



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

JUDICIAL REVIEW APPLICATION NO 54 OF 2011

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW IN THE NATURE OF
CERTIORARI**

AND

**IN THE MATTER OF THE LAND DISPUTE TRIBUNAL AT MOLO (LAND DISPUTE NO 10
OF 2010)**

AND

**IN THE MATTER OF THE PRINCIPAL MAGISTRATE'S COURT AT MOLO (LAND
DISPUTE NO 12 OF 2010)**

AND

**IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 AND THE LAND DISPUTE
ACT NO 18 OF 1990 LAWS OF KENYA**

AND

IN THE MATTER OF L.R. NO. 1283

NAKURU/NGONGOGERI

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

MOLO LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

PRINCIPAL MAGISTRATE'S COURT MOLO.....2ND RESPONDENT

AND

LUKA KOIMA KIPTOO

KIBITWOR KIPCHILAT.....INTERESTED PARTIES

EX PARTE

STEPHEN TANGUS and WILSON LANGAT.....SUBJECTS

JUDGMENT

1. The *Ex-parte* applicants, **Stephen Tangus** and **Wilson Langat** filed a **Notice of Motion** dated **30th May, 2011** under **Order 53 Rules (1), (2) and (4) of the Civil Procedure Rules** seeking; **An Order of Certiorari to quash the decision of the Molo Lands Disputes Tribunal in Land Dispute No. 10 of 2010, which was adopted by the Principal Magistrates Court in Molo in Land Dispute No. 12 of 2010, as well as costs of the application.**
2. This application is premised on the grounds therein and is supported by the affidavit and statement of facts by the applicants; that they were never notified or summoned to appear before the 1st respondent; that they were never given an opportunity to be heard and that the 1st respondent had no jurisdiction to hear and determine the dispute.
3. The application was opposed by both the respondents and the Interested Parties.
4. The respondents filed grounds of opposition on **11th December, 2011** dated **10th December, 2013** on the grounds that the application was made in bad faith, is mischievous, frivolous, without merit and an abuse of the court process, as the applicants were afforded a hearing and the district land dispute's tribunal acted within its mandate to determine a boundary and trespass dispute.
5. The Interested Parties on their part vide an affidavit sworn by **Luka Koima Kiptoo** on **7th June, 2012** aver that the application is incompetent, frivolous, vexatious, devoid of merit and an abuse of the court process which ought to be struck out with costs. He contends that the tribunal acted within its jurisdiction as conferred by law as this was a dispute on trespass; that the applicants were on several occasions served with hearing notices summoning them to appear before the District Tribunal which they ignored and/or refused to comply with (**LKK1**) ; That prior to the dispute being referred to the tribunal, the parties had been summoned by the Chief Marioshoni to appear before him accompanied by elders to try and resolve the dispute (**LKK2**).
6. On **12th December, 2012** parties in this suit agreed to dispose of the application by way of written submissions. The applicant's Counsel filed their submissions on **3rd February, 2014**, the respondents filed theirs on even date while the interested parties had done likewise earlier on **31st January, 2014**.
7. In their submissions, the applicants contend that the tribunal exceeded its jurisdiction as the land did not fall under the Land Disputes Tribunal Act but was registered under the Registered Land Act. They relied on the cases of **Owners of Motor Vessel 'Lilian S' v Caltex Oil (Kenya) Ltd** [1989] KLR 1 and **Republic v Chairman Land Disputes Tribunal** [2013] eKLR.
8. The applicants also contend that they were never afforded an opportunity to be heard which is against the rules of natural justice and against **Article 50 (1)** of the Constitution of Kenya. They were equally not served in accordance with the requirements of **Order 7 Rule 20 and Order 5 Rule 1** of the Civil Procedure Rules, or given an opportunity to present their case as required under **Order 18 Rule 2 (2)** of the Civil Procedure Rules, 2010. They relied on the case of **Cooper v Wandsworth Board of Works** **14 C.B.N.S. 180**.
9. In reply, the respondents relied on **Sections 3, 4, 5 and 7** of the repealed Land Disputes Tribunal Act to demonstrate that the tribunal was within its mandate while determining this dispute, which involved trespass to land and did not purport to issue or cancel any title: that the composition of the tribunal was in accordance with Section 4; that the tribunal had been gazetted in accordance with section 5 and that the Principal Magistrate Molo acted within his jurisdiction when adopting the award by the tribunal in accordance with section 7 of the aforementioned Act. They relied on the decision in **Republic v Busia**

