



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Civil Application 185 of 2002

IN THE MATTER OF AN APPLICATION BY KIPKEMEI KUTO FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI TO REMOVE INTO HONOURABLE COURT AND QUASH THE DECISION OF UASIN GISHU LANDS DISPUTES TRIBUNAL (KAPSABET DIVISION) READ AND ADOPTED AS THE JUDGEMENT OF THE COURT ON 2ND JULY 2002 VIDE ELDORET CMCC AWARD NO. 32 OF 2002

BETWEEN

REPUBLIC.....APPLICANT

AND

UASIN GISHU LAND DISPUTES TRIBUNAL (KAPSARET DIVISION).....RESPONDENT

AND

SHADRACK K. NDALUT.....INTERESTED PARTY

EX-PARTE - KIPKEMEI KUTO

JUDGEMENT

Before me for determination is a Notice of Motion dated 19th August 2002. The application is supported by the affidavit of Mr. Kipkemoi Kuto, the Ex-Parte applicant. The applicant seeks an order of certiorari to remove into this Court and quash forthwith the decision of Uasin Gishu Lands Disputes Tribunal (Kapsaret Division) read and adopted as the Judgment of the Court on 2nd July 2002.

The proceedings were joined by Mr. Shadrack K. Ndalut an Interested Party who filed a replying affidavit sworn on 28th April 2003.

The case of the Ex-Parte applicant is that he is the registered proprietor of **NGERIA/KESSES BLOCK 3(KABONGWA) 117** measuring 4 acres. The title deed is annexed to the application and marked **KK1**. The Ex-Parte applicant depones at paragraph 4 and 6 of the affidavit that Uasin Gishu Land Disputes Tribunal deliberated on a dispute whereof the Interested Party claimed the suit property. The award of the Tribunal was adopted as the order of the court on 2nd July 2002 before the Resident Magistrate at Eldoret. The applicant contends that the Land Disputes Tribunal lacks jurisdiction to grant the award now under challenge i.e disputes on ownership of land registered under Registration of Lands Act CAP 300.

The Interested Party on the other hand maintained that the Land Disputes Tribunal acted within its

jurisdiction and its decision is well founded in law. He further deponed that the Ex-Parte applicant participated in the proceedings before the Tribunal. It is his case that the applicant ought to have filed an appeal with the Provincial Land Disputes Appeals Committee and if dissatisfied appeal to the High Court of Kenya.

From the pleadings and documents filed, I have noted that the Ex-Parte applicant and the Interested Party entered into an agreement for sale of the suit property on 18th March 1999. From this agreement the Interested Party was to acquire the suit property for a sum of Ksh.280,000./=. For some reasons the sale aborted and the suit property was not transferred to the Interested Party. I will not dwell further on this trajectory which leads entirely to Private Law Remedies which is not in issue here.

I have considered the rival submissions of the parties. The question that I am required to answer is whether or not the Land Disputes Tribunal has jurisdiction to entertain a dispute revolves around ownership of land registered under Registered Land Act CAP 300. The Land Disputes Tribunal is a creature of statute (Land Disputes Tribunal CAP 18). Jurisdiction of the Disputes Tribunal is set out in section 3.(1);

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.***

The Act is specific and unambiguous that the Tribunal can only deal with disputes spelt out in the aforesaid section. Disputes that extend to ownership of land are clearly not covered in this section.

In **HCCC MISC. CIVIL APPLICATION NO.164 OF 2005 R vs CHAIRMAN NANDI LAND DISPUTES TRIBUNAL KAPSABET DIVISION & PAUL FUNDI TUWEI** this court held that the Land Disputes Tribunal has no jurisdiction to hear disputes arising from agreements relating to sale or purchase of land. The Tribunal had no power to give the award that was adopted by the lower court as an order of the court. The Tribunal acted ultra vires its statute.

In **MUHIA vs MUTURA EALR (1999) 1 EA 202**, the Court of Appeal held;

"A question of jurisdiction was a matter which the Court can and should take cognisance whether or not the matter is raised in argument".

The Tribunal lacked jurisdiction. I allow the Notice of Motion dated 19th August 2002 with costs to the Applicant. Order accordingly.

Dated AND Signed At Nairobi This 23rd day of August 2012.

**M. K. IBRAHIM
JUDGE**

DATED AND Delivered At Eldoret on This 26th day of September 2012.

**ABIGAIL MSHILA
JUDGE**

Delivered in the presence of: momanyi for interested party

n/a: ex parte applicant

n/a: for respondent