



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. CIVIL APP. NO. 82 OF 2005

REPUBLIC.....

.....APPLICANT

VERSUS

CHERANGANY L.D.T

SPM'S COURT AT KITALE

SAMSON LOCHIRIM.....RESPONDENTS

EX-PARTE – JOHANA NGURIATUKEY

R U L I N G

This is an application by the ex-parte Applicant, **Johana Nguriatukey**, for an order or Certiorari to remove into this court and quash the decision of the Chepareria Land Disputes Tribunal which was read and adopted as a Judgment of the court on 13th June, 2005 vide Kitale SPMCC Land Case No. 16 of 2005.

The grounds in support of the application are in the body of the appropriate Notice of Motion dated 2nd August, 2005. These include that the panel of elders had no jurisdiction to cancel and nullify a title-deed nor deliberate on matters touching on the estate of a deceased person. That the panel of elders was not gazetted and that none of the parties to the dispute had obtained necessary letters of Administration over the estate of the deceased. That, the ruling of the elders was irregularly signed. Supporting and verifying affidavits dated 2nd August, 2005, were deponed by the Applicant in further support of the application.

The first and second Respondents through the Attorney General supported the application on the basic ground that the dispute involved registered land and therefore, the tribunal had no jurisdiction to deal with such land. The third Respondent, **Samson Lochirim**, opposed the application on the basis of the grounds contained in his replying affidavit dated 8th May, 2006.

At the hearing of the application, the Applicant through the learned Counsel, **Mr. Chebii**, submitted and reiterated that the tribunal had no jurisdiction to deal with the dispute as it involved registered land for which a title deed was issued.

The third Respondent through the learned Counsel, **Mr Teti**, contended that the tribunal had the necessary jurisdiction to deal with a claim to land. That, the members of the tribunal were duly gazetted vide a Gazette Notice dated 11th December, 2003.

That, the Applicant failed to prove that there was a cancellation of a title deed and in particular respecting title No. West Pokot/ Chepareria/1149. That, the decision of the tribunal was adopted by the court without any specification as to the title number. That, the tribunal concluded that the title deed should be given to one Chepkokai without sharing the title number. That there was no proof that the decision of the elders was irregularly signed and that the application offended Order 53 (3) (2) of the Civil Procedure Rules in that all the affected parties were not served and that a copy of the tribunal's decision was not lodged with the Registrar as required under Rule 7 of Order 53 of the Civil Procedure Rules.

The third Respondent therefore urged this court to dismiss the application with costs.

From all the foregoing, the basic issue arising for determination is whether the tribunal (first Respondent) was possessed of necessary jurisdiction to deal with a dispute involving land which was apparently registered.

The proceedings annexed to the supporting affidavit (i.e "JN 2") indicate that the dispute was lodged by the third Respondent against the ex-parte applicant and that it essentially revoked amend a parcel of land Number 1149.

The tribunal in its conclusion acknowledged that the land was registered and that a title deed in respect thereof existed. But, without even indicating the title number, the tribunal resolved that the title deed issued to the Applicant be nullified and that the land be given to one Chepokokai Nguriakukei. The title deed sought to be nullified was annexed to the applicant's supporting affidavit (i.e 'JN '). It shows that the land now known as West Pokot/Chepareria/1149 was registered in the name of the Applicant on 4th November, 2004 prior to the 19th November, 2004, when the proceedings of the tribunal were conducted and a ruling delivered later in December, 2004.

The Land Disputes Tribunals were established under the Land Disputes Tribunals Act which also defined their jurisdiction and powers.

Thus, under section 3 (1) of the said Act a dispute relating to the division of or the determination of boundaries to land including land held in common or a dispute relating to a claim to occupy or work land or trespass to land was determinable by a land tribunal. Such jurisdiction did not extend to a dispute relating to registered land. Consequently, the decision of the tribunal herein was made in the absence of necessary jurisdiction. A decision made without jurisdiction would be null and void "ab initio".

The first Respondent tribunal had no powers to order cancellation and/or nullification of a valid title deed issued to the ex-parte Applicant. Therefore, this application succeeds to the extent that the decision of the first Respondent adopted as a judgment of the court by the second Respondent be and is hereby removed into this court and quashed accordingly. The ex-parte Applicant shall be entitled to costs from the third Respondent only.

Ordered Accordingly.

J. R. KARANJA

JUDGE

11/11/2014

[Read & signed this 11th day of November, 2014]