



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

Civil Appeal 43 of 2006

REPUBLIC APPLICANT

VERSUS

CHAIRMAN KEIYO DIVISION L.D.T.

ATTORNEY GENERAL.....RESPONDENTS

TABYOTIN KABON EGO EX-PARTE

J U D G M E N T

This is an application by way of Notice of Motion dated 20th February, 2006 under the provisions of Order 53, rules 1, 3 and 4 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act. The Applicant seeks an order to remove into this Court and for it to be quashed the 1st Respondent's decision/verdict and which was adopted as the Judgment/Order of the Court in Iten RMCC. No. 10 of 2005.

The grounds for the application set out by the Applicant are;-

- (a) That the Tribunal lacked jurisdiction and mandate to determine the dispute involving title to land.
- (b) That the Tribunal in purporting to deliberate and make decision of the nature of awarding the Applicant's parcel of land was acting ultra vires.
- (c) That the decision is contrary to all rules of absolute ownership of the title holder and his indefeasible rights thereon.
- (d) That the Tribunal exhibited bias in favour of the interested party and disregarded the rules of natural justice.
- (e) That the decision of the Tribunal was arrived at in a flawed process with total disregard to the rules of natural justice and the ex-parte applicant not given proper opportunity to be heard.
- (f) That the Tribunal's Constitution was wanting, it's membership consisting of strangers to the area and the true facts concerning the subject matter.

(g) That the Tribunal decision in awarding the interested party 6.2 hectares being part of parcel No. Irong/Iten/102 was made contrary to all known statutes and settled law and thus is null and void ab initio.

(h) That the High Court in Eldoret pursuant to the application dated 8th February, 2006 granted leave to the applicant to apply for orders of Certiorary on 8th February, 2006 to remove and quash the decision of Keiyo Land Dispute Tribunal No. 10 of 2005.

(i) As a result thereto it is apparently clear that;

(a) The said Keiyo Land Disputes Tribunal had no jurisdiction to entertain the proceedings in the said Appeal, or at all.

(b) The said Keiyo Land Disputes Tribunal acted ultra vires.

(c) The challenged decision herein was arrived in a biased manner.

(d) The said decision was arrived at against the rules of Natural Justice.

(e) The said decisions were null and void ab initio.

The application was duly served on the 1st and 2nd respondents i.e. the Chairman of Keiyo Division Land Disputes Tribunal and the Attorney General respectively. The interested party, was also served.

The Respondents did not file any replying affidavit or other documents in opposition to the application.

The interested party filed a Replying Affidavit sworn on 25th April, 2006, in opposition to the application.

I have considered the application the statement of claim and the vival affidavits. I have also considered the submissions by counsel.

The Applicant is the registered proprietor in respect of the suit property, namely, Irong/Iten/102. It is not quite clear how the Applicant became the registered owner of the land on 10th December, 1992. From the title deed it appears to be a first registration. The interested party claims that both herself and the Applicant were wives of one Kaino Koringo Yego, now deceased. She further claims that the suit property originally belonged to their late husband and that the Applicant registered herself as owner fraudulently.

From the said dispute it is clear that the interested party's claim is that she was a widow of the deceased and entitled to inherit a portion of the suit property.

Does the Land Disputes Tribunal have any jurisdiction to hear and determine any disputes or issues touching on succession and/or inheritance? I hold that that certainly not so.

Section 3 of the Land Disputes Tribunal Act, Act no. 18 of 1990 provides as follows;

“3. Subject to this Act, all cases of a Civil nature involving a dispute as to -----

(a) the division of 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.”

The interested party's claim herein does not fall under any of the 3 categories above. Her claim is one of a beneficiary to the Estate of the late Kaino Koringo Yego. She has to prove that first, the land registered in the name of the Applicant was part of the assets of the said Estate and secondly that it was registered in the name of the Applicant in breach of any applicable law whether the Law of Succession Act or otherwise.

The Tribunal therefore did not have jurisdiction or mandate to consider the claim by the Applicant. It is not an answer to state that the Applicant participated in the proceedings and submitted herself to the "jurisdiction" of the Tribunal. Jurisdiction can only be conferred by Law and not by consent or conduct of parties.

From the facts and pleadings, I agree that the Applicant's title has not yet been challenged in law. The Tribunal has no jurisdiction to deal with disputes in respect of title to land and which would possibly lead to revocation of a title or registration thereof.

I therefore do hereby grant an order of Certiorari to remove into this court the decision of the 1st Respondent which was adopted by the Subordinate Court and do also hereby quash the same.

The interested party shall pay the costs of this application.

Dated and delivered at Eldoret on this 21st day of January, 2008.

MOHAMMED IBRAHIM

JUDGE