



No.306/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANEOUS APPLICATION NO. 13 OF 2011

**IN THE MATTER OF AN APPLICATION BY JASON OLE MOOKE TONOU FOR ORDERS
OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF TITLE NO. KAJIADO/KAPUTIE-NORTH/2118

AND

IN THE MATTER OF KAJIADO LAND DISPUTES TRIBUNAL CASE NO. TC.418/07

AND

IN THE MATTER OF LAND DISPUTE TRIBUNAL CAUSE NO. 14 OF 2008

AND

IN THE MATTER OF THE SENIOR RESIDENT MAGISTRATE'S COURT AT KAJIADO

BETWEEN

BONIFACE TAANI.....RESPONDENT

VERSUS

JASON OLE MOOKE TONOU.....EXPARTE APPLICANT

RULING

1. By an Application dated the 21st day of February, 2011, the applicant seeks Orders of-
 - i. Prohibition to issue against the Land Registrar, Kajiado from alienating, transferring or otherwise dealing with Kajiado /Kaputiei/2118.
 - ii. A declaration that the decision of the Kajiado Land Tribunal was null and void *ab initio* and the subsequent transfer was marred by illegality.
 - iii. The Land Registrar be directed to reverse the transfer of Land effected by following the order of the tribunal.

2. The application is premised on grounds that the applicant is the beneficial owner of **Land Parcel Number Kajiado/ Kaputiei-North 2118** and one of the administrators of the estate of **Mooke Tonou Lila** (deceased) who was the proprietor of the said Land; On the **28th March, 2008** the **Kajiado Land Dispute Tribunal** reached an award in Case No. **418 of 2007** awarding **30 acres** of the aforesaid land to the respondent herein; the award was made against a deceased person as he had died. On the **5th June, 1994**; no notice was issued to the administrators of the estate of the deceased; the award of the tribunal was subsequently adopted by the **Kajiado Senior Resident Magistrate's Court** in **Law Dispute Misc Application No. 14 of 2008** on the **27th May, 2008** and the **Kajiado Senior Resident Magistrate** contravened rules of natural justice by admitting, reading and adopting the award which was *ultra vires* having been made by incompetent bodies that had no jurisdiction to hear and determine the suit.
3. In a response thereto the respondent deponed that he is the lawful registered owner of the suit premises which he purchased from **Kitoitoy Mooke** who is a brother to the *ex parte* applicant who failed to give him transfer documents. Failure to do so prompted the respondent to institute proceedings before the tribunal, a case that was ruled in his favour. Therefore after he prepared documents for purpose of transfer.
4. The application was canvassed by way of written submissions. Rival submissions have been duly considered.
5. Leave to apply for the order sought of prohibition was granted by **Waweru, J** on the **1st February 2011**.
6. This is a case where the *ex parte* applicant seeks prohibition of the **Land Registrar, Kajiado** from transferring or dealing with parcel Number, **Kajiado/Kaputiei/2118** pursuant to orders issued by the **Kajiado Land Disputes Tribunal** and subsequently **Kajiado Senior Resident Magistrate**. As correctly submitted by counsel for the respondent, the entities whose decisions are being challenged are not parties to this suit. Judicial review proceedings being administrative in nature is adopted to challenge the decision of a public body exercising a public function. It cannot be issued against individuals. Without enjoining the **Kajiado Land Disputes Tribunal**, the **Senior Resident Magistrate's Court** and the **Land Registrar**. If orders sought are issued it will be done in vain. The application in the circumstances does not meet the threshold of granting the orders sought.
7. Judicial proceedings are by their nature special. They are neither civil nor criminal. The jurisdiction emanates from the **Law Reform Act (vide Section 8 and 9)**. The procedure laid down must be complied with. In the case of **Kenya National Chamber of Commerce and County Council of Makueni versus County Council of Makueni (2004) eKLR**- the court held that:-

“... the applicants had genuine grievances, their application cannot pass the test set in Order 53 of the Civil Procedure Rules. It is correctly submitted that the procedure under Order 53 Civil Procedure Rules and the Law Reform Act is unique itself. It is also special jurisdiction and other provisions of the Civil Procedure Act cannot be imported into it. I do agree that there are errors noted in the proceedings before this court which go to the root of the entire application destroying it in the process. I also agree with the submissions of the respondent's counsel that there are no safety valves in Order 53 of the Civil Procedure Rules.”

8. In the case of **Republic versus chairman, Kajiado Central Land Tribunal & 2 Others, ex parte-Timaiyo Kirtavi [2012] eKLR**, **Makhandia, J** (as he then was) held;

“This being a special jurisdiction and with a mandatory procedure, failure to comply with mandatory procedural law is not a technicality that can be cured under either the constitution and/or “the double”O” principle would apply to civil proceedings. However, as we have already demonstrated, Judicial Review Proceedings do not fall in that category”.

9. From the foregoing failure to follow procedure rendered the proceedings totally defective. In the Premises it will be futile to delve into the merits and demerits of the application as it is defective for want of procedure. Consequently, it is dismissed with costs to the respondents.
10. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 10TH day of JUNE 2014.

L.N. MUTENDE

JUDGE