



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION 5 OF 2011**

**REPUBLIC..... APPLICANT**

**VERSUS**

**THE CHAIRMAN**

**PROVINCIAL LAND DISPUTES APPEAL TRIBUNAL**

**RIFT VALLEY PROVINCE ..... 1ST RESPONDENT**

**THE CHIEF MAGISTRATE KITALE ..... 2ND RESPONDENT**

**ESTHER JUMBA ..... INTERESTED PARTY**

**EX-PARTE ..... JOSECK KIBOI KIBOR**

**RULING**

1. The ex-parte applicant Joseph Kiboi Kibor brought a notice of motion dated 14th February, 2011 in which he seeks an order of certiorari to remove into this court and quash a decision of the provincial Land Disputes Appeals Committee made on 17/11/2009 and the subsequent judgement entered in Kitale CMC Land Case No. 13 of 2005 on 18/8/2010. The ex-parte applicant also seeks an order of Prohibition to prohibit the Chief Magistrate's court and or the interested party from executing the decree issued in terms of the award filed.
2. The ex-parte applicant had filed a claim at the Kaplamai Land Disputes Tribunal in which he laid claim to occupy one acre of land which was being occupied by the interested party Esther Jumba. The Kaplamai Land Disputes Tribunal ruled that the ex-parte applicant was entitled to have one acre from the interested party.
3. The ex-parte applicant and the interested party were both shareholders of Chepkoiyo Farm. During division of the farm amongst shareholders, it was discovered that the ex-parte applicant who had 3,000 shares which entitled him to have 20 acres had only 18.2 acres. The farm officials decided to establish who had excess acreage so that the excess could be recovered and the ex-parte applicant given his full entitlement. It was found out that the interested party had bought 1.3 acres whereas on the ground, she had more than what she was entitled to.
4. The ex-parte applicant got some acres from other shareholder who were willing to have their excess acres given out. When the interested party was asked to surrender the excess acres, she declined forcing the ex-parte applicant to file his claim at the Tribunal.
5. The interested party being aggrieved with the decision of the Kaplamai Land Disputes Tribunal appealed to the Provincial Appeals Committee which overturned the verdict of the Kaplamai

- Land Disputes Tribunal holding that since the interested party had been in occupation of her Land including the disputed one acre for over 25 years, she was entitled to retain the land.
6. The ex-parte applicant contends that the provincial Land Disputes Appeals Committee exceeded their jurisdiction by declaring that the interested party was entitled to retain the land on account of having possessed it for over a period of 25 years.
  7. The interested party opposed the application through her replying affidavit sworn on 17/7/2012 in which she contends that it is the ex- parte applicant who filed a claim at the Tribunal and should therefore not complain that the final decision by the Provincial Land Disputes Appeals Committee was reached without jurisdiction. The interested party also contends that she initially bought 2.0 acres and later added another acre making a total of 2.3 acres. That she was shocked when surveyors excised one acre from her land claiming that it should be given to the ex-parte applicant.
  8. I have considered the ex-parte applicant's notice of motion as well as the replying affidavit by the interested party. The issue which arises for determination is whether the Provincial Appeals Committee exceeded its jurisdiction. Mr Bundi for the ex-parte applicant contends in his submissions that the Provincial Appeals Committee exceeded its jurisdiction by awarding the land in dispute to the interested party by way of adverse possession when there was no such claim before it. In support of this, Mr Bundi cited the case of Benson Wamai Kahungu -Vs- Jane Wanjiru Kamau (2006) e KLR. In this case an award had been given in favour of Jane Wanjiru Kamau by Kahuro Land Disputes Tribunal. The respondent Benson Wamai Kahungo preferred an appeal to the Provincial Appeals Committee. His appeal was dismissed and he preferred an appeal to the High Court on points of law as provided for under the repealed Land Disputes Tribunal Act. The Tribunal had ordered that the appellant do give her three acres from his land. Lady Justice Okwengu who is now a Judge of the Court of Appeal stated as follows;-

***“It is evident that the respondent has been in possession of the suit land since 1962, facts which may provide a good ground for a claim for adverse possession ..... the central issue however was ownership and title to land and those are issues which ought to have been referred to the High Court.”***

9. The facts of the above case might have been different to the facts in the present case. However it is clear that the Provincial Land Disputes Appeals Committee in their decision were alive to the fact that the interested party was in possession of one acre of land which ought to have been given to the ex-parte applicant but they nevertheless reached a decision that the land should remain in the possession of the interested party on account of her having been in possession for over 25 years. This was clearly giving the one acre to the interested party by way of adverse possession. There was no claim for adverse possession before the appeals Committee and in any case they had no jurisdiction to pronounce ownership of land.

10. I find that the Provincial Land Disputes Appeals Committee exceeded their jurisdiction. For this reason their decision cannot stand. The same is removed into this court and is hereby quashed together with the judgement of the Chief Magistrate's court which adopted it as judgement of the court on 18/8/2010. The ex-parte applicant shall have costs of the motion.

It is so ordered.

Dated, signed and delivered at Kitale on this 8th day of April, 2014.

**E. OBAGA,**

**JUDGE**

In the presence of Mr Bundi for ex-parte applicand Mr Yano for the interested party. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

8/4/2014