



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Miscellaneous Application 64 of 2009

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN LAND DISPUTE TRIBUNAL APPEALS COMMITTEE
RIFT VALLEY

PROVINCE.....RESPONDENT

AND

JESUM MUWOL.....INTERESTED PARTY

KIBOR ARAP BUSIENEY.....EX-PARTE

RULING

In his Notice of Motion dated 31st March 2009, Kibor Arap Busienei, the ex-parte applicant seeks under **Sections 8 and 9** of the **Law Reform Act** and **Order 53** of the **Civil Procedure Rules** the judicial review orders of certiorari and prohibition. He seeks the order of certiorari to bring to this court and quash the decision of the Rift Valley Provincial Land Disputes Appeals Committee given on 24th February 2009 in Appeal No. 45 of 2005 and the order of prohibition to prohibit the implementation of that decision. The application is based on the grounds that both the Kilibwon Land Disputes Tribunal (the Tribunal) and the Rift Valley Provincial Land Disputes Appeals Committee (the Committee) had no jurisdiction to entertain the dispute between the ex-parte applicant and the interested party which was on ownership of land; that the claim was time barred under the Limitation of Actions Act; that the interested party had no locus standi in the matter and that the Committee had no jurisdiction to award damages as it purported to do.

Thought served neither the Committee nor the interested party has filed any document in opposition to the application or appeared to oppose it. From the documents placed before me in this matter it is clear that the ex-parte applicant bought the suit piece of land from the late Arap Mutwol (the deceased) and the same was transferred to the applicant when the deceased was still alive. After his death his widow filed a dispute in the Tribunal claiming the land. The same was dismissed and the widow filed an appeal before the Committee.

After hearing the appeal the Committee reversed the decision of the Tribunal, ordered the cancellation of the ex-parte applicant's Title Deed and ordered the eviction of the ex-parte applicant from the suit piece of land so that it could be

surveyed and 6.50 acres thereof be given to the deceased's widow while 3 acres be given to the ex-parte applicant. After finding that the ex-part applicant had been on the suit piece of land for over 16 years, the Committee ordered him to pay Kshs.416,000/- as compensation for the use of the land for that period as well as the costs of the suit.

It is clear from the proceedings before the Committee and its decision that the deceased's widow was urging a claim on behalf of the deceased's family. To do that she needed a grant of letters of administration to her late husband's estate. There is nothing on record to show that she applied and/or obtained such a grant. In the circumstances I agree with counsel for the ex-parte applicant that she had no locus standi in the matter.

Besides the deceased's widow's standing in the matter neither the Tribunal nor the Committee had jurisdiction to entertain the dispute for the reason that neither of them is authorized to entertain a claim which is time barred or one which is on ownership to land. **Section 3** of the **Land Disputes Tribunal Act No. 18 of 1990** is very clear on what the tribunals established under that Act are authorized to do. That section only authorizes them to adjudicate on disputes 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.”**

Section 12(3) of the Act forbids the tribunals from entertaining claims that are barred under any law relating to limitation. It provides that:-

“For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.”

Neither the Tribunal nor the Committee was therefore authorized to entertain the dispute in this case after 16 years.

For these reasons I allow the application and direct that an order of certiorari shall issue to quash the Committee's decision given on 24th February 2009 in Appeal No. 45 of 2005. Having quashed that decision there is nothing left to be prohibited. A grant of the order of prohibition will therefore be superfluous. As neither the Committee nor the interested party opposed the application I make no order as to costs.

DATED and delivered this 25th day of January 2010.

D. K. MARAGA
JUDGE.