



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 248 OF 2003

REPUBLIC.....**APPLICANT**
VERSUS
THE CHAIRMAN CHEPKOILEL
LAND DISPUTES TRIBUNAL.....**1ST RESPONDENT**
ATTORNEY GENERAL.....**2ND RESPONDENT**
AND
PASTOR AGGREY WATINDI.....**INTERESTED PARTY**
EX-PARTY.....**KUROSU MWANGANI**

JUDGMENT

By his amended Notice of Motion dated 19th September, 2006, the applicant, **Kurosi Mwangani**, (hereinafter “the applicant”) seeks one main order, namely an order of certiorari to quash the decision of the 1st respondent in respect of Land formally Parcel No. Uasin Gishu/Kimumu/140 now Sub-divided into parcel numbers 2104, 2106, 2107, 2108 and 2110 which decision was confirmed as a judgment of the court on 3rd February, 2003 in Eldoret CMC Land Dispute Case No. 70 of 2002.

The main grounds for the application are that the 1st respondent acted without and in excess of jurisdiction; that the Interested Party’s claim was statute barred and that the 1st respondent acted in breach of the Rules of Natural Justice. The amended Notice of Motion is supported by a statutory statement and an affidavit sworn by the applicant. The affidavit is an elaboration of those grounds. Annexed to the affidavit are several exhibits including a copy of the proceedings and the decision being challenged.

In opposition to the application the Interested Party through **M/s. Karira and Company Advocates** filed a Notice of Preliminary Objection. The advocates however, did not attend the court when the Notice of Motion came up for hearing before me on 27th March, 2012 despite having been

served. The application therefore proceeded without representation for the Interested Party. Counsel for the Respondents on his part however did not oppose the application.

I have considered the application, the pleadings filed and the submissions made to me. Having done so, I take the following view of the matter. The tribunal's decision is brief and I set the same below:

“ELDERS OPINION

1) It is true that Pastor Aggrey Watindi bought cash one (1) acre of land from Mr. Kurosi Mwangani.

2) The wife of Mr. Kurosi Mwangani knew about this sale deal because the money was used to pay for the son's fine/penalty who was in prison

as at that time of this agreement. Second, she was an eye witness.

3) Love of money is the cause of the dispute.

4) Mr. Kurosi Mwangani sold the plot earlier shown to Pastor Watindi while he was in America for Christian studies and bought 5 acres in Soy area.

So he should surrender one acre plot no UG/140.

ELDER'S AWARD

1) Pastor Aggrey Watindi be given the land title deed for a plot measuring one (1) acre of land from Mr. Kurosi Mwangani parcel of Lnad No. UG Kimumu 1400 of the 6 acres as he does not owe Mr. Mwangani any debt as per their agreement dated 12th November, 1985.

2) Failure to observe the above Mr. Kurosi Mwangani is hereby required to pay back Pastor Aggrey Watindi the total sum of Kshs. 750,000/- which is the current price on average of one acre in Kimumu farm.”

It is settled that an order of certiorari may issue to quash a decision of an inferior tribunal if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with. The above decision determined the Interested Party's claim for specific performance, in the alternative compensation for a failed contract of sale of land.

Had the tribunal the jurisdiction to make those orders? The jurisdiction of a Land Disputes Tribunal was circumscribed by section 3(1) of the Land disputes Tribunals Act No. 8 of 1990 (now repealed) The section reads as follows:-

“3(1) Subject to this Act, all cases of a civilnature involving a dispute as to:-

(a) The division of or the determinationof boundaries to land including land heldin 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.”

It is plain beyond, peradventure, that the Interested Party's claim did not fall within the purview of the above section. The tribunal therefore obviously had no jurisdiction to entertain the dispute. The Interested Party's claim can only be tried by the High Court or by the Resident Magistrate's Court depending on the value of the subject matter (See section 159 of the Registered Land Act). I am therefore not surprised that counsel for the respondents conceded the application.

The upshot is that, the applicant's amended Notice of Motion dated 19th September, 2006, is allowed in terms of prayer 1 thereof.

Given the Interested Party's claim and the applicant's responses thereto, I am of the view that costs should not follow the event. Accordingly each party shall bear its own costs of the application.

It is so ordered.

DATED AND DELIVERED AT ELDORET

THIS 22ND DAY OF MAY, 2012.

F. AZANGALALA
JUDGE

Read in the presence of:-

Mr. Ngumbi for the Respondent

F. AZANGALALA
JUDGE

17TH MAY, 2012