



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Miscellaneous Application 119 of 2010**

**IN THE MATTER OF AN APPLICATION FOR LEAVE OF THE COURT TO MOVE  
HONOURABLE COURT FOR JUDICIAL REVIEW AND ORDERS OF CERTIORARI AND  
PROHIBITION TO ISSUE AGAINST SENIOR PRINCIPLE MAGISTRATE, LAW COURTS  
NAROK**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**SENIOR PRINCIPAL MAGISTRATE, NAROK....FIRST RESPONDENT**

**LAND DISPUTES TRIBUNAL.....SECOND RESPONDENT**

**SINDIMAIYO KOISAMU.....INTERESTED PARTY**

**DAVID TUUKUO.....SUBJECT**

**RULING**

The the notice of motion dated 16th December, 2010 brought under **Order LIII Rule 3** of the **Civil Procedure Rules, section 8 and 9** of the **Law Reforms Act**.

In this application the applicant is seeking for the following orders:-

- 1.An order of Certiorari moving to this Honourable Court for purposes of being quashed the decision of the 2nd Respondent made on 21st September, 2010;
- 2.An order of Certiorari moving to this Honourable Court for purposes of being quashed the judgment entered by the 1st respondent on the 23rd November, 2010;
- 3.An order of Mandamus compelling the 2nd Respondent to reverse in its entirety the purported decision made on 21st September, 2010;
- 4.An order of Mandamus compelling the 1st respondent to reverse in its entirety the judgment made on 23rd November, 2010;
- 5.An order of prohibition restraining the 3rd respondent/interested party by itself, it's agents and or servants from interfering in anyway with the title deed of the applicant.

The application is premised on the grounds that the 2nd respondent has in purported exercise of powers it does not possess, heard a dispute over a parcel of land No.NAROK/CISMARA/NAIRAGIE/ENKARE/85 registered under the Registered Land Act, chapter 300 laws of Kenya and in so doing acted ultra vires; that the decision of the 1st and 2nd respondent was made outside the law and as such was a nullity ab initio; that the decision of the 1st and 2nd respondents was made in total disregard of proceedings pending before this Honourable Court and is thus blatantly contemptuous of this court and its processes.

The application is supported by the statement and verifying affidavit sworn by the applicant, David Kiseria Tuukuo, in which documents the applicant has basically reiterated the grounds stated on the face of the application.

The application is unopposed. The applicants on their part, filed written submissions in which they contend that a land disputes tribunal established under the Land Disputes Tribunals Act, 1990, does not have power to adjudicate over land registered under the Registered Land Act, Chapter 300, laws of Kenya; further the second respondent acted outside its powers by ordering and recommending the cancellation of the title issued to the applicants, and in any event the interested party had previously instituted a suit at the High court which was dismissed for want of prosecution. The proceedings before the tribunal are described as incompetent, and that the 1st respondent had no power to adopt the award of the tribunal.

From the pleadings and the submissions filed by the applicant in support of the application, the issues for the court's determination are:-

a) Whether a land disputes tribunal has power to adjudicate over land registered under the Registered Land Act;

b) Whether the second respondent had the power

to order and/or recommend the cancellation of the title deed issued to the applicants;

c) Whether the proceedings instituted before the 2<sup>nd</sup> respondent were incompetent;

d) Whether the first respondent had power to adopt the decision of the 2<sup>nd</sup> respondent; and

The 2nd respondent is established under section 4 of the Land Disputes Tribunals Act, 1990 (hereinafter called "**the Act**"). Under section 3 of the Act the 2nd respondent has power to hear and determine all cases involving-

(a) The division of, or determination of boundaries to land, including land held in common;

(b) A claim to occupy or work land; or

(c) A claim on trespass to land.

Under section 7 of the Act the 1st respondent is under a legal obligation to pass judgment in accordance with the decision of the 2nd respondent. The section provides-

**7 (1) " The Chairman of the Tribunal shall cause the decision of the tribunal to be filed in the magistrates court together with any dispositions or documents which were proved before the tribunal."**

**(2) "The court shall enter judgment in accordance with the decision of the tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided in the Civil Procedure Act."**

Section 159 of the Registered Land Act, Chapter 300 laws of Kenya, provides-

**“Civil suits and proceedings relating to the title to or, or the possession of, land, or to the title to a lease or charge, registered under this Act, or any interest in the land, lease or charge, being an interest which is registered or registrable under this Act or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matter does not exceed twenty five thousand pounds by Resident Magistrate’s Court, or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunals Act, in accordance with that Act.”**

It is clear from Section 3 (1) of the Land Disputes Tribunals Act as read with section 159 of cap 300 that the tribunal has power to hear and determine disputes regarding the right to occupy or work land.

Under **Section 2** of the **Act**, land is defined as agricultural land, as defined under **section 2** of the **Land Control Act, Chapter 302, laws of Kenya**, whether registered under the Registered Land Act or not but does not include land within an adjudication section declared under the Land Adjudication Act or land which is subject of determination by the LRC under the Land Titles Act. The Tribunal has power to hear disputes over land registered under the Registered Land Act so long as it is not within an adjudication section.

Under section 2 of Land Control Act, chapter 302 laws of Kenya agricultural land means land that is not within-

- i. A municipality or a township; or
- ii. An area which was, on or at anytime after 1st July,1952, a township under the Townships Ordinance (now repealed) ; or
- iii. An area which was, on or at any time after the 1st July, 1952, a trading centre under ther Trading Centres Ordinance(repealed); or
- iv. A market.

The property which is the subject of this application is situated in Narok County. There is no evidence before me that it falls under the exceptions provided under section 2 of the Land Control Act. For this reason and for the purposes of the application before me I will presume it to be agricultural land.

It is also apparent that the tribunal accepted that the land fell within an adjudication area.

From the proceedings which were before the Tribunal the dispute was two fold-the interested party claimed a right to occupy or work on the land but there was also a claim relating to ownership based on allocation by a Land Allocation Committee and registration of that property in favour of one party. Secondly the Tribunal recognised that the land fell within an adjudication area. The issues were intertwined – right to occupy and ownership and the proper forum was the High Court and in determining who was the owner of the land it acted in excess of its jurisdiction.

On whether the Tribunal acted within its powers in ordering and recommending the cancellation of Title under provisions of **section 142** and **143** of **Cap 300** it is only the Registrar or the court who may order for rectification of the title issued to a proprietor under Cap 300. Consequently, I make a declaration that the tribunal’s order for cancellation of the title issued to the applicant was in excess of its powers and as such void abnatio.

Consequently, I make a finding that:

- 1.The application has merits and the decision by the Tribunal, which was adopted by the Resident Magistrate is quashed by way of certiorari, as it was exercised in excess of jurisdiction.

2.The 2nd Respondent is prohibited from making any cancellation as had been recommended by the Tribunal.

3.The costs of this application shall be in the cause.

**Dated, signed and delivered on this 9th day of October 2012 at Nakuru.**

**H.A OMONDI**

**JUDGE**