



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**JR CASE NO. 6 OF 2010**

**KELEMENT OLOLOSIKANY.....PLAINTIFF**

**VERSUS**

**LAND DISPUTE APPEAL**

**TRIBUNAL & 2 OTHERS .....RESPONDENT**

**RULING**

The application dated 29/11/2010 seeks for orders of certiorari to quash the ex parte decision of the Rift Valley Provincial Land Disputes Appeal Tribunal in APPEAL CASE No. 24 of 2008 made on 30/11/2009, which was yet to be adopted upon expiry of 60 days thereof by Nairobi Principal Magistrates Court in Miscellaneous Land Case No. 5 of 2008.

The Applicant also prays for orders to prohibit implementation, adoption and/or execution of the ex parte award delivered on 30/11/2009. It is the applicant's contention that he is the owner of parcel CIS-Mara/Oleleshwa/878, which he has had possession of for over 20 years to date. The third respondent (Parsitan Ololosikany) lodged an appeal with the Rift Valley Provincial Appeals Committee in Land Dispute No. 24 of 2008, and the matter proceeded ex parte and a decision was made in favour of the 3rd respondent.

The applicant insists that parcel was allocated to her in 1992 and he has since been in occupation. He fears that if the award is adopted by the Nairobi Court, then the 3rd respondent is likely to enforce the award, and evict him. It is his lament that the matter was not properly and comprehensively determined as the Tribunal had no jurisdiction to determine a dispute on land which had a title deed. He explained further that the 3rd respondent presented an appeal before the Appeals committee on issues related to fraudulently registered parcel of land Title No. CIS-Mara/Oleleshwa/878. The committee heard the matter ex parte without service of hearing notice to the applicant, who was also not notified of the ruling date.

In opposing the application the 3rd Respondent states in his replying affidavit that he had filed a civil suit No 59 of 2006 at Nairobi Law Courts seeking interim orders of injunction to restrain the applicant herein and his agents from interfering with his parcel No. CIS Mara/Oleleshwa/878 while the matter was pending in court. The applicant furtherance of his illegal claims to the land, moved to the High Court in Nairobi and filed ELC No. 456 of 2007, which he withdrew before determination when the applicant released it was impossible to challenge and have ownership and/or the title deeds cancelled in the lower and superior court, he applied to the Central Lands Dispute Tribunal - Nairobi who granted the applicant a proprietary right over the land contrary to its mandate.

That is what led to the 3rd respondent filing an appeal before the Appeals Committee. The 3rd respondent maintains that the Appeals Committee reached its decision based on merit and facts presented before

court and the same is not ultra vires to warrant review as sought in the application. Further that the parcel claimed is non-existent, the same having mutated to other portions with different numbers, so no orders can flow from that application. That in any event, this matter has been overtaken by events as the Land Disputes Tribunal has been disbanded and replaced by the Environmental and Land Court, so none of the pending decisions can be enforced.

The matter was disposed of by way of written submissions. The submissions of the applicants' counsel reiterate the contents of the application and the supporting affidavit, emphasis being that the Appeals Committee had no jurisdiction to hear the matter and further that despite stay orders being in place, the 3rd Respondent subdivided the disputed parcel and sold almost the entire parcel to third parties yet he had already received compensation from the government of Kenya after compulsory acquisition of his land, during construction of Nairobi-Mulot road.

Counsel submits that this dispute has been arbitrated upon several times by members of Nairasirasa Group Ranch, and the decision has always been in the applicant's favour.

The 1st and 2nd respondents are represented by Miss Khatambi of the Attorney General's chambers - she has no objection to the application. The 3rd respondent's counsel has set out what I agree are the issues for determination as

- (a) Whether the District Land Tribunal had jurisdiction to determine the matter.
- (b) Whether the Provincial Appeals Committee had jurisdiction to determine the matter.

The genesis of this matter is that the applicant and the 3rd respondent are brothers and members of Nairasarasa Group Ranch, although each claims parcel No. 878 and says the other was the one allocated parcel No. 1003.

The applicant presented his case before the Land Tribunal on grounds that the Respondent was trespassing on Parcel No. 878. It is argued that the gist of the proceedings before the tribunal was that the 3rd respondent had entered into the applicant's parcel - this despite the existence of two court orders of injunction issued against the 3rd respondent. Counsel for appellant argues that the matter before the tribunal was purely one of trespass and boundary dispute, which fell within the Tribunal's mandate.

However it is a fact that although that was the issue before the tribunal, it went ahead to make an order cancelling the title. This decision is defended on grounds that it was an inevitable consequence since the tribunal had made its findings.

I do not agree. The jurisdiction of the Land Disputes Tribunal was clearly spelt in section of the Land Disputes Act No. 18 of 1990 was limited to

- (1) Subject to this Act, all cases of 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.

However that award was adopted by Nairobi Principal Magistrate as a ground in Civil Appeal No. 5 of 2008 of 8/7/2008. The Land Disputes Act at Section provided that any party aggrieved by the Tribunal's decision could file an appeal to the Provincial Appeals Committee - which is what the 3rd Respondent did. Since the appeal was heard, I think it follows the orders that the committee had no jurisdiction to determine whether that cancellation was proper or not and restore title to another party, from that point, the matter ought to have come to court.

In making that decision, which touched on the ownership/title the committee exceeded its jurisdiction and acted ultra vires.

I therefore find merit in the application and grants orders of certiorari to quash the decision by the Provincial Appeals Committee.

(2) The award has not been adopted by the court sitting at Nairobi and I prohibit the court from adopting the provincial appeals committee.

(3) Costs of these proceedings shall be borne by the 3rd respondent.

Written and dated this 30<sup>th</sup> day of January 2014 at Bungoma.

**HON. H OMONDI**

**JUDGE**

Delivered and dated this 29<sup>th</sup> day of January 2015 at Nakuru.

**JANET MULWA**

**JUDGE**

In the presence of:-

.....for the applicant/subject

.....1<sup>st</sup> and 2<sup>nd</sup> respondent

.....3<sup>rd</sup> respondent

Mwai - court clerk