



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISCELLANEOUS CIVIL APPLICATION NO. 694 OF 2006

IN THE MATTER OF AN APPLICATION BY PAUL BIWOTT NGAULO alias NGAULO OLE MASUAI TO FILE AN APPLICATION ON JUDICIAL REVIEW FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF THE CIVIL PROCEDURE ACT AND THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF THE REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF ALL THAT PARCEL OF LAND KNOWN AS

TARAKWA/LAINGUSE BLOCK 4 (RORIANI) 107

BETWEEN

REPUBLIC APPLICANT

=VERSUS=

MAURICE WASIKE- CHAIRMAN

MARY MISOS – SECRETARY

JOHN TANUI – MEMBER

(Sitting as Committee members of Kessess

Division Land Disputes Tribunal) 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

ESTHER CHEBET A. LAGAT INTERESTED PARTY

JUDGMENT

The claim before this Court is for Judicial Review. The Primary relief sought by the Ex-parte Applicant is for an Order of Certiorari, to quash the decision of the **KESSES DIVISION LAND DISPUTES TRIBUNAL**.

It is the case of the Ex-parte Applicant that the Tribunal lacked Jurisdiction to hear and determine the claim that was before it. The Ex-parte Applicant also asserts that the proceedings were conducted contrary to the Principles of natural justice and the principles of law.

The case before the Tribunal was that of **MRS. ESTHER CHEBET A. LANGAT =VRS= MR. PAUL BIWOTT NGAULO, CASE NO. 13 OF 2006.**

The salient facts of that case can be summarized briefly. First, it is a fact that the two parties are a sister and a brother.

Paul was living at Lorian Farm, which is located in the area called Burnt Forest. Meanwhile, Esther was living at Londiani. Esther told the Tribunal that her brother, Paul, encouraged her to sell off her parcel of land in Londiani, and to buy alternative land at Lorian.

Esther was persuaded and she sold off her parcel of land for Kshs 102,000/=. The said piece of land was said to have been inherited by Esther, from her late father.

Thereafter, Esther sold one Bull for Kshs 15,400/= and another animal for Kshs 4,000/=. Having received the money from the sale of the animals, Esther says that she had a total of Kshs 123,000/=.

Esther traveled to Lorian farm, where Paul was living. She was accompanied by her brother, Alexander A. Chepkwony. They went to Lorian to give money to **Paul**, which was to be used to purchase some land for **Esther**.

Paul advised **Esther** and **Alexander** against keeping the large sum of money at house. In line with that advice, **Alexander** accompanied **Paul** to the Co-operative Bank, Eldoret Branch, where the sum of Kshs 122,000/= was deposited into **Paul's** account.

Esther expected her parcel of land, which **Paul** was to buy on her behalf, using the money that she had brought to him. However, **Paul** never gave her the said piece of land.

On the other hand, **Paul** categorically denied having any land that belonged to Esther. He also denied ever having been given Kshs 122,000/= by **Esther**.

However, the Tribunal was persuaded by the testimony of Esther, and they held that she had given to Paul the sum of Kshs 122,000/=: which **Paul** was to use to buy a parcel of land for Esther.

Consequently, the Tribunal directed Paul to surrender to Esther three (3) acres of land. That order was later adopted as a Decree in **ELDORET CHIEF MAGISTRATE'S COURT AWARD NO. 15 OF 2006.**

The Ex-parte Applicant (**Paul**) felt aggrieved with the decision of the Tribunal and the consequential Decree founded upon it. It is for that reason that he has come to

this Court, seeking an Order of Certiorari, to quash the orders in contention. In his view, the Tribunal lacked jurisdiction to hear and determine the case.

But the Interested Party (Esther) supports the findings of the Tribunal, which she says acted fairly and in the interest of justice.

Meanwhile, the Tribunal also defended its actions. It was their position that the Tribunal was mandated by law, to apply customary law when resolving disputes touching on land which was registered under the Registered Land Act.

As far as the Tribunal was concerned;

“ ... the disputed land was inherited from the interested party's father according to customary law.”

It is noteworthy that the Tribunal's position, as quoted above, was expressly stated in their decision.

First, that position does not appear to be supported by the evidence tendered. I say so because Esther had made it clear that the parcel of land which she was claiming was supposed to have been purchased for her, using the money which she handed over to **Paul**.

When **Paul** kept the money but failed to give any land to **Esther**, she lodged the claim for the land.

Esther had sold the parcel of land which she had inherited from her father. The sale realized Kshs 102,000/=, which was part of the money which Esther gave to **Paul**.

Secondly, I find that the dispute between **Esther** and **Paul** was not about a claim to occupy land. It was actually a claim for title to a portion of land which was to be carved out from the land whose title was currently registered in the name of **Paul**.

The Tribunal ordered **Paul** to give to **Esther** three (3) acres of land. That decision was based on the fact that **Paul** had received money from **Esther**, which he was to use to buy land for Esther. In effect, **Paul** was being required to provide consideration for the money he received. And **Esther** was found to be entitled to 3 acres of land, as a matter of right, arising from the money she had paid to **Paul**

The Tribunal may or may not have been fair in the manner in which it resolved the dispute. However, the Tribunal lacked jurisdiction to delve into issues touching on the right to own land, following payment for such land. Such disputes ought to only be determined by Courts of Law.

Consequently, although my sympathies rest with Esther, I have no alternative but to issue an order of Certiorari, to quash the Tribunal's decision which was thereafter adopted as the Decree in the Chief Magistrate's Court Award No. 15 of 2006.

As regards costs, I note the Ex-parte Applicant and the Interested Party both participated willingly in the proceedings before the Tribunal.

The issue of jurisdiction was only raised after the Tribunal had given its verdict. In the circumstances, I find no reason to condemn either the Respondent or the

Interested Party with the costs of these Judicial Review proceedings. I order that each party will bear his own costs.

DATED, SIGNED AND DELIVERED AT ELDORET,

THIS 19TH DAY OF MAY, 2014.

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FRED A. OCHIENG

JUDGE.