REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Misc Civil Appli 412 of 2006

REPUBLIC…….....APPLICANT

VERSUS

OLENGURUONE LAND DISPUTES TRIBUNAL…..…RESPONDENT

RULING

This is a judicial review application brought under Order 53 Rule 3(1) of the Civil Procedure Rules and Section 8 of the Law Reform Act it seeks an order of certiorari to bring to this court and quash the proceedings and award of the Olenguruone Land Dispute Tribunal (the Tribunal) made on 22nd June 2006 in Land Dispute Tribunal Case Numbers 44 and 53 of 2006 (consolidated). The application is supported by the affidavit of the first ex-parte applicant, Richard K. Koech, in which he has raised one major issue: that the Tribunal had no jurisdiction to adjudicate on a claim on ownership of land. He deposed that the Tribunal ignored his protestations and went ahead to hear and decide the matter.

In his replying affidavit, the chairman of the Tribunal, Mr. Samuel Bett, deposed that the Tribunal had jurisdiction under **Sections 3(1)(b) & (c)** and **12** of the **Land Disputes Tribunal Act 1990** (the **Act)**. In his view the High Court can only deal with a matter arising from the Tribunal on appeal.

Basing himself on the averments in the affidavit in support of the application, Mr. Kahiga for the ex-parte applicants submitted that the Tribunal had absolutely no jurisdiction to deal with the issue of ownership of land and to make the award it purported to.

On his part, Mr. Gai for the Interested Parties chose to confine himself to the argument that this application is incompetent. He submitted that the Molo Resident Magistrate's court before which the award is pending for adoption having not been made a party renders these proceedings bad in law and therefore incompetent. He also argued that the application is wrongly intituled.

On the competence of this application, Mr. Gai did not elaborate on how it is wrongly intituled. I say nothing about that. He also argued that this application is incompetent for failure to join the Molo Resident Magistrate before whom the award is pending for adoption. I agree with Mr. Kahiga that that contention is devoid of any substance. The Molo court having not adopted the award or made any order in the matter could not be made a party to these proceedings. I therefore find that this application is competent and properly before court.

On the merits of the application I have carefully considered the above submissions and the averments in the affidavits in support of and in opposition to the application. I have also carefully read the Tribunal proceedings and award. The Tribunal was at one stage incensed that, while the matter was pending before it, the first ex-parte applicant filed a suit in the Resident Magistrate's court at Molo and obtained

certain orders. It considered that as contempt of its authority and demanded an explanation from the first ex-parte applicant which he refused to give.

It is clear from a perusal of the proceedings that what was before the Tribunal was a dispute on the ownership of the suit piece of land. Both the ex-parte applicants and the Interested Parties claimed ownership of it. The Tribunal took their evidence and that of their witnesses and in their award decreed that the Interested Parties were the owners of land and went ahead to award compensation and mesne profits to the Interested Parties.

The Tribunal had absolutely no jurisdiction to do any of these things. It appears to me that the Tribunals established under the **Act** think that they deal with literally anything under the sun as long as it involves land. That of course is wrong. The long and short of this matter is that the Tribunal had absolutely no jurisdiction to entertain a dispute on the ownership of property. **Section 3** of the **Land Disputes Tribunal Act No. 18 of 1990** is very clear as to what the Tribunals established under that Act are authorized to do. That section only authorizes them to adjudicate on disputes 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."

And by subsection 7 of that section:-

"The Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law, after hearing the parties to the disputes…"

What does this tell you, bearing in mind the fact that those Tribunals are manned by local elders who may have no formal education? And also that they are to deal with disputes which would otherwise have ended up in the magistrates' courts? I have no doubt in my mind that those Tribunals are supposed to deal with issues like boundary disputes or trespass to neighbours land and such like matters that the local elders have knowledge of even without being told.

As I have said, in this case the dispute referred to the Tribunal was one of ownership of the suit piece of land. It is only recently that I dealt with a similar issue in **Kiplagat Arap Biator Vs Esther Tala Chepyegon, Nakuru HCC No. 70 of 2004.**

In that case I said that those Tribunals have no jurisdiction to entertain disputes on title to land. That fact has been stated over and over again by this court and even the Court of Appeal. (See for **instance Republic Vs The Musambweni Land Disputes Tribunal & Others, Mombasa Misc. Apl. No. 745 of 2005** and **Republic Vs Kajiado Land Disputes Tribunal & Another, Nairobi HC Misc. Appl. No. 689 of 2001.**

For these reasons I allow this application and order that an order of certiorari do issue to quash the Oenguruone Land Disputes Tribunal's proceedings as well as its award made on the 22nd June 2006 in Land Dispute cases numbers 44 and 53 of 2006. The applicant shall have the costs of this application to be paid by the Interested Parties.

DATED and delivered this 16th day of October, 2008.

D. K. MARAGA

JUDGE