



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Miscellaneous Civil Application 418 of 2006

REPUBLIC.....APPLICANT

AND

OLENGURUONE LAND

DISPUTE TRIBUNAL.....RESPONDENT

AND

EUNICE CHEPKWONY.....INTERESTED PARTY

EXPARTE

EMILY CHEPKURUI KILEL.....SUBJECT

RULING

Pursuant to leave granted on 30th August, 2006, the applicant has brought the instant motion for orders of certiorari and prohibition against the decision of the Olenguruone Land Disputes Tribunal in case **No.138 of 2006**, on the grounds that the Tribunal acted in disregard of the law and without jurisdiction.

The interested party and the respondent were duly served but stayed away from these proceedings. The background to this application is that the interested party made a reference to the Tribunal claiming parcel of land No. NAKURU/TINET/

SOTIK SETTLEMENT SCHEME/1406. The tribunal made, among others, the following findings

“3. THAT Mr. Kilel also admitted that he found the plot developed and in fact found the claimant living in the plot

5. THAT the collection of the Title Deed by the objector when someone also has been living and having developed the plot after being allocated legally was not proper.”

The tribunal then proceeded to make the following award:

“THAT the objector Emily Kilel shall sign transfer forms to effect a valid transfer of the Plot NAKURU/TINET/SOTIK SETTLEMENT SCHEME 1406 to the claimant EUNICE CHEPKWONY. In default the land registrar shall sign the forms on her behalf.”

This court was referred to the case of **Beatrice M'Marete Vs. Republic**, Civil Appeal No.259 of 2000 in which

the Court of Appeal held as follows with regard to the Tribunal's jurisdiction:

“We have already set out at the commencement of this judgment the final decision of the Tribunal. It was to the effect that the penal of elders awarded the parcels of land Nos. Nyaki/Mulathankari/

1680 and 1681 to the claimant (Beatrice) who is the appellant before us. These pieces of land were registered under the Registered Land Act (Cap.3000 Laws of Kenya). Awarding land to the claimant meant she acquired an interest in it by virtue of that award. In order to put that ruling into effect, the appellant would have to effect it by rectifying or canceling the titles.....

Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction”

Section 3 of the Land Dispute Tribunal Act stipulates what kind of disputes can be entertained by the Tribunal. The dispute before the Tribunal which has given rise to this application did not relate to boundaries, claim to occupy or work on the land, but a claim to ownership. Clearly therefore, the Tribunal exceeded its mandate under the law and proceed to entertain a claim of ownership awarding the suit land to the interested party and directing a transfer from a registered owner to the interested party. An order of certiorari is therefore

available to the applicant to quash that decision. The applicant has also applied for an order of prohibition

“.....to prohibit the Respondents from adopting, executing or acting upon the decision of the Olenguruone Land Dispute Tribunal made on 27th July, 2006 in claim No.138 of 2006”

There is only one respondent, Olenguruone Land Disputes Tribunal. The court is being asked to prohibit it from adopting, executing or acting upon its own decision.

The Tribunal's decision has been rendered and it is *functus officio*. It is not apparent from the record whether the decision was ever entered, in terms of **section 7(2)** of the Act, as judgment by the magistrate's court. An order of prohibition is intended to forbid a tribunal or body from continuing with proceedings which are in excess of its jurisdiction or in contravention of the law. It looks to the future and not the past. The Tribunal cannot therefore be prohibited from doing any of the acts sought in this application when it is already *functus officio*.

For the reasons stated earlier, the decision of the Olenguruone Land Disputes Tribunal delivered on 27th July, 2006 is hereby quashed by an order of Certiorari with costs to the applicant.

DATED, SIGNED and DELIVERED at NAKURU this 25th day of November, 2009.

**W. OUKO
JUDGE**