



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

**AT ELDORET**

**Miscellaneous Civil Application 4B of 2008**

**REPUBLIC .....**  
**APPLICANT**

**VERSUS**

**THE CHAIRMAN LAND DISPUTES TRIBUNAL KABIYET DIVISION...1<sup>ST</sup> RESPONDENT**

**PRINCIPAL MAGISTRATE, KAPSABET..... 2<sup>ND</sup>**  
**RESPONDENT**

**AND**

**PAULINA CHEBOO TALAM ..... INTERESTED**  
**PARTY**

**EX-PARTE: KIMAIYO TALAM PETRO**

**JUDGEMENT**

This application before me is the Notice of Motion dated 29<sup>th</sup> May, 2008. The application is brought under Section 8 and 9 of the Law Reform Act and Order LIII rule 3 and 4 of the Civil Procedure Rules. The ex-parte Applicant KIMAIYO TALAM PETRO seeks the following orders:-

- (1) An order of certiorari to bring to the High Court for the purpose of being quashed the decision of the Land Disputes Tribunal Kabiyeet Division dated 18<sup>th</sup> April, 2008 filed in Kapsabet Principal Magistrate's Court and registered in Kapsabet Principal Magistrate's Court Land Disputes Tribunal Case No. 21 of 2008.
- (2) An Order of prohibition do issue to prohibit the adoption and enforcement of the decision of the Land Disputes Tribunal Kabiyeet Division filed in the Principal Magistrate's Court Kasabet and registered in Kapsabet Principal Magistrate's Court Land Disputes Tribunal Case No. 21 of 2008.
- (3) Costs of this application and the application for leave to be borne by the Interested Party and the Respondent.

The application premised on the following grounds:-

- (a) The Tribunal lacked jurisdiction.

- (b) The Tribunal did not act in accordance with the provisions of the Land Disputes Tribunal Act when receiving, processing the claim for hearing and forwarding the decision to Court.
- (c) The decision was contrary to the Land Control Act.
- (d) The decision/dispute relates to Agricultural land.
- (e) The rules of natural justice were not observed.
- (f) The decision if not stopped will be adopted as Judgment of the Court and enforced rendering the Applicant landless and or almost landless.
- (g) The proceedings were a nullity.

The application is also based on the affidavit of the

Applicant and the Statement of facts. The Applicant has contended the following in his Statement of facts.

- (i) The Applicant is the registered owner of the land reference NANDI/NDULELE/943.
- (ii) The Interested Party has been awarded eight (8) acres out of land reference NANDI/NDULELE/943 by the Tribunal.
- (iii) The award is ultra vires the Land Disputes Tribunal Act.
- (iv) There was no claim filed before the Tribunal as per law required.
- (v) The matter was not processed for hearing as per law required and the hearing was pre-mature and illegal.
- (vi) The Land Disputes Tribunal exceeded its jurisdiction by entertaining a matrimonial dispute and purported to share out land reference NANDI/NDULELE/943.
- (vii) The Applicant has not consented to the sharing out and transfer of land reference No. NANDI/NDULELE/943 or part thereof.
- (viii) Land reference NANDI/NDULELE/943 is agricultural land governed by the Land Control Act and the award illegal under the Act.
- (ix) The Applicant was never summoned to appear before the Tribunal nor was he served with the statement of claim as required by the Act.
- (x) The District Officer has no part to play in proceedings before the Tribunal nor is he a member of the Tribunal.
- (xi) The decision of the Tribunal was not forwarded to the Court as per the law required.
- (xii) The Tribunal awarded eight (8) acres of land to ROSEBELLAH who was not party to the dispute before the Tribunal.
- (xiii) The rules of natural justice were not observed.
- (xiv) The proceedings were conducted in a public Baraza and members of the public allowed to participate in the case.

(xv) The proceedings before the Tribunal were a nullity.

(xvi) The adoption and enforcement of the decision of the Tribunal will cause the Applicant great loss and hardship and or irreparable loss.

