



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
JUDICIAL REVIEW APPLICATION NO.1 OF 2018
(FORMERLY NO.13 OF 2011)

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN

CHEPLELWA LAND DISPUTES TRIBUNAL 1ST RESPONDENT

THE PRINCIPAL MAGISTRATE, SOTIK 2ND RESPONDENT

MICHAEL KURGAT 3RD RESPONDENT

EX PARTE

DENIS KIPRONO RUTO

(suing as a legal representative of the

estate of LAWRENCE NYAKOSE SOI) SUBJECT

JUDGMENT

Introduction

1. The ex parte applicant instituted this suit by way of Notice of Motion dated 26/6/2018, seeking the following orders against the Respondents;

a) THAT this Honourable court be pleased to issue an order of certiorari removing unto this Honourable court for purposes of being quashed forthwith the 2nd respondent's order dated 17th February 2011 together with all the entire proceedings arising therefrom and or connected therewith pursuant to the 1st Respondent's award dated 15th November 2006 which was read and adopted as a judgment of the court being Sotik Principal Magistrate Court Land Dispute Case No.2 of 2011.

b) THAT the costs of this application be provided for.

2. The application is predicated on the verifying affidavit sworn by the late LAWRENCE NYAKOSEI SOI. In the said affidavit, he depones that he is the registered proprietor of land parcel KERICHO/CHEPLELWA/132 7135 which is the suit property herein.

3. He further states that he filed a claim in the Cheplelwa Land Dispute Tribunal pursuant to the provisions of the Land Disputes Tribunal Act Number 18 of 1990 (now repealed) and that the Tribunal on 15th November 2006 reached its verdict in favour of the 3rd Respondent.

4. He further avers that the Land Disputes Tribunal Award's was read on 17th February 2011 and adopted as a judgment of the court in Sotik Principal Magistrate's Court Land Dispute Case No.2 of 2011.

5. It is the ex-parte applicant's contention that the Land Dispute Tribunal acted ultra vires since it had no jurisdiction to adjudicate on a dispute touching on title to land and on matters which are statutorily time barred.

6. The applicant further depones that the 1st Respondents' award dated 18th November 2006 and its subsequent adoption by the 2nd Respondent is incompetent, frivolous or vexatious, bad in law and or an abuse of the court process.

7. The court directed that the application be canvassed by way of written submissions and only the ex- parte Applicant's counsel filed his.

Issues for determination

8. The following issues arise for determination before this court.

1. Whether Cheplelwa Land Dispute Tribunal acted ultra vires by issuing an award on 15th November 2006.
2. Whether the subsequent adoption of the award by the Principal Magistrate Court in Sotik is incompetent, frivolous or vexatious, bad in law and or an abuse of the court process.
3. Whether the Applicant has met the grounds for grant of Judicial Review order of certiorari.
4. Who is entitled to the cost of this application

Analysis and determination

1) Whether Cheplelwa Land Disputes Tribunal acted ultra vires by issuing an award on 15th November 2006.

9. Counsel has relied on the case of *Republic versus Chairman Land Tribunal Lurambi Division (2013)eKLR* where George Dulu J stated that,

“ the Orders of certiorari are issued to quash decisions by public officers or public officials that are either illegal or made outside their powers or made without due procedure or process being complied with”.

10. In the same case the learned Judge proceeded to quote the contents of section 3(1) of the Land Disputes Tribunal Act which provides that,

“... Subject to this Act, all cases of a civil nature involving a dispute 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,

Shall be heard and determined by a tribunal established under section 4.

11. In light of the foregoing, I agree with counsel's submissions that the Land Dispute Tribunal had no powers to adjudicate on a dispute touching title to land. I find and hold that the nature of dispute which led to issuance of an award dated 15th November 2006 by Cheplelwa Land Dispute Tribunal does not fall within the bracket of section 3 of the Land Dispute Tribunal Act and it is therefore null and void.

2) Whether the Applicant has met the grounds for grant of Judicial Review

12. In the case of *Pastoli vs Kabale District Local Government Canal & others (2008)2 EA Justice Kasule* stated as follows:

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality, is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of a law or its principles are instances of illegality----

Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety, is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules, expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

13. It is clear from the facts of this case that the Cheplelwa Land Disputes Tribunal acted ultra vires in issuing an award dated 15/11/2006 and the same is tainted with illegality.

14. In arriving at this finding I am guided by the case of *David Kimani Karogo v Thika Land Disputes Tribunal & 2 others [2017] eKLR* where the court held that:-

“ A decision issued by a public body in excess of its jurisdiction is null and void and such ground is enough to warrant the issuance of an order of certiorari by the court to quash such a decision”.

3) Whether the subsequent adoption of the award by the Principal Magistrate’s Court in Sotik is a nullity an amounts to an abuse of the court process.

15. Flowing from my findings hereinabove it follows that the adoption of the Tribunal’s award by the 2nd Respondent was a nullity. In *Republic Vs Kajiado North District Ngong Land Disputes Tribunal, Senior Resident Magistrate Kadjiado [2014] Eklr* the Court held that:-

“If the said Tribunal had no jurisdiction to entertain the matter, whatever proceedings flowed from its decision would be null and void since decision made by a Tribunal which has no jurisdiction to entertain the dispute before it must of necessity be null and void”.

16. It was further stated in the case of *Macfoy vs. United Africa Co. Ltd* that,

“if an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

17. In view of the foregoing, I find merit in the applicant’s application and I grant it and make the following final orders:

a) An order of certiorari is hereby issued quashing the 2nd Respondent’s order dated 17th February 2011 together with the entire proceedings arising therefrom and or connected therewith pursuant to the 1st Respondent’s award dated 15th November 2006 which was read and adopted as a judgment of the Court in Sotik Principal Magistrate’s Court Land Dispute Case No.2 of 2011.

b) THAT the costs of this application be borne by the 3rd Respondent.

Dated, signed and delivered at Kericho this 12th day of September 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. Mr. J.K.Rono for Mr. Orina for the Ex-parte/Applicant
2. Mr. Mugumya for Mr. Motanya for the 3rd Respondent
3. Court assistant - Rotich