



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA**

**Miscellaneous Application 53 of 2005**

**REPUBLIC ..... APPLICANT**

**AND**

**THE A.G. FOR AND ON BEHALF**

**OF CHARIMAN KAPSOKWONY LAND**

**DISPUTES TRIBUNAL ..... RESPONDENT**

**EXPARTE**

**KINYOR KACHAS ..... APPLICANT**

**VRS**

**1. DANIEL CHEPTOEK KACHASE**

**2. ROSE JOPKOECH TUWEL INTERESTED PARTY**

**RULING**

This is a ruling on application brought by way of Judicial Review dated 16<sup>th</sup> March, 2005 and brought under Order LIII rule (1) & (2) of the Civil Procedure Rules section (8) and (9) Law Reform Act Cap 26, Laws of Kenya. The Applicant Kinyor Kachas seeks for orders of *certiorari* to remove into this court and quash the proceedings and award Kapsokwony Land Disputes Tribunal in claim *No.KAP/LDT/11/04* read and adopted as Judgment of the court on 25/1/2006 vide Kimilili Resident Magistrate's Court Land case No.1 of 2005.

In the grounds supporting the application, the Applicant contends that, the Kapsokwony Land Disputes Tribunal had no jurisdiction to arbitrate in a dispute involving a registered parcel of land and ordering subdivision and transfer of the same. The facts are that on 14/12/2004 the tribunal made an award which was later adopted as judgment of the court on the 25/1/2005 by Kimilili Resident Magistrate to the effect that land Ref. *NO.ELGON/CHEMOGE/376* be shared between the Applicant and the interested parties. The applicant was to retain 5.2 hecs., Daniel Cheptoek Kachas 2 hecs., and one Rodhah, the wife to the late John Kweyu to get 2 acres. The Applicant was aggrieved by the said decision resulting to filing of this application.

The 1<sup>st</sup> interested party filed grounds of opposition dated 7/11/2005 in which he stated that the tribunal

acted within its jurisdiction and that the award adopted as judgment of the court is legally enforceable against the applicant.

The jurisdiction of the tribunal is provided for in section 3(1) of the Land Disputes Tribunal Act No.18 which provides as follows:

*“1) 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.”*

Section 4 which establishes the tribunal, including the tribunals composition states in sub section (1):

*“There shall be established a tribunal, to be called the Land Disputes Tribunal, for every registration district.”*

The jurisdiction of the tribunal is derived from section 159 of the Registered Land Act (300) and the relevant part states as follows:

*“Section 159 civil suits and proceedings relating to the title to, or possession of, land ..... shall be tried by the High Court and where the value of the subject matter does not exceed twenty five thousand pounds by the Resident Magistrate’s Court, or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunal Act, in accordance with that Act.”*

The issue before this court is to determine whether the Webuye Land Disputes Tribunal had the jurisdiction to determine the dispute before it on the 6<sup>th</sup> of December, 2005. The dispute involved land parcel No. ELGON/CHEMOGE/376 which was registered under the Registered Land Act as shown by the application of official search annexed to the application. The interested party made the following statement before the tribunal.

*“When our father (1<sup>st</sup> interested party) passed on my brother registered the parcel of land ELGON/CHEMOGE/376 in his name. When I asked him to give me a portion, he refused. I went to the chief of Chemoge who made efforts to call my brother to his office but he refused to turn up. I went to the District Commissioner, Bungoma and took to him the official search certificate. After this, is when we brought this case before the land disputes Tribunal. I request my brother to give me my portion of this land which belonged to my late father.”*

It is clear from the proceedings of the tribunal that the land in issue was registered under the Registered Land Act Cap.300. Under section 159 of the Registered Land Act, proceedings relating to title to, or possession of land are triable by the High Court and the Resident Magistrate Court depending on the value of the subject matter. The jurisdiction of the tribunal is limited to disputes involving division of, or the determination of boundaries to land, a claim to occupy or work on land and trace pass to land. The issues presented before Kapsokwony Land Disputes Tribunal did not involve any of the disputes outlined in section 3(1) of the Land Disputes Tribunal Act. The tribunal therefore proceeded to hear a dispute in which it had no jurisdiction. In my considered opinion the grounds of opposition claiming that the tribunal had jurisdiction are misconceived.

The actions and the decision of the tribunal over the suit land were *ultra vires*. The Applicant has satisfied the court that the tribunal acted without jurisdiction in hearing the said dispute. The award of the said tribunal which was adopted by SRM, Kimilili is hereby moved to this court and quashed accordingly. The application is therefore merited and it is allowed with costs to the applicants.

Dated, Delivered and Signed at Bungoma

This 10th day of June 2009 in the presence of Ms Nanzushi for the applicants on 10/06/09.

**F. N. MUCHEMI**

**JUDGE**