



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
JUDICIAL REVIEW 31 OF 2010
IN THE MATER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF ORDER LIII OF THE CIVIL PROCEDURE RULES AND SECTIONS 8
AND 9 OF THE LAW REFORM ACT

BETWEEN

REPUBLIC.....
.....APPLICANT

=VERSUS=

THE ATTORNEY GENERAL ON BEHALF OF THE MARAKWET
DISRICT LAND DISPUTES TRIBUNAL, THE

SENIOR RESIDENT MAGISTRATE’S COURT AT ITEN, THE KEIYO /
MARAKWET DISTRICT LAND REGISTRAR

AND THE MARAKWET DISTRICT
SURVEYOR.....1ST RESPONDENT

KIPTANUI CHELEWA (INTERESTED
PARTY).....2ND RESPONDENT

(EX-PARTE KIPTANUI KIPKECH)

JUDGMENT

This is an application for an order of certiorari to remove into this Court for the purposes of quashing, the proceedings and Ruling of the Marakwet Land Disputes Tribunal Case No. 22 of 2009 and Iten Senior Resident Magistrate’s Court LTD Case No. 11 of 2010 between the applicant **Kiptanui Kipkech** and the

Interested Party **Kiptanui Chelewa** in respect of Parcel Numbers **Lelan/Kaptalamwa/197 and 198** (hereinafter “**the suit parcels of Land**”)

On 13th April, 2011, the applicant had obtained leave to seek the said orders pursuant to his chamber summons lodged on 6th October, 2010. The decision sought to be quashed was made in January, 2010 and adopted on 28th September, 2010 by the Senior Resident Magistrate’s Court at Iten.

The application is based on the grounds stated in the statutory statement and the verifying affidavit accompanying the application for leave. The main ground is however that the Land Dispute’s Tribunal had no jurisdiction to entertain the dispute over the suit parcels of land.

The jurisdiction of a Land Disputes Tribunal is circumscribed by section 3 (1) of the land Disputes Tribunals Act No. 8 of 1990 (now repealed) which reads as follows:-

“ 3 (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”

Before the Marakwet Land Disputes Tribunal, the applicant with two others claimed a portion of land parcel No. Lelan/Kaptalamwa/198 on the basis that the same had been incorporated therein during an unlawful resurvey. In his own words:

“This elders should today award disputed land to me”

The Marakwet Land Disputes Tribunal made the following award:-

“ After analyzing all the statements made by disputing parties, their witnesses and those of ... neutral persons, the chairman and his team of elders awarded disputed land measuring 10 acres to defendant, Mr. Kiptanui Chelewa”.

It is plain therefore that the proceedings before the tribunal related to title to the suit land and the tribunal’s decision in effect awarded 10 acres to the interested party. It cannot be gainsaid that the dispute presented to the tribunal by the applicant was clearly not within the purview of section 3 (1) of the repealed Land Disputes Tribunal Act and the tribunal obviously had no jurisdiction to entertain that dispute. The applicant’s dispute can only be tried by the High Court or by the subordinate court of the level of a Resident Magistrate and above depending on the value of the subject matter. (See section 159 of the Registered Land Act).

In the premises, an order of certiorari shall issue removing the proceedings and award of the Marakwet Land Disputes Tribunal Case No. 22 of 2009 and adopted by the Senior Resident Magistrate, Iten on 28th September, 2010 into this Court and the same are hereby quashed.

With regard to costs, the same cannot follow the event in these proceedings because it is the applicant and others who lodged the dispute before the Marakwet Land Disputes Tribunal. The same applicant has sought that those same proceedings and award be quashed in these proceedings. The order which commends itself to me therefore is that each party shall bear his own costs of these proceedings.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 17TH DAY OF JULY, 2012.

**F. AZANGALALA
JUDGE**

Read in the presence of:-

Mr. Kiplimo holding for **Cheptarus** for the applicant and **Mr. Ngumbi** for the 1st Respondent.

**F. AZANGALALA
JUDGE
17/7/2012.**