



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
JUDICIAL REVIEW APPLICATION NO. 35 OF 2011

SIMON KIPKEMOI KENDUIYWO.....APPELLANT

VERSUS

THE CHAIRMAN LAND DISPUTES APPEAL COMMITTEE....1ST RESPONDENT

THE CHIEF MAGISTRATE, KERICHO.....2ND RESPONDENT

KIPKOSKEI ARAP MOSONIK.....3RD RESPONDENT

RULING

This ruling is the outcome of the Motion dated 5th October, 2011 in which the exparte Applicant namely **SIMON KIPKEMOI KENDUIYWO**, sought for the following orders:

(a) AN ORDER OF CERTIORARI to remove to this Honourable Court to be quashed forthwith the 2nd Respondent's Order dated the 1st day of August 2011 together with all the entire proceedings arising therefrom and/or connected therewith pursuant to the 1st Respondent's Award dated 25th day of May 2011 which was read and adopted as a Judgment of the Court in Kericho Chief Magistrate's Court Misc. Application No. 37 of 2011.

(b) THAT the costs of this the Application be in the cause.

The aforesaid Motion is accompanied by a statement of fact and is verified by the affidavit of the exparte applicant. When served Kipkoskei Arap Mosonik, the 3rd Respondent filed a notice of preliminary objection and two replying affidavits he swore to oppose the Motion.

There was no response from the 1st and 2nd Respondents despite having been served. The history behind this Motion is short and straightforward. The dispute is a claim over the parcels of land known as **L.R.nos.Narok/Cis-Mara/Ololunga/1575** and **L.R Kericho/Chemaner/536**. The aforesaid parcels of land are registered in the name of Kipkoskei Arap Mosonik, the 3rd Respondent herein Simon Kipkemoi Kenduiyuo, the exparte Applicant, filed a complaint before the Kericho Land Disputes Tribunal claiming the parcels were fraudulently registered in the name of the 3rd Respondent yet the same is family land. It would appear the Land Disputes Tribunal agreed with him and proceeded to award the exparte Applicant the land and also ordered the 3rd Respondent to vacate the land. The 3rd Respondent being aggrieved, filed an appeal before the Provincial Appeals Committee. On appeal, the Provincial Land Disputes Appeals Committee set aside the Land Disputes award and proceeded to further declare that the parcels of

land in dispute belonged to the 3rd Respondent herein. The appeals committee also went ahead to issue orders giving the 3rd Respondent vacant possession of the suit parcels of land. It is this later decision which made the exparte Applicant herein to take out these proceedings.

Having set out in brief the background of this dispute, let me now turn my attention to the merits or otherwise of the Motion. It is the submission of the exparte Applicant that the tribunal and the appeals committee had no jurisdiction to hear and determine the dispute. He argued that the dispute being a succession matter, the tribunal had no jurisdiction to entertain the same. The 3rd Respondent on the other hand is of the view the Land Disputes Tribunal had no jurisdiction to hear and determine the dispute. However, he was of the view that the appeals committee made a decision to correct error by setting aside the Land Disputes Tribunal's award. He accused the Applicant of blowing hot and cold at the same time. The 3rd Respondent further argued that since the award has no effect on the title and ownership of the land in question, the decision of the appeals committee should not be disturbed.

I have considered the rival submissions. With respect, I agree with the submissions of learned counsels from both sides that the claim initially filed before the Kericho Land Disputes Tribunal was based on a claim of land. Such a claim cannot be entertained by the Land Disputes Tribunal under **Section 3** of the **Land Disputes Tribunal Act (now repealed)**. This court deprecates the conduct of the exparte applicant herein,. He filed such a claim before the Land Disputes Tribunal while knowing that the tribunal had no power to hear and determine such a dispute. He did not question the tribunal's jurisdiction when the Land Disputes Tribunal gave him the land but only chose to raise the question when he lost on appeal. However, that in my view does not change the position in law. Parties cannot grant jurisdiction to courts or tribunals where the law did not give. The question which this court must grapple with is whether the Land Disputes Appeals Committee made a decision which ultra-vires the Statute. The exparte applicant says yes while the 3rd Respondent is of the view that since the Appeals Committee did not make a decision affecting title to land then its decision should not be disturbed. I have carefully looked at the dispute which were presented before the appeals committee. To begin with, the Land Disputes Tribunal entertained a claim of land and proceeded to award the same. The Appeals Committee went ahead to review the evidences which had been presented before the Land Disputes Tribunal before setting aside the decision of the Tribunal.

In part the appeals committee stated as follows:

“The Respondents did NOT produce any documents to prove or show the CAUSE why they would share plot no.536 Kericho.”

It is obvious from the above excerpt that had the exparte Applicant produced documents showing ownership the Land Disputes Appeals Committee would have dismissed the appeal and proceed to affirm the decision of the Land Disputes Tribunal. The undeniable fact is that both the Land Disputes Tribunal and the Land Disputes Appeals Committee heard and determined the question relating to title to land. They did not have jurisdiction to entertain such a dispute therefore they acted ultra-vires **Section 3** of the **Land Disputes Tribunal Act no. 18 of 1990 (now repealed)**. I am convinced that the decision should be impugned. I have already stated that the exparte Applicant herein is guilty of approbating and reprobating. In view of that I will deny him costs of the Motion.

In sum, the Motion dated 5th October 2011 is well founded. It is allowed as prayed save that each party shall bear his own costs. For the avoidance of doubt, both the decisions of the Land Disputes Tribunal and the Appeals committee are quashed hence the parties are returned to the positions they held before the claim was filed before the Kericho Land Disputes Tribunal.

Dated, Signed and delivered this 22nd day of November, 2013.

J.K.SERGON

JUDGE