



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Misc. Appli. 190 of 2006**

**REPUBLIC – EXPARTE**

**GEORGE GICHEHA KAGIA.....APPLICANT**

**VERSUS**

**SOUTH KINANGOP LAND DISPUTE TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**THOMAS KAHARA KANGETHE.....2<sup>ND</sup> RESPONDENT**

**RULING**

The ex-parte applicant George Gicheha Kagia filed this notice of motion dated 10<sup>th</sup> April 2006, pursuant to an order of leave granted to him on 22<sup>nd</sup> March 2006. The applicant was given leave to institute Judicial Review proceedings by way of an order of certiorari to remove to the High Court, for purposes of quashing the decision and award by the *South Kinangop Land Disputes Tribunal Case No. 47 of 2006*. This application is premised on the grounds stipulated on the body of the application, the matters contained in the verifying affidavit by the applicant and the statement of facts.

Briefly stated, the applicant's complaint is that he is the registered proprietor of parcel of land known as Nyandarua/Jabini/416. He attached a copy of the certificate of title registered under the Registration of Tittles Act. Several years ago on 22<sup>nd</sup> November 1985, the applicant entered into an agreement of sale for sale of three acres of his land to the 2<sup>nd</sup> respondent at a price of Kshs 70,000/=.

The applicant contended that no consent was obtained from the Land Control Board, since the respondent did not seek an extension of time; the sale agreement of land is unenforceable save for the refund of the purchase price and damages for the breach of contract. The 2<sup>nd</sup> respondent also failed to honour the terms of the agreement. Moreover counsel for the applicant submitted that the claim by the 2<sup>nd</sup> respondent was based on the Law of Contract and it was time barred by virtue of the provisions of the Limitations of Actions Act. The land transaction itself had become null and void because the consent of the land Control Board was not obtained within six (6) months as provided for under Cap 302 of the Laws of Kenya. The Land Disputes Tribunal acted in excess of the powers and the mandate given to the tribunal. The decision of the tribunal exceeded their jurisdiction; it is ultra vires, null and void.

The 2<sup>nd</sup> respondent put up a formidable opposition to this application. He relied on a lengthy affidavit detailing how the applicant refused to obtain the consent by the Land Control Board. The 2<sup>nd</sup> respondent contended that he paid the purchase price and took possession of the land where he planted trees and Kikuyu grass. However the applicant started interfering with his peaceful occupation by removing the boundaries which he had planted therefore he filed the case before the Land Disputes Tribunal. Counsel for the 2<sup>nd</sup> respondent also submitted that this application was incompetent because it was not supported by the applicant's affidavit.

This application seeks for discretionary remedies which can only be granted on the basis of clear evidence of abuse of power, excess in exercise of jurisdiction or on the grounds that the rules of natural justice were not observed by the relevant tribunal. In this case, the applicant's complaint is that South Kinangop

Land Dispute's Tribunal exceeded its jurisdiction by the award made on 23<sup>rd</sup> March 2006. This tribunal is set up pursuant to the Land Dispute's Tribunal Act No. 18 of 1990. Under section 3 of the Act, the Tribunal is only supposed to deal with the issues of

- "a) the division of, or determination of boundaries of land, including land held in common*
- b) A claim to occupy or work land."*

The tribunal in this case and in their award of 23<sup>rd</sup> March 2006 decided as follows and I quote:

*"Decision*

*The claimant should be compelled to transfer the 3.0 acres of land to the objector immediately. He should also pay him Kshs 5,000/= per acre per year with effect from January, 2003 for cultivation of his land. This is the shamba rent fee for the area. He should further pay the objector Ksh 20,000/= being the cost he has incurred in brining this dispute to this stage. This Tribunal will not handle the matter of the trees that have been allegedly felled by the objector but he could pursue the matter elsewhere if he so wishes. Right of appeal within 30 days from the date of this judgment."*

This decision clearly speaks for itself that the Tribunal acted outside the jurisdiction conferred by the Act. The Tribunal had no jurisdiction to order the applicant to transfer his land to the 2<sup>nd</sup> respondent or to order the payment of costs and to make an assessment and to order the applicant to pay damages. This order is ultra vires; it is made in excess of jurisdiction and renders itself for quashing. Determining the ownership of a land registered under the Registered Lands Act was not within the mandate of the Land Disputes Tribunal. Accordingly, the decision by the Kinangop Land Disputes Tribunal in respect of LR. No. Nyandarua/Jabini/416 is hereby quashed by an order of certiorari.

Counsel for the respondent challenged this application on the grounds that there is no supporting affidavit. The verifying affidavit contains all the averments that are also found in the statement. These are all facts put forward on oath by the applicant. The fact that the affidavit is titled "verifying" does not render an application incurably defective.

For those reasons the application is allowed with costs to the applicant.

Judgment read and signed on 30<sup>th</sup> day of January 2009

**M. KOOME**

**JUDGE**