



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**MISC. CIVIL APPLICATION NO. 181 OF 2011**

**REPUBLIC .....APPLICANT**

**VERSUS**

**IN THE MATTER OF JUDICIAL REVIEW UNDER ORDER 53(1), (2), (3) & (4) OF THE CIVIL PROCEDURE (REVISED) RULES 2010 SECTIONS 27, 28 & 143 OF THE REGISTERED LAND ACT CAP 300 & SECTIONS 3, 8 & 9, LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990 ALL OF THE LAWS OF KENYA FOR LEAVE AND STAY TO APPLY FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF PREROGATIVE ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION TO THE RULING/AWARD DELIVERED ON 15<sup>TH</sup> JUNE, 2011 AND THE NOTICE DATED 24<sup>TH</sup> JUNE, 2011 ISSUED BY THE PROVINCIAL LAND DISPUTES TRIBUNAL, NAKURU IN THE LAND APPEAL CASE NO. 22 OF 2011 AGAINST THE APPELLANT AND IN FAVOUR OF THE RESPONDENT IN THE MATTER PERTAINING TO ALL THAT PARCEL OF LAND KNOWN AS LAND REFERENCE NUMBERS KAJIADO/OLORNGOSUA/27 AND KAJIADO/OLORNGOSUA/1585 LEGALLY AND ABSOLUTELY REGISTERED IN THE NAMES OF DAVID LETURA KISIPAN AND CRISPUS KISIPAN RESPECTIVELY AND WHICH DECISION IS LIKELY TO ADVERSELY AFFECT THEM THEREOF.**

**AND**

**IN THE MATTER OF: AN APPLICATION BY THE APPLICANT**

**DANIEL KISHIL LETURA .....APPLICANT**

**AND**

**IN THE MATTER OF:**

**NELSON S. YENYO (CHAIRMAN) .....1<sup>ST</sup> RESPONDENT**

**SECRETARY .....2<sup>ND</sup> RESPONDENT**

**DAVID G. KABUYA (MEMBER) .....3<sup>RD</sup> RESPONDENT**

**FRANCIS K. BIWOTT (MEMBER) .....4<sup>TH</sup> RESPONDENT**

PROVINCIAL LAND DISPUTES APPEALS

SENIOR RESIDENT MAGISTRATE KAJIADO.....5<sup>TH</sup> RESPONDENT

ELIZABETH SIPAN LETURA .....6<sup>TH</sup> RESPONDENT

ATTORNEY GENERAL .....7<sup>TH</sup> RESPONDENT

EX-PARTE

JUDGMENT

1. In the Notice of Motion dated 2<sup>nd</sup> August, 2011, the Ex-parte Applicant is seeking for the following orders:

*a. That certiorari to quash the Ruling of the Provincial Land Dispute Tribunal delivered on 15<sup>th</sup> June, 2011 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in the Case No. Land Dispute Appeal No. 22 of 2011 at Nakuru against the Applicant and in favour of the 6<sup>th</sup> Respondent and the Notice issued dated 24<sup>th</sup> June, 2011 directing for the adoption of the said Ruling as the Judgment of the Senior Resident Magistrate by the 5<sup>th</sup> Respondent pertaining to all that parcels of land known as L.R. No. Kajiado/Olorgosua/27 and Kajiado/Olorgosua/1585 registered in the names of David Letura Kisipan and Crispus Kisipan.*

*b. That prohibition against the Ruling of the Provincial Land Dispute Tribunal delivered on 15<sup>th</sup> June, 2011 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in the Case No. Land Dispute Appeal No. 22 of 2011 at Nakuru against the Applicant and in favour of the 6<sup>th</sup> Respondent and the Notice issued dated 24<sup>th</sup> June, 2011 directing for the adoption of the said Ruling and the Judgment of the Senior Resident Magistrate by the 5<sup>th</sup> Respondent pertaining to all that parcels of land known as L.R. No. Kajiado/Olorgosua/27 and Kajiado/Olorgosua/1585 registered in the names of David Letura Kisipan and Crispus Kisipan.*

*c. That an order of this Honourable Court upholding the decision of the Kajiado Land Disputes Tribunal in Case No. 602/11/2010 on the subject matter delivered on 13<sup>th</sup> January, 2011 and adoption of the Senior Resident Magistrate on 17<sup>th</sup> March, 2011 pertaining to all that parcels of land known as L.R. No. Kajiado/Olorgosua/27 and Kajiado/Olorgosua/1585 registered in the names of David Letura Kisipan and Crispus Kisipan.*

2. In his Statutory Statement of facts, the Ex-parte Applicant (*the Applicant*) has averred that the Respondents failed to adhere to the provisions of the Land Disputes Tribunal Act when they arrived at their Ruling of 15<sup>th</sup> June, 2011.

