



REPUBLIC OF KENYA

High Court at Eldoret

Judicial Review 4 of 2012

IN THE MATTER OF:-

AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF

CERTIORARI AND PROHIBITATION

AND

IN THE MATTER OF:-

ORDER 53 (APPLICATIONS FOR JUDICIAL REVIEW)

OF THE CIVIL PROCEDURE RULES, 2010 AND SECTION 8 AND 9 OF THE

LAW REFORM ACT

BETWEEN

REPUBLIC.....APPLICANT

VS

1. THE KEIYO SOUTH DISTRICT LAND DISPUTES TRIBUNAL

2. THE SENIOR PRINCIPAL MAGISTRATES COURT AT ITE

3. THE KEIYO MARAKWET/KEIYO SOUTH DISTRICT LAND REGISTRAR

**4. THE KEIYO/MARAKWET/KEIYO SOUTH DISTRICT
SURVEYORS.....FIRST RESPONDENT**

PAUL

KIPLAGAT.....SECOND

RESPONDENT

EX-PARTE

JEREMIAH CHESANG ALIAS

JEREMIAH KIPTARUS CHESANG

RULING

Before me is the ex-parte application dated 28 March 2013 filed by Jeremiah Chesang alias Jeremiah Kiptarus Chesang (the applicant). It is an application brought under the provisions of Order 53 Rule 1 (1)

and (2) of the Civil Procedure Rules, 2010. The applicant is seeking leave to apply for an order of certiorari to move into this court and quash the proceedings and award of the Keiyo South District Land Disputes Tribunal Case No. 3 of 2011 which was adopted as the order of the court in Land Disputes Tribunal Case No. 18 of 2011 in the Senior Principal Magistrate's court at Iten. The applicant also seeks to have the grant of leave operate as a stay of proceedings and of the award and decree of the Iten court until the substantive determination of the substantive application.

It is the case of the applicant that he is the registered proprietor of the land parcel Elgeyo Marakwet/Turesia/366 and he has exhibited the certificate of title to the said land in his supporting affidavit indicating that he is the first registered proprietor. A dispute arose between himself and one Paul Kiplagat and the latter referred the matter to the Keiyo South Land Disputes Tribunal which heard the dispute on 5 October 2011 and rendered its decision on 11 November 2011. The award of the Tribunal was filed in the Iten Senior Principal Magistrate's Court and adopted as a judgement of the court on 1st March 2013. A decree was later issued.

It is this decree that the applicant wishes to quash inter alia on the grounds that the Tribunal had no jurisdiction to entertain the dispute and that the proceedings are null and void.

I have considered the application and I see no reason why I should not grant leave to the applicant to file the substantive motion for orders of certiorari. I therefore grant leave to the applicant to so file the substantive motion for judicial review. The said application to be filed within 21 days from the date hereof and be served within 15 days of filing. I also issue an order staying the execution of the subject award and decree of the Iten Senior Resident Magistrate's Court until the final determination of the substantive motion for judicial review.

The costs of this application shall be costs in the substantive motion.

It is so ordered.

DATED and DELIVERED THIS 2ND DAY OF MAY 2013

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT & LAND COURT AT ELDORET

Delivered in the presence of:

Mr. Y.M. Barasa advocate holding brief for Mr. Cheptarus of M/s J.K.C Cheptarus & Co. Advocates for the ex-parte applicant.