



REPUBLIC OF KENYA
IN THE HIGHCOURT OF KENYA
AT ELDORET
JUDICIAL REVIEW NO. 35 OF 2010

BETWEEN
JONATHAN CHERUIYOT APPLICANT
AND
THE LAND DISPUTES APPEALS,
COMMITTEE (R/VALLEY)
..... 1ST RESPONDENT
THE PRINCIPAL MAGISTRATE-
KAPSABET COURT 2ND RESPONDENT
AND
ESTHER MISHACK INTERESTED PARTY

JUDGMENT

This is an application by way of a Notice of Motion seeking two orders expressed as follows:-

- (a) An order of Certiorari to remove into this court and quash the award made by the 1st respondent on 21st September, 2010 in Appeal No. 30 of 2010 (**Esther Mishack –vrs- Jonathan Cheruiyot and Samuel Cheruiyot Sang**).
- (b) An order of prohibition prohibiting the 2nd respondent from enforcing the said decision.

The application is by **Jonathan Cheruiyot** and **Samuel Sang Cheruiyot** (hereinafter “**the applicants**”) who were the respondents before the Rift Valley Land Disputes Appeals Committee (hereinafter, “**the 1st respondent**”). The 1st respondent allowed the appeal which had been lodged before it by **Esther Mishack**, (hereinafter “**the interested party**”), from Kapsabet Land Disputes Tribunal. Although the interested party deponed in her replying affidavit that she had annexed proceedings of that tribunal, the same have not been traced on this record. It is apparent however that the applicants’ claim before the tribunal was allowed. It is the ruling delivered by that tribunal which was set aside by the 1st respondent and adopted by the 2nd respondent.

Being aggrieved, the applicants on 27th October, 2010 obtained leave to move this court for the orders stated above. The applicants have invoked the provisions of order 53 Rules 3 (1) (4) and 7 (2) of the Civil Procedure Rules and all enabling provisions of the law.

The Notice of Motion is based on three main grounds namely:-

- Ø That the 1st respondent had no jurisdiction to entertain the interested party’s appeal;

- Ø That it violated the Rules of Natural Justice; and
- Ø That it acted *ultra vires* its powers.

In the affidavit verifying the facts contained in the statutory statement, the 1st applicant deponed, *inter alia*,

- v That he purchased L.R. No. Nandi/Komobo/510 (hereinafter “**the suit land**”) from the 2nd applicant in 1981 who in turn had purchased the same from the interested party’s deceased husband;
- v That the interested party had promised to transfer the suit land to the 1st applicant but had not done so thereby necessitating his filing a dispute before the Kapsabet Land Disputes Tribunal;
- v That the 1st respondent had decided that the suit land belonged to the interested party yet it had no jurisdiction to do so, hence the Judicial review proceedings.

The application is opposed and there is a replying affidavit sworn by the interested party. She has also filed a further affidavit in which she has rehashed her averments in the replying affidavit. The interested party’s case is that the 1st respondent indeed had jurisdiction to entertain her appeal because the applicants themselves had submitted to the jurisdiction of the Kapsabet Land Disputes Tribunal whose decision was the subject of the appeal to the Appeals Committee.

When the application came up before me for hearing on 24th May, 2011, counsel agreed to file written submissions which were duly in place by 11th October, 2011. The same restated the parties’ stand-points taken in their respective pleadings.

I have considered the pleadings, the submissions of counsel and the authorities cited. Having done so, I take the following view of the matter. The jurisdiction of a Land Disputes Tribunal and an Appeals Committee is circumscribed by section 3 (1) and 8 (1) of the Land Disputes Tribunals Act No. 18 of 1990. In the matter before me, the appeal before the 1st respondent was preferred from the decision of Kapsabet Land Disputes Tribunal Case No. 75 of 2005 which appears to have awarded the suit piece land to the applicant. The Appeals Committee reversed that decision and awarded the suit land to the interested party.

Section 3 (1) of the said Act is in the following terms:-

“Subject to this Act, all cases of a Civil nature involving a dispute as to:

- (a) The division of or 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 under section 4”.**

The material availed to the court shows that the applicant’s claim before the Kapsabet Land Disputes Tribunal was for transfer of the suit land from the interested party to himself. The applicant’s claim before the Kapsabet Land Disputes Tribunal was therefore, by dint of the provisions of the above section, beyond its jurisdiction. The Appeals Committee purported to award the same land to the interested party. It is plain that if the Kapsabet Land Disputes Tribunal had no jurisdiction to entertain the applicants’ claim, the Appeals Committee could not entertain the interested party’s claim. The decision of the Kapsabet Land Disputes Tribunal was therefore a nullity. A nullity remains a nullity. It cannot be legitimized on appeal.

The applicants’ claim may be entertained by either the High Court or the Resident Magistrate’s Court depending on the value of the subject matter. **(See section 159 of the Registered Land Act)**. Their claim could not be entertained at any level under the Land Disputes Tribunals Act.

The result is that both the decisions of the Kapsabet Land Disputes Tribunal and the Appeals Committee are removed into this Court and the same are quashed. The status of the suit land reverts to the position obtaining before reference was made to the Kapsabet Land Disputes Tribunals. The applicants’ success does not translate to the applicants’ getting the transfer they sought from the interested party.

I will make no orders as to costs.

**DATED AND DELIVERED AT ELDORET THIS
15TH DAY OF NOVEMBER, 2011.**

**F. AZANGALALA
JUDGE**

Read in the presence of:-

1. **Mr. Omusundi** for the applicant.
2. **Mr. Oduor** holding brief for Chemitei for the Respondent and Mr. Miyianda holding brief for Mr. Chumo for the Respondent.

**F. AZANGALALA
JUDGE**