3. It is the Applicant's case that the Respondents acted without jurisdiction by hearing and determining a matter in respect of parcel of land number Kajiado/Olorgosua/27 and 1585; that the Respondents failed to conduct the proceedings pursuant to the principles of natural justice and that the Respondents failed to give reasons for their decision.

4. In his Verifying Affidavit, the Applicant deponed that he is the son of David Letura Kisipan and a brother of Crispus Kisipan, the registered proprietors of parcel of land known as Kajiado/Olorgosua/27 and 1585 respectively.

5. It is the deposition of the Applicant that his father sub-divided parcel number 27 into sixteen (16) portions which he allocated to all his children; that the Purka Land Control Board gave its consent to the sub-division and that he was shocked when the 6<sup>th</sup> Respondent claimed parcel of land number 1585

measuring 15.4Ha which had been allocated to his brother Crispus Kisipan.

6. When the issue was escalated to the Kajiado Central Land Disputes Tribunal, the Applicant deponed that the Tribunal ruled in his favour by dismissing the complaint whereafter the 6<sup>th</sup> Respondent preferred an Appeal before the Provincial Land Appeals Committee.

7. It is the Applicant's case that the Appeals Committee did not summon any witnesses; that although the dispute was in respect of Plot No. 1585, the Committee addressed the issue of plot number 27 which had been closed upon sub-division and that the Appeals Committee made an order purporting to stop the sub-division of parcel number 27 yet the land had already been sub-divided.

8. In response to the Application, the Attorney General filed Grounds of Opposition on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents and averred that the prerogative orders sought by the Applicant are misplaced because the dispute is over ownership of land.

9. It is the averments of the 1<sup>st</sup> to 4<sup>th</sup> Respondents that the Application is defective because the Respondents have been sued in their personal capacities and that the Applicant does not have the *locus standi* to file the suit.

10. In her Replying Affidavit, the 6<sup>th</sup> Respondent deponed that she is the lawful wife of David Letura Kisipan, the registered proprietor of parcel of land known as Kajiado/Olorgosua/27; that the Applicant does not have the *locus standi* to file the current suit because the registered owner of the suit land is alive and that the Applicant sub-divided the suit property without any lawful authority to do so.

11. The 6<sup>th</sup> Respondent denied having attended any family meeting as alleged by the Applicant and deponed that the alleged sub-division of Plot No.27 was as a result of an unlawful manipulation of the Applicant to illegally enrich himself.

12. In his Supplementary Affidavit, the Ex-parte Applicant deponed that the 6<sup>th</sup> Respondent has not shown that she is the lawful wife of David Letura Kisipan; that he was the Respondent in the proceedings in Nakuru and therefore has the *locus standi* to institute this suit and that the representatives of the Land Control Board forwarded their Minutes to the Board which gave directions on how the suit property should be divided.

13. It is the Applicant's case that the complain by the 6<sup>th</sup> Respondent to the Land Tribunal was lodged on 18<sup>th</sup> November, 2010, four (4) years after the sub-division of the suit land; that parcel of land number Kajiado/Olorgosua/27 was sub-divided by the owner and that the Appeal Committee made its Ruling even before hearing the dispute.

14. The Applicant's advocate submitted that the 1<sup>st</sup> – 4<sup>th</sup> Respondents failed to adhere to the provisions of the Land Disputes Tribunal Act, and in particular Sections 3,8,9, and 10.

15. Counsel submitted that the 1<sup>st</sup> -4<sup>th</sup> Respondents conducted proceedings in a hurry and granted an erroneous and biased decision in respect of parcel of land number 27; that the Committee lacked jurisdiction to hear and determine matters in respect of registered land and that the decision of the Committee was null and void.

16. The Applicant's counsel submitted that the dispute at the Tribunal and the subsequent Appeal in Nakuru were filed by the 6<sup>th</sup> Respondent against him and that he has the *locus standi* to bring this suit.

17. The Attorney General submitted that these proceedings are misplaced; that the issues of ownership of land should be canvassed in a civil suit and that the Application is null and void.

18. Being not the registered proprietor of the suit property, it was submitted, the Applicant does not have

the *locus standi* to bring these proceedings.

19. The 6<sup>th</sup> Respondent's counsel submitted that Daniel Kisipan Letura (*deceased*) sub-divided his land into sixteen (16) portions; that in 2010, it came to the attention of the 6<sup>th</sup> Respondent that the Applicant had taken advantage of the said Daniel's old age and had parcel of land number 27 transferred in the name of Crispus Kisipan, his younger brother and that is when he lodged a complaint with the Kajiado Central Land Disputes Tribunal to refrain the Applicant from dealing with parcel number 27.