The application is opposed by the Respondent who has filed replying affidavit giving grounds. She says:-

(i) That it is not true that she moved the Tribunal deliberately on a matrimonial dispute as alleged by the Applicant.

(ii) That the claim was well within Tribunal's jurisdiction.

(iii) That her desire was to occupy and work on the land that belongs to her husband.

(iv) That the Applicant's application is incompetent and lacks merit.

(v) That there is no provision of law that bars the District Officer from forwarding the Tribunal's decision to the Court on behalf of the Chairman for adoption.

The facts of this litigation as gathered from the pleadings and the affidavit evidence are as follows. The Applicant KIMAIYO PETRO TALAM is the registered proprietor of the suit land being NANDI/NDULELE/943 measuring about 17½ acres. He has two wives namely PAULINA TALAM who is the Respondent in this suit and she is the senior wife and ROSEBELLAH TALAM who is the junior wife. The Applicant had allowed the Respondent to utilize only a small portion of the land while Rosebellah utilized the rest of the land. The Respondent was not happy with the way she was being treated and she decided to file a dispute before the Land Disputes Tribunal where she demanded that she be given equal share with Rosebellah. The Tribunal deliberated on the dispute and awarded her eight (8) acres. Rosebellah also was awarded eight (8) acres and the balance of 1½ acres was awarded to the Applicant. This is what provoked these proceedings by way of judicial review. Judicial review is concerned with the decision making process as opposed to the merit of the decision. The Court is urged to make a finding on the following issues:-

(i) Whether or not the Respondent PAULINA TALAM could file a dispute against her husband demanding a share of the suit land which is registered in the name of her husband under the provisions of the Registered Lands Act Cap 300.

(ii) Whether or not the Tribunal had jurisdiction to entertain a dispute over registered land under the provisions of Registered Land Act Cap. 300.

The Applicant as the registered owner of the suit property is still alive. His property is not yet available for sub-division and distribution among his wives except if he is personally on his own free will decides to sub-divide and distribute it among them. He cannot be directed or ordered to do it against his own will. To the extent that the Respondent wanted the Tribunal to compel the Applicant to share the suit property during his life time in a particular manner and in designated shares, she did not have a cause of action in law respecting which the Tribunal could aid her to enforce. See **C.A. NO. 189, KARIUKI MARIGI APPELLANT VS. RICHARD MARIGI MURIUKI & TWO OTHERS.**

The second issue for the Court to make a finding is whether or not the Tribunal had jurisdiction to entertain a dispute over registered land under the provisions of the Registered Land Act Cap. 300. Jurisdiction is conferred upon the Tribunal by Section 3 of the Land Disputes Tribunal Act which provides:-

**“3” (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 on land; or**

**(c) trespass to land shall be heard and determined by a Tribunal established under Section 4.**

From the above provision it is clear that the Tribunal exceeded its jurisdiction when it ordered for the sub division of the Applicant's land and transfer of the two sub divisions to the wives of the Applicant and the orders so made were therefore a nullity.

It follows from all the foregoing that the order of Certiorari

must issue to remove to this Court and to quash the decision of the Land Disputes Tribunal Kabiye Division dated 18<sup>th</sup> April, 2008 and filed in Kapsabet Principal Magistrate's Court and registered as Kapsabet Principal Magistrate's Court Land Disputes Tribunal Case No. 21 of 2008. I make a further order to prohibit the adoption and enforcement of the decision of the Land Disputes Tribunal Kabiye Division filed in the Principal Magistrate's Court Kapsabet and registered as Kapsabet Principal Magistrate's Court Land Disputes Tribunal Case No. 21 of 2008.

What then is the appropriate order for costs the Applicant having succeeded in his application? The application falls within the definition of "suit" and Section 27 gives me jurisdiction to make orders for costs. The correct order in my view is to direct that the Respondent shall pay the Applicant's costs and incidental to this application.

Order accordingly.

**DELIVERED AND DATED AT ELDORET THIS 21<sup>ST</sup> DAY OF OCTOBER, 2009.**

**J. L. A. OSIEMO**

**JUDGE**