



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Judicial Review 60 of 2011**

**IN THE MATTER OF AN APPLICATION TO FILE AN APPLICATION**

**FOR JUDICIAL REVIEW ORDERS OF CERTIORARI  
AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL**

**ACT (ACT NO. 18 OF 1990)**

**AND**

**IN THE MATTER OF CIVIL PROCEDURE ACT AND RULES**

**AND**

**IN THE MATTER OF ELDORET CHIEF MAGISTRATES COURT IN AWARD NO. 16 OF 2011  
IN RESPECT OF PARCEL OF LAND MOIBEN /MOIBEN BLOCK 3/KAPSILIAT/182**

**BETWEEN**

**REPUBLIC ..... APPLICANT  
=VERSUS=**

**UASIN GISHU LAND DISPUTES TRIBUNAL .....1<sup>ST</sup> RESPONDENT**

**THE CHIEF MAGISTRATE COURT ELDORET.....2<sup>ND</sup> RESPONDENT**

**AND**

**CHEMORIO CHRISTOPHER .....INTERESTED PARTY**

**AND**

**CHELIMO ROTICH KAINO.....EX-PARTE APPLICANT**

**JUDGMENT**

On 18<sup>th</sup> August, 2011, I granted the applicant leave to file Judicial Review proceedings for orders of **Certiorari** and **Prohibition** directed at the decision of Uasin Gishu Land Disputes Tribunal and to prohibit Eldoret Chief Magistrates Court from adopting the same.

Pursuant to that leave, the applicant lodged this Notice of Motion under Order 53 Rule 3 (1) of the

Civil Procedure Rules seeking orders for which leave had been obtained. The main grounds for the application are that the **Uasin –Gishu Land Disputes Tribunal** (the 1<sup>st</sup> respondent) lacked jurisdiction to entertain the dispute which had been referred to it by **Chemorio Christopher** (the “**Interested Party**”) and that the 1<sup>st</sup> Respondent also offended the Rules of Natural Justice when it heard the dispute in the absence of the applicant.

The Notice of Motion is supported by an affidavit sworn by the applicant and a statement of facts filed by his advocate. From the statement and affidavit, the case of the applicant is briefly as follows. He is the registered proprietor of Land Parcel Number **Moiben/Moiben block 3/Kapsiliat/182** (hereinafter “**the Suit Land**”) upon which the Interested Party laid a claim before the 1<sup>st</sup> Respondent seeking to be declared the owner of one half of the suit land; that the 1<sup>st</sup> Respondent ordered that the applicant’s said property be sub-divided and half thereof be transferred to the Interested Party and that the 1<sup>st</sup> Respondent did so without jurisdiction and without according the Applicant an opportunity to challenge the Interested Party’s Claim.

The application is opposed by the Interested Party who has filed a replying affidavit. In the affidavit, it is deponed *inter alia*, that the suit land was jointly purchased by both the Applicant and the Interested Party but registration was effected in the name of the applicant who has refused to transfer one half share to the Interested Party - thus provoking the reference to the 1<sup>st</sup> respondent.

I have considered the application and the submissions of Counsel. Having done so, I take the following view of the matter. The Interested Party testified, *inter alia*, as follows before the 1<sup>st</sup> Respondent:-

**“We are two brothers who jointly bought 42 acres of land in the year 1971 and registered the whole parcel under Chelimo Rotich Kaino. In the year 2009, he said that I should come with a survey (*sic*) that is when I started demanding for the title deed ...”**

The 1<sup>st</sup> Respondent’s verdict was as follows:-

- (a) **The panel hereby recommends that Mr. Christopher Chemorio ..... Should be given his (*sic*) of possessing his land title deed by the Objector Mr. Chelimo Rotich Kaino immediately.**
- (b) **The Objector Mr. Chelimo Rotich Kaino should be compelled to confirm the Sub-division of 21 acres for each of them and facilitate the necessary land Title Deed process acquisition (*sic*) for Mr. Christopher Chemorio”.**

From the above, it is plain that the Interested Party’s claim was for 21 acres of the suit land which he wanted transferred to him. The 1<sup>st</sup> Respondent obliged and ordered the sub-division and transfer of the 21 acres to the Interested Party. The 1<sup>st</sup> Respondent could not do so since its jurisdiction does not extend to determining disputes based in Contract including the dispute which the Interested party referred to it being a claim for Sub-division and transfer of a portion of the suit land pursuant to a joint purchase. The 1<sup>st</sup> Respondent could only determine disputes described in Section 3 (1) of the Land Disputes Tribunal Act No. 8 of 1999 (now repealed). That section provided 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 and including land held in common;**
- (b) **A claim to occupy or work land or;**
- (c) **Transfer to land;**

**Shall be heard and determined by a Tribunal established under section 4.”**

The Interested party's Claim was clearly outside the purview of the above provisions as he sought to enforce a contract in respect of the Suit Land. Such a claim could not Lawfully be entertained by the 1<sup>st</sup> Respondent given the jurisdiction circumscribed by the above provisions of the Land Disputes Tribunal Act aforesaid. In purporting to entertain the interested party's claim, the 1<sup>st</sup> Respondent clearly acted without and in excess of jurisdiction.

In the premises, the Order of Certiorari is available to the applicant as sought in his Motion on Notice dated 22<sup>nd</sup> August, 2011. The same is allowed in terms of prayer 1 thereof and the decision/award of the 1<sup>st</sup> Respondent made on 27<sup>th</sup> May, 2011 concerning parcel number **Moiben/Moiben Block 2/Kapsiliat/182** is brought into this Court and the same is hereby quashed.

The Interested party is advised to file his claim in a Court of Competent Jurisdiction if he so wishes.

With regard to costs, I observe that the parties are brothers. That being the case, the order which commends itself to me is that each party bears his own costs of these proceedings and those before the 1<sup>st</sup> Respondent.

It is so ordered.

**DATED AND DELIVERED AT ELDORET  
THIS 6TH DAY OF NOVEMBER, 2012.  
F. AZANGALALA  
JUDGE**

**Read in the presence of:-**

**Mr. Limo** for Applicant, **Mr. Wainaina** for the Respondent and **Mr. Mitei** for the interested party.

**F. AZANGALALA  
JUDGE  
6/11/2012**