



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC JUDICIAL REVIEW NO. 5 OF 2017

FORMERLY NAKURU J.R.NO. 37 OF 2016

REPUBLIC.....APPLICANT

-VERSUS-

THE CHIEF MAGISTRATE COURT NAROK.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

DR. CLEMENT LENASHURU.....3RD DEFENDANT

HENRY RUFUS OLE KULET.....EX PARTE

JUDGEMENT

The Exparte Applicant by a Notice of Motion dated 10th March, 2017 sought for leave to apply for orders of prohibition to stop the Chief magistrate's court from proceeding with Misc. Civil Appl. No. 4 of 2016 regarding the adoption of an award made on the 7th March, 2000 by the Narok District Land disputes tribunal in case no. 30 of 1999 and that the costs of the said application be provided for.

The Application was based on the grounds that on 9/7/2016 the interested party had filed an application before the Narok Chief Magistrate's Court to have the said court adopt an award made by the Narok District Land Disputes tribunal in which the applicant herein was not aware of the aforesaid proceedings before the tribunal. The exparte applicant further contended that the aforesaid Narok Chief Magistrate's Court did not have jurisdiction to hear the matter since the Land Dispute Tribunal Act 1990 was repealed and that the adoption of the award will render the applicant to suffer irreparable loss and damage.

The 1st and the 2nd interested party had opposed the said application stating that the Magistrate court was only adopting the award of the tribunal and furthermore the applicant had not preferred an appeal against the said decision of the tribunal. The interested party further contended that had the jurisdiction to making the adoption of the award pursuant to the practice direction which were issued by the Chief Justice.

I have considered the application, the affidavit in opposition to the same and the submissions filed by the parties and the only issue for determination before me is whether the Chief Magistrate's Court had jurisdiction to making an adoption of the award of the Narok District Land Disputes Tribunal. Pursuant to the enactment of the environment and land court Act 2011 the land disputes Tribunal Act No. 18 of 1990 has repealed by section 32 of the Environment and land Court Act 2011 it is the applicant's contention that pursuant to the said repeal the Magistrate Court Act did not have jurisdiction to hear and make the adoption of the award.

The interested party on their part contended that the said court had jurisdiction pursuant to the practice directive issued by the Hon. Chief Justice. However, it is worth noting that the Environment and Land Court Act had come into force on 2011, the award in question here was made prior to the enhancement and the coming into force of the Environment and Land Act, the Chief Magistrate's court was adopting an award invoking the provisions of section 7 and 8 of the repealed land disputes tribunal act no. 18 of 1990 and in view of the foregoing I find that the Chief Magistrate court lacked the requisite jurisdiction to entertain and adopt an order on the basis of a repealed provision of the law, the repeal of the Land Dispute Tribunal Act No. 18 of 1990 had outstated the jurisdiction of the Magistrate to entertain any application emanating from the exercise of the repealed Act.

The upshot of the above is that I find that the Narok Chief Magistrate's Court lacks the requisite jurisdiction to entertain the application for making of an award pursuant to the decision made by the Narok District Land Disputes Tribunal and I thus consequently allow the Notice of Motion dated 24/3/2017 and accordingly issue an order of prohibition prohibiting the Chief Magistrate Court-Narok from proceeding with Misc. Civil Appl. No. 14 of 2016 for the purposes of adopting a judgement.

I award the costs to the applicant.

DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 6th day of MAY, 2020

Mohamed Kullow

Judge

6/5/2020

In the presence of:

CA:Chuma

N/A for the parties