20. Counsel submitted that the Applicant does not have the *locus standi* to bring this suit because the suit property is not registered in his name; that the Applicant has not demonstrated that the Respondents acted without jurisdiction and that the Notice of Motion is not only premature but also hypothetical in nature.

21. It is not in dispute that land known as Kajiado/Olorgosua/27 measuring 473.53Ha was registered in the name of David Letura Kisipan. It is also not in dispute that Mr. David Kisipan Letura led a polygamous life.

22. According to the Affidavits of the Applicant and the 6<sup>th</sup> Respondent, Mr. David Kisipan Letura sought to sub-divide his land and allocate the said portions amongst his siblings while still alive.

23. According to the Mutation form annexed on the Applicant's Affidavit, parcel of land number 27 was sub-divided into sixteen (16) portions. The Mutation form confirming the said sub-division was registered by the Land Registrar on 30<sup>th</sup> November, 2006.

24. One of the parcels of land that arose out of the said sub-division was Kajiado/Lorngosua/1585 measuring approximately 15.14 Ha which was registered in the name of one David's son, Crispus Kisipan, on 11<sup>th</sup> April, 2008.

25. From the documents annexed on the Application, it is not clear in whose favour the other sub-divisions of parcel of land number 27 were registered.

26. However, according to a handwritten letter dated 29<sup>th</sup> November, 2006 purportedly authored by David Letura Kisipan and addressed to the Land Registrar, parcel of land No. 27 was allocated to his eleven (11) sons and three (3) daughters, leaving one (1) parcel of land to himself and another parcel of land for a market centre.

27. According to the list of the allottees in the said letter, the Applicant was allocated portion number 1584 while Rosa Musei Moike was allocated parcel number 1585.

28. After the letter of 29<sup>th</sup> November, 2006 by Mr. David, the matter was escalated to the Purka Land Control Board, who, on 8<sup>th</sup> December, 2006 held a meeting to discuss the issue of sub-division of parcel of land number 27.

29. According to the Minutes of the Board "*after long deliberations by members present it was agreed that the portion left for David L. Kisipan, Kajiado/Lorngosua/1585 be co-owned by David Letura Kisipan and his four (4) wives...*"

30. The documents annexed on the Applicant's Affidavit shows that parcel of land number 1585 was transferred to Crispus Kisipan by David Letura Kisipan on 11<sup>th</sup> April, 2008. A Title Deed was then issued to the said person.

31. It would appear that the 6<sup>th</sup> Respondent, who was allegedly one of the wives of the patriarch, was not happy with the fact that parcel of land number 1585 was registered in favour of the said Crispus Kisipan, which, according to her, was done at the behest of the Applicant.

32. In her complaint to the Kajiado Central Land Disputes Tribunal, the 6<sup>th</sup> Respondent stated that she was given parcel of land number Kajiado/Lorngosua/1585 by her husband, Letura Ole Kisipan.

33. It was the 6<sup>th</sup> Respondent's case that the Applicant had caused the Title Deed for Plot No. 1585 to be issued to his brother and was seeking to evict her from the land.

34. After hearing the matter, the Kajiado Central Land Disputes Tribunal directed as follows:

***“1. That the Registrar to issue title no. Kajiado/Lolngosua/1585 in the name of Crispus Letura as per the signed documents by the transferor (David Letura).***

***2. That the three brothers Crispus Letura, Lekula Letura and Melita Letura to re-obtain the consents to sub-divide and transfer of parcel No. Kajiado/Lolngosua/1585 into three equal portions and the Registrar to re-issue the titles in their names.”***

35. In a nutshell, the Kajiado Central Land Disputes Tribunal dismissed the 6<sup>th</sup> Respondent's claim in respect of parcel no. 1585.

36. The 6<sup>th</sup> Respondent was aggrieved by that decision and filed an Appeal with the Rift Valley Land Disputes Appeals Committee. In the said Appeal, the Applicant herein was the sole Respondent while the 6<sup>th</sup> Respondent herein was the Appellant.

37. Although it is not clear if the Appeals Committee heard witnesses when the Appeal came up for hearing, what is clear is that the Appeals Committee re-opened the issue of sub-division of parcel number 27. The Appeals Committee stated as follows:

***“The 473.54Ha should have been divided into four (4) houses meaning wives of Sipan Ole Letura not the children “wives” so children can be under their mothers. If in case children are given land and misuse or sell it the mothers will end up in poverty. In our Ruling we have stopped the division of this land to children and sub-divide to four (4) wives of Sipan Ole Letura. We have ordered the Registrar to enter to parcel No. Kajiado/Olongosua No. 27 measuring 473.53Ha and curve 125Ha of land and process Title Deed for Elizabeth Letura of Identity Card No. 1349299 without any delay.”***

38. That decision is the subject of this Application.

39. The first issue that I shall deal with is whether the Ex-parte Applicant has the *locus standi* to bring this suit.

40. It is true, as submitted by the 6<sup>th</sup> Respondent's counsel, that the Ex-parte Applicant is neither the registered proprietor of parcel of land number Kajiado/Lorngosua/27 nor parcel number 1585.

