



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Miscellaneous Civil Application 243 of 2003**

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

**VERSUS**

**CHAIRMAN KIBIYET LAND DISPUTE TRIBUNAL:.....RESPONDENT**

**AND**

**1. WILLIAM KIBOR MAIYO:.....INTERSTED PARTIES**

**2. SAMUEL KIPSANG CHEPKWONY**

**JOSEPH KIMETO CHEPKOWNY :.....EX-PARTE**

**JUDGEMENT**

The Ex parte Applicant brings this Notice of Motion under Order LIII Rules 3,4 of the Civil Procedure Rules and section 3A of the Civil Procedure Act and sections 8 and 9 of the Law Reform Act cap.26 of the Laws of Kenya praying for orders of certiorari removing into this court for purposes of quashing forthwith the proceedings and decisions of Kibiyet Land Dispute Tribunal case No.27 of 2001 and removing into this court for purposes of quashing forthwith the orders of Kapsabet Principal Magistrate's court Land case No.27 of 2001 over parcel of land number Nandi Lolkeringet/116. there are also prayers that this Honourable court do issue prohibitory orders prohibiting the Principal Magistrate court at Kapsabet from executing application forms for consent to subdivide and transfer forms in respect of land parcel Nandi/Lolkering/116 and to prohibit the Kibiyet Land Control Board from consenting to application to subdivide and transfer the said parcel of land and to prohibit the Surveyor Nandi District from surveying and/or placing any beacons or boundaries on the same and prohibit the Land Registrar, Nandi District from registering the parcel of land in terms of the award filed in court on the 4/11/2001 and adopted on the 19<sup>th</sup> October 2002. That this court do issue orders of mandamus compelling the District Land Registrar – Nandi District to delete from the Register any entries made over Land Parcel Nand/Lolkeringet/116 vide Kabsabet Principal Magistrate's court LDT No.27 of 2001. The application was based on the grounds that the Land Disputes Tribunal had no jurisdiction to entertain a matter on a parcel of land registered under the Registered Land Act cap.300 of the Laws of Kenya and the Interested party's claim, if any, was time barred in terms of the Limitation of Actions Act cap 22 of the Laws of Kenya. That the panel of elders' decision was founded against the Rules of Natural Justice and the Applicant was condemned unheard and the transaction was void for all purposes in the view that no consent of the Land Control Board was obtained as required by the Land Control Act cap.302 Laws of Kenya JOSEPH KIMETO CHEPKWONY, the ex parte applicant swore an affidavit to support his application.

WILLIAM KIBOR MAIYO one of the interested parties filed a replying Affidavit in opposition to the application and stated that he purchased 4 acres of land parcel No. Nandi/Lolkeringet/172 from the ex-parte applicant and later another two acres making a total of 6 aces. He stated that he bought 6 acres out of land parcel number Nandi/Lelkeringet/172 and not out of parcel Number Nandi/Lolkeringet/116.

I have given consideration to this application. I have carefully perused the proceedings of the Kabiye Land Disputes Tribunal. Those proceedings relate to land parcel Number Nandi/Lolkeringet/172. Parcel No. Nandi Lolkeringet/116 is mentioned when the First interested party (The then 1<sup>st</sup> Plaintiff) stated that the Ex parte Applicant wanted him to take part of plot No.116 but he refused as according to him he bought 6 acres out of plot No.172 and in any case plot No.116 is not in the name of the Ex parte Applicant according to the 1<sup>st</sup> Interested Party. I find that the Panel of elders Award also relates to plot No.172 and that is why they stated that the Interested parties were to remain on the plots they had bought and built on and not be moved to No.116. The heading of their Award related to plot No.Nandi/Lolkeriget/172. However the decree issued at Kapsabet Principal Magistrate's Court case No. LDT.No.27/2001 and annexed to the present application relates to plot number Nandi/Lolkeringet/116 and this must be why the present application has been brought. Although the elders deliberated on plot No.172, judgment was entered in respect of plot No.116. For that reason the application under consideration must succeed. Further and more importantly both parcels of land are registered under the Registered Land Act and consequently the Panel of elders did not have jurisdiction to deliberate on the same and whatever they did was a nullity and I so find. The result of my finding is that the interested parties must pursue whatever claims they may have against the ex parte applicant through the right procedure. In the end the application dated 25/7/2003 succeeds in its entirety. Costs to the applicant.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 2<sup>ND</sup> DAY OF DECEMBER.2009**

**P.M.MWILU**

**JUDGE**

**IN THE PRESENCE OF**

Mr. Birech for Exparte Applicant

Lagat holding brief for Misoi for interested party

Court Clerk - Paul Ekitela