. For those reasons I allow the application by the *ex parte* applicant and quash the decision of Kaplamai Land Dispute Tribunal which was adopted as the judgment of the court on 13th January, 2009 vides Kitale CMC Land Case No. 106 of 2008. Due to the nature of this application each party shall bear their own cost of this litigation.

Judgment read and signed on 19th day of November, 2010.

MARTHA KOOME

JUDGE