41. However, in the proceedings before the Kajiado Central Land Disputes Tribunal, the 6<sup>th</sup> Respondent sued the Applicant herein as the sole “*Objector.*”

42. After the 6<sup>th</sup> Respondent lost the case, she filed the Appeal, not as against the registered proprietor of the two suit properties, but as against the Applicant herein.

43. Having sued the Applicant in the two Tribunals, it cannot be open to the 6<sup>th</sup> Respondent to allege that the Applicant does not have the *locus standi* to challenge the proceedings of the Appeals Committee.

44. Indeed, one of the grounds that this court shall be examining in this Ruling was whether it was open to both the Kajiado Central Land Disputes Tribunal and the Rift Valley Provincial Land Disputes Appeals Committee to deliberate on a dispute involving registered land without inviting the registered owners.

45. Because it is the Ex-parte Applicant who was the Respondent in the Appeal that was determined by the Appeals Committee, the Applicant has the *locus standi* to challenge the decision of the said Committee.
46. As I have stated above, the 6<sup>th</sup> Respondent was aggrieved by the fact that parcel of land Kajiado/Lorngosua/1585, which was one of the sub-divisions of parcel number 27, had been registered in favour of Crispus Kisipan.
47. When her complaint was dismissed by the Kajiado Central Disputes Tribunal, she appealed to the Appeals Committee who, instead of dealing with parcel of land number 1585, ordered for the re-distribution of parcel number 27 amongst the four (4) wives of David Letura.
48. In addition to directing that parcel of land number 27 should be distributed amongst the four (4) wives of David Letura, the Appeals Committee went further to allocate 125Ha out of the 475.53Ha of parcel of land number 27 to the 6<sup>th</sup> Respondent.
49. It is not clear on which basis the Appeals Committee directed that the 6<sup>th</sup> Respondent should be registered as the owner of land measuring 125Ha.
50. The evidence before this court shows that by the time the Appeals Committee made its decision, parcel of land number 27, which was initially registered in the name of David Letura, had been closed after the registered owner sub-divided it into sixteen (16) portions.
51. Indeed, there is evidence that some of those sub-divisions had been registered and titles issued, including the title in respect of parcel of land number 1585.
52. It is trite that where land has been registered under the Registered Land Act, the Land Disputes Tribunals and the Appeals Committees did not have jurisdiction to sub-divide such parcels of land, or where such land has been sub-divided, to order for consolidation of the same.
53. Considering that parcel of land Kajiado/Lorngosua/27 was already registered in favour of David Kisipan, and the register for the said parcel had been closed upon sub-division by the registered owner, the Appeals Committee did not have jurisdiction to decide on how the said land should be re-sub-divided.
54. In any event, the decision of the Appeals Committee was arrived at without hearing the evidence of the registered proprietors of either parcel number 27 or 1585 thus breaching the rules of natural justice.
55. Considering that the proceedings of the Appeals Committee would affect the registered proprietors of parcels of land known as Kajiado/Lorngosua/27 and 1585, it was imperative that they were to be notified of the said proceedings before any adverse decision could be made.
56. In view of the fact that the 1<sup>st</sup> to the 5<sup>th</sup> Respondents did not have jurisdiction to order for the sub-division of land registered under the Registered Land Act, and considering that the registered owners of the two parcels of land were not notified of the proceedings before the Appeals Committee, I find and hold that the proceedings and the decision of the Appeals Committee is null and void.
57. For those reasons, I shall, which I hereby do, I allow the Ex-parte Applicant's Notice of Motion dated 2<sup>nd</sup> August, 2011 in the following terms:

***a. That an order of certiorari be and is hereby issued to quash the Ruling of the Provincial Land Disputes Appeals Committee delivered on 15<sup>th</sup> June, 2011 by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in Land Dispute Appeal Case No. 22 of 2011 at Nakuru against the Applicant and in favour of the 6<sup>th</sup> Respondent and the Notice issued dated 24<sup>th</sup> June, 2011 directing for the adoption of the said Ruling as the Judgment of the Senior Resident Magistrate by the 5<sup>th</sup> Respondent pertaining to all that parcels of land known as L.R. No. Kajiado/Olorgosua/27 and***

*Kajiado/Olorgosua/1585 registered in the names of David Letura Kisipan and Crispus Kisipan.*

*b. Each party to pay his/her own costs.*

**DATED AND DELIVERED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF MARCH, 2017.**

**OSCAR A. ANGOTE**

**JUDGE**