



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

CIVIL SUIT NO. 52 OF 2017 (J.R)

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IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT (NO.18 OF 1990) (NOW REPEALED)

AND

IN THE MATTER OF THE CIVIL PROCEDURE ACT AND RULES

IN THE MATTER OF LAND REFERENCE NO. KERICHO/KIPTERE/463

IN THE MATTER OF THE LAND DISPUTES APPEALS COMMITTEE

IN THE MATTER OF THE KERICHO CHIEF MAGISTRATE'S COURT

MISCELLANEOUS APPLICATION NO. 46 OF 2011

AND

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

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN

LAND DISPUTES APPEALS COMMITTEE.....1ST RESPONDENT

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

AND

PAUL SAWE KOE.....INTERESTED PARTY

AND

JOEL KIPKOECH NGENO.....SUBJECT

JUDGMENT

1. The ex-parte applicant filed this suit against the respondents by way of a Notice of Motion for Judicial Review 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 award dated the 14th September 2011 together with entire proceedings arising therefrom and or connected therewith pursuant to the 1st Respondent's award dated 14th June 2011 which was read and adopted as a judgment of the court in Kericho Chief Magistrate's Court Misc. Civil Application No. 46 of 2011.

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in Sigowet Land Disputes Tribunal pursuant to the provisions of the Land Disputes Tribunal Act No. 18 of 1990 (now repealed). The interested party being aggrieved by the said decision preferred an appeal to the Land Disputes Appeals Committee.

3. The appeal was heard and the Appeals Committee reached its verdict in a finding contained in the award dated 14th June 2011 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 14th September 2011 in Kericho Chief Magistrate's Court Misc. Civil application No. 46 of 2011 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 an award dated 14th June 2011
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 Tribunal shall adjudicate upon the claim and reach a decision in accordance with the realized 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 touching on registered title in accordance with customary law. I find and hold that the nature of dispute which led to issuance of an award dated 14th June 2011 by Sigowet Land Disputes Tribunal does not fall within the bracket of section 3 of the Land Disputes Tribunal Act Cap 303A of 2010 and it 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. In view of the foregoing, I find merit in the applicant’s application and I grant it 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 judgment dated 14th September 2011 together with the entire proceedings arising therefrom and or connected therewith pursuant to the 1st Respondent’s award dated 14th June 2011 which was read and adopted as a judgment of the Court in Kericho Chief Magistrate’s Court Miscellaneous Civil Application No. 46 of 2011.

b) THAT the costs of this application be borne by the Interested party.

Dated, signed and delivered at Kericho this 16th day of November, 2018.

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J. M. ONYANGO

JUDGE

In the presence of:

1. Mr. Kipkoech for Mr. Orina for the ex-parte
2. Court assistant - Rotich