



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL MISC. APPL. NO. 3 OF 2009(JR)

JOHN ROTICH
.....**APPLICANT**
VERSUS
CHAIRMAN RORET LAND DISPUTE
TRIBUNAL**1ST RESPONDENT**
THE PRINCIPAL MAGISTRATE COURT
KERICHO**2ND RESPONDENT**
BORNES ROTICH
..... **3RD**
..... **RESPONDENT**

RULING

In the Notice of Motion dated 19th March, 2010 and in the Statutory Statement and verifying affidavit filed with the Notice to the Registrar, the ex parte Applicant, **JOHN ROTICH**, prayed that an order of certiorari be issued to bring into this court for quashing the decision of the Roret Land Disputes Tribunal dated 8th May, 2008 which was adopted as a judgment of the Court on 31st July, 2008 in Kericho Magistrate’s Court Miscellaneous Civil Application No. 26 of 2008. It was the contention of the ex parte Applicant that the said Land Disputes Tribunal did not have jurisdiction to determine the matter. Mr. K.L. Kipyegon, the Learned Counsel who appeared for the ex parte Applicant submitted that the provisions of **Section 3(1) of the Land Disputes Tribunals Act, No. 18 of 1990** did not confer any power on the Tribunal to deal with the title or to make a determination such as the Tribunal made when it offered compensation and purported to divide the land comprised in the titles to the land referred to in the decision.

Mr. J.K. Koech who represented the 3rd Respondent opposed the Motion and relying on the 3rd Respondent’s replying affidavit submitted that the land in question was held jointly by the ex parte Applicant and **Norah Chepkurui Rono**, his client and consequently, he said, the Tribunal had jurisdiction under **Section 3(1)** to determine issues of division of land.

The decision of the Tribunal was as follows:

1. *John Rotich to enjoy use of his land 1.13 acres because David Rotich did not pay for it.*
2. *John Rotich to compensate David Rotich for the tea bushes planted by David Rotich in John Rotich’s land”*

Did the Tribunal have jurisdiction to determine the dispute and make the above decisions? The provisions of **Section 3(1) of Act 18 of 1990** do not confer jurisdiction on the Tribunal to deal with or determine issues of contract which the Tribunal purported to do. Nor do the provisions in the said section vest any jurisdiction in the tribunal to make orders for compensation as it did. These are matters that fell outside the purview of the Tribunal’s jurisdiction. The plenitude of its powers do not encompass the decisions that it made. The decisions were therefore null and void. Their adoption by the Resident Magistrate Court

in Kericho P.M. Misc. Civil Application No. 26 of 2008 did not revive or breathe new life into them. They remained dead.

It is my finding that the decisions sought to be quashed were made by a body that had no power to make them. I therefore allow the application and issue an order of certiorari to bringing into this court for quashing the decision of Roret Land Disputes Tribunal dated 8th May, 2008 which was purportedly adopted as an order of the court on 31st July, 2008 in Kericho Principal Magistrate's Court Miscellaneous Civil Application No. 26 of 2008. As a consequence of this and for the avoidance of doubt, I declare the order adopting the said decision in Kericho Principal Magistrate's Court Misc. Civil Application No. 26 of 2008 as null and void. The six months period stipulated in **Section 9(3)** of the **Law Reform Act, Cap 26**, for applying to quash any judgment, order, or decree, conviction or other proceedings does not apply where, like here, such order is rendered null and void by reason of nullification of other proceedings from which such order, or other proceedings spring from.

I award the costs of the application to the ex parte Applicant against the Respondents who shall be liable jointly and severally.

DATED at KERICHO this 6th day of December, 2010

G.B.M. KARIUKI,sc
RESIDENT JUDGE

COUNSEL APPEARING

Mr. K.L. Kipyegon advocate for the ex parte Applicant

Mr. J.K. Koech advocate for the 3rd Respondent

N/A by the Attorney General for the 1st and 2nd Respondents

Court Clerk – Mr. Bett