



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
MISC. CIVIL APPLICATION NO. 262 OF 2006

REPUBLIC.....APPLICANT

VERSUS

**THE CHAIRMAN KEIYO DISTRICT LAND DISPUTES TRIBUNAL.....1ST
RESPONDENT**

**THE DISTRICT LAND REGISTRAR KEIYO DISTRICT.....2ND
RESPONDENT**

THE ATTORNEY GENERAL.....3RD RESPONDENT

AND

JULIUS OLE NALAMAEINTERESTED PARTY

AND

PATRICK KIPYEGO.....EX-PARTE

RULING

Before me is an application brought under Order LIII Rules 1, 3 and 4 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act Cap. 260 of the Laws of Kenya in which the ex parte Applicant one PATRICK KIPYEGO seeks orders of certiorari to remove into this Honourable Court and quash the Award of the 1st Respondent Keiyo Land Disputes Tribunal adopted on 24th March 2006 in Iten Senior Resident Magistrate's Court Award No. 8 of 2006 and of prohibition to bar the Respondent from executing implementing and/or in any way enforcing the aforesaid Award No. 8 of 2006 adopted as an order of the Honourable Court on 24th March 2006. It also prays for the costs of the entire proceedings.

That application is brought on the grounds that on the 27th October 2004 the Keiyo Land District Tribunal made a decision over a dispute over land known as Elgeyo/Marakwet/Anin/988 and on 24th March 2006 the Senior Resident Magistrate's Court Iten adopted the said decision as Award No. 8 of 2006 in which decision the Tribunal granted the interested party ½ share of the parcel of land in dispute and which decision the ex parte application was aggrieved by. Further grounds are that the Tribunal did not have jurisdiction to determine the matter as the suit land was registered land and one of the registered owners Lawrence Kipyego now deceased was the father of the ex parte applicant and he died before the commencement of the proceedings before the Tribunal and succession proceedings not having been taken there cannot be any dealing with the deceased's land and further the decision of the Tribunal is contrary to the provisions of Section 45 of the Law of Succession Act. That the Interested Party lacked locus standi to give evidence at the Tribunal and further the Tribunal acted ultra vires, the decision was arrived at against the Rules of Natural Justice and that decision is null and void. The affidavit in support merely amplifies the above.

The Interested Party in his Replying Affidavit swore that the application was without merit and was filed out of time and ought to be dismissed with costs. That he was advised by his counsel which advice he believed that the non-inclusion of the court that adopted the Award was fatal to the application and in any case the ex parte applicant lacked capacity to bring the proceedings before this court and even to defend earlier at the Tribunal.

There were substantive submissions by both counsel in support of their respective rival positions.

I have considered the application in its entirety and this is the view I take of the whole matter and all the issues raised.

It was not disputed by either of the parties before me that the land the subject matter of the proceedings before me was registered land. Further it was not disputed that the dispute is one of ownership of that land. Now, Section 3 (1) of the Land Disputes Tribunal Act, 1990 No. 18 of 1990 is the one that donates the necessary jurisdiction to the Tribunal in the following terms:-

“Subject to this Act, all cases of a civil nature involving a dispute as to –

(a) the division of, or the determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land;

shall be heard and determined by a Tribunal established under Section 4.”

That is all the jurisdiction such Tribunals have and clearly that jurisdiction does not include one of determining disputes involving ownership of registered land. To that extent the Keiyo District Land Disputes Tribunal acted ultra vires its mandate and its such action was null and void ab initio. It matters not whether or not the parties that subjected themselves to that Tribunal had locus standi or not. Jurisdiction is everything and the Tribunal had none.

The Interested Party would have to draw a decree and execute the same to make effective the orders he obtained from the Tribunal, had that Tribunal any jurisdiction to act as it did. It had no such jurisdiction as already stated above and no attempts at effecting the judgment were made within or without time. The claim herein is one for a civil court's determination and I accordingly pronounce as null what the Tribunal attempted to do and hereby allow the application under consideration with costs.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 15TH DAY OF DECEMBER 2010.

P. M. MWILU

JUDGE

In the presence of:-

Mr. Were holding brief for Chepkonga Advocate for the Applicants

Mr. Kathili Advocate for the Defendant

Andrew Omwenga - Court Clerk

P. M. MWILU

JUDGE