



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

Misc Civil Appli 24 of 2004 (JR)

**IN THE MATTER OF: AN APPLICATION BY PARSEYO OLE KITIAPAS FOR ORDER OF
JUDICIAL REVIEW IN THE NATURE OF (CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF: LAND DISPUTES TRIBUNAL ACT, NO.18 OF 1990

AND

IN THE MATTER OF: KIPINDON LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF: SENIOR RESIDENT MAGISTRATE'S COURT AT KILGORIS

BETWEEN

REPUBLICAPPLICANT

-VERSUS-

KIPINDON LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

**THE SENIOR RESIDENT MAGISTRATE'S COURT AT
KILGORIS.....2ND RESPONDENT**

AND

JOHNSTONE LANGAT.....1ST INTERESTED PARTY

SAMWEL LANGAT2ND INTERESTED PARTY

AND

PARSEYO OLE KITIAPAS.....EX-PARTE APPLICANT

RULING

This is an application for judicial Review brought by way of Notice of Motion under *Order 53 rules 3,4,5 and 7 of the Civil Procedure Rules* and *sections 8 and 9 of the Law Reform Act (Cap.26)* for an order of Certiorari to remove into this court and quash the proceedings and decision of the Kirindon Land Disputes Tribunal (1st respondent) and for order of Prohibition to prohibit the Senior Resident Magistrate (2nd respondent) from adopting the award as judgment of the court.

The facts of the case do not appear to be in dispute. The *ex parte* applicant is the registered proprietor of LR no. North Transmara/Kimintet "D"/616 which measures about 11.28 Hectares. The Title Deed was issued under the Registered Land Act (Cap.300). The interested parties went to the 1st respondent and claimed that they had bought land from the *ex parte* applicant: the 1st interested party a total of 6 acres and the 2nd interested party 6 acres. The

1st respondent heard the dispute and agreed with the claimants. It decided that each interested party gets his entitlement from the *ex parte* applicant's land. The Assistant chief Oloololo was asked to give the *ex parte* applicant 6 acres in Ilookwaya, but that does not concern this court. The decision was filed with the 2nd respondent for adoption as the judgment of the court.

The *ex parte* applicant relying on *section 3(1)* of the Land Disputes Tribunal Act, no 18 of 1990, contends that the 1st respondent had no jurisdiction to order him to relinquish any of his registered land to the interested parties. He contends, further, that the interested parties alleged purchase did not receive the blessings of the Land Control Board as required by section 6 of the Land Control Act and was therefore null and void. The Tribunal would not give life, as it were, to such transactions. He was represented by Mr. Otieno. Mr. Jumba represented the interested parties. The 1st respondent was served but filed no papers to defend the allegation they acted without jurisdiction and is disobedience of the law. Regarding the issue of the consent for the Land Control Board, Mr. Jumba submitted the *ex parte* applicant had not shown this was agricultural land or that the minister responsible had brought the area under the provisions of the Act. He submitted that what the 1st respondent dealt with and decided fell under its powers, under *section 3(1)* of the Land Disputes Tribunal Act.

The jurisdiction of the 1st respondent is circumscribed by *section 3(1)* of the Land Disputes Tribunal Act. It can deal with all cases of civil nature relating to division of or the determination of boundaries to land, including land held in common; a claim to occupy or work land; or trespass to land. The implementation of the decision of the 1st respondent will entail the subdivision of the suit land into three parcels and opening of a register in respect of each subdivision and thereafter transfer of two of the subdivided portions to the interested parties, leaving the *ex parte* applicant with one subdivision. It is clear that the proceedings and decision of the 1st respondent related to title to land. In my view, the 1st respondent had no jurisdiction to deal with the dispute or make the decision it did. (See *Jotham Amunavi .V. The Chairman Sabatia Division Land Disputes Tribunal and Another, Civil Appeal No.256 Of 2002 At Kisumu*).

This is sufficient to decide this application, which the court allows with costs.

Dated, signed and delivered at Kisii this 2nd day of November, 2009

A.O.MUCHELULE

JUDGE

2/11/2009

Before A.O.Muchelule-J

Court clerk-Mongare

Mr. Otieno-present

COURT: Ruling in open court.

A.O.MUCHELULE

JUDGE

2/11/2009