



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

JUDICIAL REVIEW NO. 5 OF 2018

REPUBLICAPPLICANT

VERSUS

THE CHAIRMAN CHERANGANY

LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

BOAZ K. KAINO2ND RESPONDENT

EX-PARTE.....RICHARD CHEPKONGA

JUDGMENT

INTRODUCTION

1. The Notice of Motion dated **6th July, 2010** seeks that an order of certiorari to bring into the High Court and quash the decision of the 1st Respondent Tribunal dated **26th April, 2010**.

2. The Notice of Motion is founded on the grounds set out on the foot of the application. These are the same grounds that are replicated in the statement of facts dated **28/6/2010**. They are that on or about **26th April, 2010** the 1st respondent entertained a dispute ostensibly referred to it by the 2nd respondent; that no points of claim and or any other form of claim was lodged with the said tribunal; that upon deliberation the 1st respondent awarded the 2nd respondent **9.6 acres** and directed that the said parcels of land be carved out of the applicant's land; that the Elders who purported to make the award were not gazetted; that the applicant was not served with any form of claim to enable him answer it and he was never heard; that the Land Disputes Tribunal had no jurisdiction to hear and determine a dispute touching on ownership of land; that the Land Disputes Tribunal does not have jurisdiction to direct a Government Surveyor to survey land for the purposes of curving out any part of it; that the Tribunal therefore acted in breach of the rules of natural justice in a matter it did not have jurisdiction and its decision is therefore *ultra vires*, null and void; that the said decision is also ambiguous and unenforceable; that the said decision therefore ought to be quashed and that the *ex parte* applicant was granted leave to commence these proceedings on **1/7/2010**.

3. The application and the grounds raise the following issues:

- (a) *Were the rules of natural justice violated in regard to the applicant?*
- (b) *Was the tribunal properly constituted?*
- (c) *Did the tribunal have jurisdiction to hear and determine the dispute?*
- (d) *What orders should issue?*

4. The respondents did not oppose the Judicial Review Notice of Motion application.

5. The applicant states that he is the owner of plots numbers **208** and **209** in **Milimani ADC Farm** in Trans Nzoia District; that he only learnt on **10th May 2010** that the 2nd respondent had lodged a complaint against him before the 1st respondent claiming that the applicant had been allocated a part of his land; that the applicant did not participate in the proceedings; that the Tribunal heard the complaint on the basis of the letter and made an award in the 2nd respondent's favour; that the award directed the survey to be conducted on plot number **212** in order to recover **9.6 acres** of land which were claimed to belong to the 2nd respondent; that there was no evidence before the tribunal to warrant the award; that the applicant's parcels are not set out anywhere as being the subject matter of the 2nd respondent's complaint and the

complaint was therefore vague; that the award is ultra vires as the respondent can not adjudicate on issues of ownership of land; that only the court can hear a dispute touching on land ownership; that his advocate has perused gazette notices and he has failed to see any notice appointing the members of the respondent; that relevant facts were not considered and no pleadings were placed before the tribunal; that his right to full and fair hearing were violated; that the tribunal had no jurisdiction to issue the orders it did and that the decision is vague and unenforceable.

6. The very detailed allegations in the affidavit of the applicant have not been replied to by the respondents. Such factual allegations require a specific traverse if the court is to consider them as disputed. In this case there is no replying affidavit and there are no grounds of opposition. On the 8th October 2018 the state counsel appearing for the 1st respondent informed the court that his client would not be opposing the Judicial Review Notice of Motion. I find that it is the acts and omissions of the 1st respondent that are under challenge in the motion. An information such as that conveyed by the counsel, though falling short of expressly stating that the 1st respondent had conceded to the application, is an implied admission that the contents of the statement of facts and also the statements in the verifying affidavit are correct. Though served alongside the 1st respondent as described in the affidavit of service sworn by **Vincent O. Ogutu** on the **27th September 2018** and filed in court on the **8th October 2018**, the 2nd respondent did not respond. Just like the 1st respondent, the 2nd respondent should also be deemed to have admitted the facts in the application as correct. No submissions were filed by any of the parties in the motion.

7. Though unopposed the court is entitled to examine the motion for its merits, for it has been an established rule that Judicial Review Orders are discretionary remedies. I have perused the application and considered the facts surrounding it and I find nothing out of the ordinary that would disentitle the applicant from the orders sought. All the issues listed in **paragraph 3** above must be therefore answered in favour of the applicant's case.

8. In view of the above I find that the application dated **6/7/2010** is unopposed. I therefore grant the application in terms of order **(a)** and **(b)** thereof.

Dated, signed and delivered at Kitale on this **19th** day of **November, 2018**.

MWANGI NJOROGE

JUDGE

19/11/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the applicant

N/A for the respondents

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

19/11/2018