REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JR CASE NO. 29 OF 2012

REPUBLIC.....APPLICANT

VERSUS

KIKUYU LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

PRINCIPAL MAGISTRATE'S COURT KIKUYU.....2ND RESPONDENT

JOSEPH NGUGI NGANGA.....INTERESTED PARTY

EX-PARTE

BENJAMIN BIN NJUGUNA

JUDGMENT

In these judicial review proceedings the applicant is Benjamin Bin Njuguna. Kikuyu Land Disputes Tribunal and the Principal Magistrate's Court at Kikuyu are the 1st and 2nd respondents respectively whereas Joseph Ngugi Ng'anga is an interested party.

Briefly, the applicant is the registered proprietor of land parcel number Muguga/Jet Scheme/3181. Sometimes in 2001 the applicant entered into a land sale agreement for the sale of 5/8 of an acre of the said parcel of land to the interested party. The transaction was never completed and it ended up as a dispute before the 1st respondent. The 1st respondent awarded 5/8 of an acre to the interested party on 12th September, 2011. On 26th September, 2011 the 2nd respondent adopted the decision of the 1st respondent. The applicant has therefore moved to this court through the notice of motion dated 7th February, 2012 seeking an order of certiorari to quash the 1st respondent's decision to award a portion of his land to the interested party and to also quash the 2nd respondent's adoption of the decision of the 1st respondent. The applicant also prays for an order of prohibition stopping the 2nd respondent from executing the decision of the 1st respondent. The applicant's case is that the 1st respondent overstepped its jurisdiction as was provided under the repealed Land Disputes Tribunal Act Cap 303A Laws of Kenya. The applicant also argues that by the time the 1st respondent delivered its verdict the Land Disputes Tribunal Act had been repealed by the Environment and Land Court Act, Act No. 19 of 2011 which came into force on 30th August, 2011 and the 1st respondent no longer had jurisdiction to determine the matter.

The interested party opposed the application through an affidavit he swore on 13th March, 2012. He

argued that the matter was taken care of by the transitional provision found in Section 30 of the Environment and Land Court Act and the 1st respondent therefore had jurisdiction at the time it delivered its verdict. The interested party also submitted that the applicant is stopped from raising the issue of jurisdiction at this stage since he never did so either before the 1st or the 2nd respondent. The interested party further submitted that the decision of the 1st respondent is just and fair.

Looking at the submissions of the parties herein it emerges that the issues for determination are:-

a. Whether the 1st respondent had jurisdiction to hear and determine the matter;
b. Whether the 2nd respondent had the legal authority to adopt the decision of the 1st respondent;
c. Whether the matter is governed by the transitional provision found in Section 30 of the Environment and Land Court Act; and
d. Who should have the costs of the application?

It is the applicant's case that the 1st respondent did not have jurisdiction to hear and determine the dispute between him and the interested party. The applicant submitted that the matter was one of contract and the 1st respondent had no jurisdiction to hear it. The applicant further submitted that the 2nd respondent ought to have carried out due diligence by questioning the judicial competence of the 1st respondent to handle the matter. The interested party in reply told the court that the 1st respondent had jurisdiction to hear the matter since the same arose out of a four year lease and in essence the dispute was about a claim to occupy or work land.

It is the interested party's case that the 1st respondent therefore had jurisdiction. The interested party further argued that Section 30 of the Environment and Land Court Act allowed the 1st respondent to finalize the matter. The interested party also argued that the 2nd respondent was empowered by the repealed Land Disputes Tribunal Act to adopt the decision of the 1st respondent as a decision of the court.

Looking at the arguments of the parties it is apparent that the issues are intertwined and I will make my findings on all the issues at one go.

The jurisdiction of the 1st respondent was found in Section 3(1) of the repealed Land Disputes Tribunal Act which provided that:-

> **"3. (1) Subject to this Act, all cases of a 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."**

As can be seen from the said Section, a matter touching on the sale of land never fell under the purview of the 1st respondent. It is clear that the dispute that was before the 1st respondent was that of the sale of land by the applicant to the interested party. It was not about a lease as claimed by the interested party. In the case of **JAMES ALUKOYE WERE VS LURAMBI DIVISIONAL LAND DISPUTES TRIBUNAL & ANOTHER [2006] eKLR** G.B.M. Kariuki, J (as he then was) held that:-

> **"The powers vested in the divisional land disputes Tribunal such as the Lurambi Divisional Land Disputes Tribunal under section 3(1) of Act 18 of 1990 do not include the power to decide rights of parties under a contract for sale of land (or any other contract) nor do they include the jurisdiction to grant specific performance of such contract or to decide issues**

affecting title to land. The Lurambi Land Disputes Tribunal in attempting to deal with the title to the said land and to determine the rights of the parties and also to decree specific performance went far beyond its powers and acted ultra vires such powers. Its decision was clearly a nullity."

I concur with the reasoning of the learned judge. Tribunals are creatures of the law and they can only do that which the law allows them to do. Anything done outside the mandate granted by the law is *ultra vires* and the only available remedy is an order of certiorari to quash such a decision. In the case before me it is clear that the 1st respondent delved into a matter that was beyond its reach. It had no business adjudicating over a dispute concerning a land sale agreement. The fact that at the initial hearing, the applicant did not challenge the tribunal's jurisdiction did not in any way confer jurisdiction on it. Having found that the 1st respondent had no jurisdiction to handle the matter, it therefore follows that the 2nd respondent had no valid decision to adopt since the same was a nullity. The interpretation of the transitional provisions found in Section 30 of the Environment and Land Court Act does not therefore arise. The application is therefore allowed as prayed.

Even after allowing the application, it is clear that there is unfinished business between the applicant and the interested party. It is not disputed that the interested party paid the applicant some money towards the purchase of land. Considering the circumstances of this case, I direct each party to meet own costs of these proceedings.

Dated, signed and delivered at Nairobi this 8th day of March , 2013

W.K. KORIR,

JUDGE