



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Misc Civ Appli 311 of 2005**

REPUBLIC APPLICANT

VERSUS

MINISTER OF LANDS AND HOUSING 1ST RESPONDENT

DISTRICT LAND ADJUDICATION AND SETTLEMENT

OFFICE MARAKWET DISTRICT 2ND RESPONDENT

JOSEPH CHELIMOINTERESTED PARTY

AND

JOSEPH KIPKEMOI CHEROP EX-PARTE APPLICANT

JUDGEMENT

This is a Notice of Motion dated 24th January, 2006 filed by the Ex parte Applicant, Joseph Kipkemoi Cherop under the provisions of Order 53, Rule 3 (1) of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act, Chapter 26 of the Laws of Kenya. The Applicant seeks the following judicial review orders:-

1. An order of Certiorari to remove into the High Court and quash forthwith the decision of the 1st Respondent vide MARAKWET DISTRICT SANGURUR LAND ADJUDICATION REGISTRATION SECTION, KOIBARAK LOCATION awarding land parcel No. 70 to the Interested Party be and is hereby issued.
2. An order of Prohibition so as to prohibit the 2nd Respondent from registering the Interested Part as the absolute owner of LAND PARCEL NO. 70 SANGURUR LAND ADJUDICATION REGISTRATION SECTION, MARAKWET DISTRICT, be and is hereby issued.

The Applicant has raised two main grounds in support of the application. These are that:-

- (a) -
- (b) The Provisions of the Land Adjudication Act (Cap. 284) have not been complied with in the proceedings upto and leading to the Minister's decision of 12/7/2005 in so far as the dispute over the said parcel of land No. 70 that was wrongly or improperly awarded to the Interested Party is concerned.
- (c) The Minister's decision of 12/7/2005 breached the Communities Customary Law or otherwise governing the Ex parte Applicant's Talai Clan and the Interested Party's Kamoi Clan in respect of many issues including the Disputed Parcel of land 70 at Sangurur Land Adjudication Section.

The Respondents in this application are the Minister of Lands and Housing and the District Land Adjudication and Settlement Office, Marakwet Office. The Interested party was named as Joseph Chelimo. The Respondents did not file any opposing pleadings or affidavits despite being served. The Interested party having been served, attended the hearing of the application. He, however, did not file any Replying Affidavit or otherwise. He made his presentation and submissions at the hearing. The Interested Party was not represented by Counsel.

I have considered the application, Statutory Statement, the Verifying Affidavit and Submissions made on behalf of the parties. I have

taken into account that the Interested Party did not file a Replying Affidavit and his statements on matters of fact were not made on oath.

The Statutory Statement contains all the Grounds for the application. These are that:-

“ *The ex-parte applicant:-*

(a) *Was asked to call at the Marakwet District Commissioner’s office on 12/7/2005 for the reading of the Ruling in respect of Appeal No. 639/96 concerning parcel number 70 as per the Land Adjudication and Settlement Officer’s letter dated 29/6/2005.*

(b) *Together with family members of the late ARUSEI KIBOSIA are aggrieved by the decision given on 12/7/2005 at Kapsowar in which parcel No. 70 was awarded to the Interested Party as per the proceedings, findings and rulings dated 25/11/2003.*

(c) *Blames the Respondent and the Interested Party in rejecting the Ex parte Applicant’s father’s appeal to the Minister as per the Appeal dated 25/11/1992 before the death of the Ex parte Applicant’s father on 1/10/2003 about two years before the delivery of the ruling on 12/7/2005 at Kapsowar.*

(d) (i) *The Ex parte Applicant’s case was not properly considered by the 1st and 2nd Respondents as per the proceedings, findings and rulings dated 25/11/2003.*

(ii) *The Ex-parte Applicant belongs to Talai Clan the Clan of Arusei Kibosia the owners of the Parcel No. 70 ever since 1960s or before and after then to date.*

(iii) *The Interested Party’s clan is Kamoi Clan, the Clan of Chelimo Kibolot deceased, the Interested Party’s father who during his lifetime laid no claim over the parcel No. 70 and whose son the Interested Party sued the side of the Ex-parte applicant after the death of Chelimo Kibolot.*

(iv) *The Interested Party’s witnesses were relatives and friends including:-*

1. *Yego Bargoror who is his cousin.*

2. *Paul Chepkonga former Sangurur Sub-Location Assistant Chief who -*

- *Is the classmate of the Interested Party and who was one of the Panel of Elders during land adjudication case at some stage.*

- *Had his hatred against Arusei Kibosia deceased due to another land dispute between Talai Clan and Kamoi Clan both at Sangurur and Kerio valley.*

(e) *Chelimo Kibolot deceased and Arusei Kibosia deceased did not sue each other over the disputed land during their own life times.*

(f) *Talai Clan and Kamoi Clan are separated by a stream, a natural boundary and each of the clans cannot cross to each other’s side to claim land as the Interested Party has done.*

(g) *And his other members of the family namely Sokomo Arusei, Pauline William Kimaiyo, Salina Ronald Cheruiyot, Anna Rotich, Elizabeth Limo, Joseph K. Cherop, Albina David Kibet and Andrew K. Kigen Arusei object to the decision of 12/7/2005.”*

Judicial review process is intended to deal with inter alia, the performance of administrative bodies, statutory corporations, public servants, tribunals e.t.c. in the performance of their statutory duties. The “*Causes of action*” on which a judicial review application must be based include – errors of law, breaches of the principles of natural justice, impropriety in procedure, excess and/or abuse of power, lack of jurisdiction, taking into account of irrelevant considerations etc.

The Applicant has not demonstrated that any of the foregoing grounds exist in this case. Most of the allegations refer to matters of fact, evidence and the weight thereof. The Applicant has not shown how the Minister failed to properly consider the Applicant’s case. On the face of it the proceedings, the Minister appears to have given both parties the opportunity to be heard. The Applicant who was the Appellant duly testified on oath. There is nothing to show that he was denied the right to call witnesses. In fact there is no such allegation.

The Interested Party testified and he called his witnesses. The Applicant duly cross-examined all of them. I see nothing irregular or improper for a litigant to call his cousin as a witness even. There was no objection raised by the Applicant at the hearing before the Minister, regarding the Panel member who was allegedly a class-mate of the Interested Party.

I do hereby find that most of the allegations relate to the evidence of the parties recorded before the Minister. Assessment of the witnesses, the weight of evidence and credibility of witnesses are matters to be adjudicated upon by the Minister or Tribunal. They include matters of their findings and discretion. The Court as a judicial review Court cannot usurp the functions of the Minister in this regard.

The applicant has not challenged the decision herein on the grounds which would bring in this Court’s intervention and if at all, there is no proof of any impropriety, irregularity, bias or prejudice, or lack of due process. The Applicant has not made out or established his case.

In the premises, this Court has no basis or justification to warrant intervention or interference with the Minister's decision. I therefore decline to grant the orders sought.

I do hereby dismiss the Applicant's Notice of Motion dated 24th January, 2006 with costs to the Interested Party. The Order of stay granted on 5th January, 2006 is hereby discharged forthwith.

DATED AND DELIVERED AT ELDORET ON THIS 5TH FEBRUARY, 2007.

M. K. IBRAHIM

JUDGE