Chief Magistrate and Busia Land Dispute Tribunal.

10. The Interested Parties submitted mainly on the issue of summons. It was their contention that the applicants were properly served and notified of the hearing before the tribunal by adducing evidence of an affidavit of service. They relied on **Rule 13 of the Land Dispute Tribunals (Forms and Procedure) Rules** (repealed) which provides, that a matter may be heard ex parte by the tribunal if the objector was duly served and failed to appear.

11. From the pleadings, affidavits and the submission, the issues that come out clearly for determination are:

- i) whether the Molo District Land Tribunal exceeded its jurisdiction**
- ii) whether the applicants were given an opportunity to be heard, and if not, whether the applicant is entitled to the orders of judicial review as prayed.**
- iii) costs**

12. Section 3 of the Land Disputes Tribunal's Act (repealed) sets out the mandate of the tribunal as follows;

“(1) 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.”

13. In the minutes signed by members of the tribunal on **24th August, 2010** it is recorded that the complaint before them was that the 1st and 2nd objectors had trespassed onto the complainant's land. The 1st objector had even rented out the complainant's land to people. In their determination they made the following observations.

- " i) The objectors have their own plots in this Company Nakuru/ Ngongogeri**
- ii) The objectors have trespassed into the complainant's plots without their consent**
- iii) According to the complainant's statements, the objectors have been renting to other tenants the disputed plots.**
- iv) According to this tribunal's decision the objector's should leave the complainant's plots and advice their tenants to keep off from Plot No. 1283 Nakuru/ Ngongogeri.**
- v) The objectors and their tenants should remove all their properties from Plot No. 1283 Nakuru/ Ngongogeri as soon as possible.**
- vi) Any party which is not certified with this Tribunal's decision may appeal to the Provincial Tribunal Panel. "**

14. From the determination above, there is no doubt that what was before the tribunal for determination was a dispute on trespass to land not a dispute on ownership of land. For that reason I find that the tribunal acted within their jurisdiction in determining the dispute before them.

15. Were the applicants given a fair hearing by the Tribunal? In the affidavit of service sworn by **Geoffery Mburu Wena**, a licensed process server, he depones that the applicants were served with a hearing notice on **12th** and **24th June, 2010** to appear before the Tribunal. They were also summoned by the Chief, Mariashoni Location vide a letter dated **14th July, 2008**. I find that the applicants are not truthful when they claim that they were not given an opportunity to be heard. Failure to attend the proceedings was entirely their fault and the Tribunal's decision to proceed *ex parte* was in accordance with **Rule 13** of the Land Dispute Tribunals (**Forms and Procedure**) Rules (repealed).

“On the day fixed for hearing if only the claimant attends and the Tribunal is satisfied— (a) that the notice of attendance was duly served on the objector the Tribunal may proceed to hear the matter ex-parte;”

16. Accordingly, I do find that the tribunal acted within its jurisdiction and accorded the applicants an opportunity to be heard as conferred by law. For those reasons the *Ex- parte's* applicants Notice of Motion dated **30th May, 2011** and filed in court on **31st March, 2011** has no merit and the same is dismissed with costs.

Dated, Signed and Delivered at Nakuru on this 3rd day of October 2014.

L N WAITHAKA

JUDGE

PRESENT

Ms Fatma for the applicants

Mr Kirui for 1st and 2nd respondent

Mr Waiganjo for the Interested Party

L N WAITHAKA

JUDGE