



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Misc Civil Appli 164 of 2005

REPUBLIC APPLICANT

VERSUS

CHAIRMAN NANDI LAND DISPUTES TRIBUNAL KAPSABET DIVISION RESPONDENT

AND

PAUL FUNDI TUWEI INTERESTED PARTY

EX-PARTE: MARTHA JEROGONY CHERES alias

MARTHA W/O DAUDI ARAP MARISIN

JUDGEMENT

This is an application under the provisions of Sections 8 and 9 of the Law Reform Act Cap 26 and Order 53 of the Civil Procedure Rules.

It seeks the following orders:-

1. That the Honourable Court do issue an order of certiorari to remove into this Court and quash forthwith the decision arrived at by the Nandi Land Disputes Tribunal, Kapsabet Division and the order adopting the award of the judgment of the Court vide Kapsabet PMCC Award No. 24 of 2005 and the Decree issued on 21.7.2005 awarding the Interested Parties 11.0 acres of that parcel of land known as Title No. Nandi/Kombe/307.
2. The Honourable Court do issue an order of prohibition to the Nandi District Land Registrar Kapsabet Division from Registering any conveyance affecting and touching on L. R. No. Nandi/Kombe/307 resulting from the decree of Kapsabet PMCC No. 24 of 2005.

The grounds for the application are that:-

- (i) The Land Disputes Tribunal did not have jurisdiction to entertain and arbitrate on the matter.
- (ii) Claim of the Interested Party was time-barred.

(iii) The Interested Parties sued the wrong parties.

(iv) Title to land belongs to the Applicant and it is issued under first registration.

The application was opposed by the Interested Party.

The Respondent, the Tribunal did not file any response or opposition to the application.

The Interested Party argued that the Tribunal had jurisdiction over the subject matter of the suit and that the Applicant did participate in the proceedings and he did not raise any objection to its authority. That the Applicant testified and the Panel duly gave its consideration.

I have considered the application, the affidavits and the statement. I have also considered the submissions.

The dispute between the Applicant and Interested Party related to a Land Sale Agreement dated 11th March, 1977 in which the Applicant agreed to sell eleven (11) acres out of her land Nandi/Kombe/307 comprising of 15.8 acres at the price of Shs. 18,370/=.

That when the Applicant refused to transfer the said piece of land, the matter was referred to the Tribunal. The Tribunal after hearing the matter found in favour of the Interested Party.

The main issue before this Court is whether the Tribunal had jurisdiction to hear and determine the dispute.

The dispute herein is one based on alleged breach of contract. The agreement is a commercial agreement relating to land.

From the statutory provisions of Section 3 of the Land Disputes Tribunal the Tribunal is only empowered in law to adjudicate on disputes relating to division of or the determination of boundaries of land, including land held in common, a claim to occupy or work on the land or trespass to land. The Tribunal herein did not have jurisdiction to hear and determine disputes arising from agreements relating to sale or purchase of land. This is for the civil Courts.

The Tribunal exceeded its mandate and the entire proceedings were a nullity.

A point of law was raised that the entire application is fatally defective as the Applicant failed to enjoin the Kapsabet Provincial Magistrate's Court since the Award was adopted by the said Court. That it is a necessary party. That similarly the Nandi District Land Registrar had not been enjoined as a party.

This point of law is technically correct, i.e. that the Kapsabet Principal Magistrate's Court and the Nandi District Land Registrar ought to have been enjoined. However, these are nominal parties and the real dispute is between the Applicant and the Interested parties. The Tribunal is absolutely a necessary party since it is its award and conduct under challenge.

The Principal Magistrate's Court role is minimal and only for purposes of enforcing the Award. There can be no contentious proceedings before the said Court. The order against the Land Registrar is consequential and there is no cause of action against him.

I am of the view that the said omissions do not render the application fatally defective. There is no prejudice if the attack is against the Tribunal's award only. In the event that I am wrong, then this Court exercises its original and inherent jurisdiction to supervise public bodies and quasi-judicial tribunals and questions the jurisdiction of the Tribunal. This Court will intervene where an inferior tribunal takes the law in its own hands and assumes jurisdiction it does not have.

I therefore do hereby allow the Motion dated 5th September, 2005 with costs to the Applicant against

the Interested Party and the Respondent.

DATED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF JANUARY, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Ngigi for the Applicant

Mr. Mwinamo for the Respondent