



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

JUDICIAL REVIEW APPLICATION NO. 36 OF 2010

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT (NO.18 OF 1990) (NOW REPEALED)

IN THE MATTER OF THE CIVIL PROCEDURE ACT AND RULES

IN THE MATTER OF LAND REFERENCE NO. KERICHO/SILIBWET/1944

IN THE MATTER OF THE BOMET LAND DISPUTES TRIBUNAL

IN THE MATTER OF THE KERICHO CHIEF MAGISTRATE'S COURT

MISCELLANEOUS APPLICATION NO. 92 OF 2009

AND

IN THE MATTER OF THE LAW REFORM ACT (CAP 26) SECTIONS 8 AND 9

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN BOMET LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE CHIEF MAGISTRATES COURT KERICHO.....2ND RESPONDENT

AND

DANIEL CHEPKWONY.....INTERESTED PARTY

AND

JONAK KILEL.....SUBJECT

RULING

Introduction

1. What is before me is the ex-parte applicant's Notice of Motion dated 31st January 2011 seeking the following prayers:

- a) That this Honourable Court be pleased to issue an order of certiorari removing unto this Honourable court for purposes of being quashed forthwith the 2nd Respondent's order dated the 18th November 2010 together with the entire proceedings arising therefrom and or connected therewith pursuant to the 1st Respondent's award dated 30th September 2009 which was read and adopted as a

b) That the costs of this application be provided for.

Applicant's case

2. A brief background of the facts giving rise to this application are as follows: The applicant herein filed a case against the interested party in Bomet Land Disputes Tribunal pursuant to the provisions of the Land Disputes Tribunal Act No. 18 of 1990 (now repealed).

3. The case was heard and the Tribunal reached its verdict in a finding contained in the award dated 30th September 2009 which was subsequently filed with the 2nd Respondent as required under S. 7 (1) of the Land Disputes Tribunal Act No. 18 of 1990. The 2nd Respondent read and adopted the award as the Judgment of the court on 18th November 2010 in Kericho Chief Magistrate's Court Misc. Civil application No.92 of 2009 in accordance with section 7 (2) of the said Act. It is this judgment adopting the said award that is the subject of this application.

4. The application was canvassed by way of written submissions and learned counsel for the ex-parte applicant filed his while counsel for the Respondents indicated that she did not intend to file any.

Issues for determination

5. The main issues for determination are as follows:

1. Whether the Land Disputes Tribunal acted within its powers by issuing the award dated 30th September 2009
2. Whether the subsequent adoption of Tribunal award by the Chief Magistrate's court is incompetent and bad in law
3. Whether the applicant is entitled to the reliefs sought.

Analysis and determination

6. With regard to the first issue section 3(1) of the Land Disputes Tribunal Act provides that,

"... Subject to this Act, all cases of the 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.

Rule 7 of the above section provides that the Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law.

7. In light of the foregoing, I agree with counsel's submissions that the Land Disputes Tribunal have no jurisdiction to adjudicate on a dispute that falls outside the purview of customary law. I find and hold that the nature of dispute which led to issuance of an award dated 30th September 2009 by Bomet Land Disputes Tribunal does not fall within the bracket of section 3 of the Land Disputes Tribunal Act as the land in question registered under the Registered Land Act Cap 300 (repealed). This registration gave the registered proprietor absolute proprietorship which cannot be defeated except in accordance with the said Act. The land in question is registered in the ex-parte applicant's name and his title can only be defeated in accordance with the RLA (repealed). The award of the Tribunal is therefore null and void.

8. The second issue for determination is whether the subsequent adoption of the Tribunal award by the Chief Magistrate's court is incompetent and bad in law.

9. Flowing from my findings herein above it follows that the adoption of the Tribunal's award by the 2nd Respondent was a nullity. In ***Republic Vs Kajiado North District Ngong Land Disputes Tribunal, Senior Resident Magistrate Kadjiado [2014] eKLR*** the Court held that:-

"If the said Tribunal had no jurisdiction to entertain the matter, whatever proceedings flowed from its decision would be null and void since decision made by a Tribunal which has no jurisdiction to entertain the dispute before it must of necessity be null and void".

10. It was further stated in the case of ***Macfoy vs. United Africa Co. Ltd*** that,

“if an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

11. I have considered the ex-parte applicant’s application, supporting affidavit and counsel’s submissions and I find merit in the application. I therefore allow the application and make the following final orders:

a) An order of certiorari is hereby issued removing unto this Honourable court for purposes of being quashed and hereby quashing the 2nd Respondent’s order dated 18th November 2010 together with the entire proceedings arising therefrom and or connected therewith pursuant to the 1st Respondent’s award dated 30th September 2009 which was read and adopted as a judgment of the Court in Kericho Chief Magistrate’s Court Miscellaneous Civil Application No. 92 of 2009.

b) THAT the costs of this application be borne by the 3rd Respondent/ Interested party.

Dated, signed and delivered at Kericho this 20th day of November, 2018.

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J. M ONYANGO

JUDGE

In the presence of

1. Mr. Orina for the Ex-parte Applicant
2. N/A for the Respondents
3. Court assistant - Rotich