



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Misc Civil Appli 682 of 2006

REPUBLIC
APPLICANT

VERSUS

THE CHAIRMAN, UASIN GISHU

LAND DISPUTES TRIBUNAL 1ST
RESPONDENT

THE CM'S COURT ELDORET 2ND
RESPONDENT

SAMWEL KARANJA MUNGAI
INTERESTED PARTY

GABRIEL NJUGUNA MWAURA EXPARTE
APPLICANT

JUDGEMENT

This is an application made under the provisions of Order 53, Rule 3 (1) and 4 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act, Cap. 26 Laws of Kenya

Applicant seeks the following orders against the Respondents, the Chairman, Uasin Gishu Land Disputes Tribunal and the Chief Magistrate's Court Eldoret:-

(i) This Honourable Court do issue an Order of Certiorari to remove into the High Court and quash forthwith the 1st Respondent's decision of 30/5/2006 ordering the applicant to pay compensation of Kshs. 74,710/= to the Interested Party.

(ii) This Honourable Court be pleased to issue the Order of Prohibition so as to prohibit the 2nd Respondent from enforcing the decree in favour of the Interested Party pursuant to the adoption of the 1st Respondent's decision as an order of the Court on 18th September, 2006 in the Eldoret CMCC Award No. 20/2006 – Samuel K. Mungai –vs- Gabriel N. Njuguna.

(iii) Costs be provided for.

The grounds raised in the application are that:-

(a) The 1st Respondent overstepped the powers granted to them by the Land Disputes Tribunal, Tribunal Act (1990) when they ordered the Applicant to pay compensation of Shs. 74,710/= to the Interested Party.

(b) The 1st Respondent acted ultra vires and its proceedings with their decision is null and void.

(c) The 1st Respondent issued orders it is not competent to issue.

I have considered the proceedings and Award of the Tribunal and I have formed the opinion that the Interested Party herein had made a claim based on trespass on his property, a Plot No. 49 and mesne profits for the period of wrongful occupation of/cultivation on his land.

After hearing the parties the Tribunal made the following orders:-

“The Elders have concluded that Mr. Gabriel Njuguna should stop ploughing Mr. Samwel Karanja’s shamba Plot No. 49 as from next year 2007.

- Mr. Njuguna has on several times been told to stop ploughing and move to his Plot No. 38.

- Mr. Njuguna has been ploughing Mr. Karanja’s Plot for the last 12 years.

- The Panel elders have therefore awarded the leasing cost 12 years of 2 acres to Mr. Njuguna to pay Mr. Karanja compensation as follows:-

EXPENSES:

Date 28/03/2006 – Department of Lands Kshs. 1,710/=

LAND LEASE

From 1994 – 1995 = 2 acres x 3000 = 6000

1995 – 1996 = 2 acres x 3000 = 6000

1996 – 1997 = 2 acres x 3000 = 6000

1997 – 1998 = 2 acres x 3000 = 6000

1998 – 1999 = 2 acres x 3000 = 6000

1999 – 2000 = 2 acres x 3000 = 6000

2000 – 2001 = 2 acres x 3000 = 6000

2001– 2002 = 2 acres x 3000 = 6000

2002– 2003 = 2 acres x 3000 = 6000

2003– 2004 = 2 acres x 3000 = 6000

2004– 2005 = 2 acres x 3000 = 6000

2005– 2006 = 2 acres x 3000 = 6000

T O T A L Kshs. 74,210/= “

In his Replying affidavit at paragraph 15, the Interested Party conceded that the Tribunal did not have jurisdiction to grant mesne profits, as such he would not defend the claim for mesne profits. I think this was a correct and wise concession by the Interested Party who was not represented by Counsel. It is trite law that under Section 3 of the Land Disputes Tribunal Act, the Tribunal did not have jurisdiction to award damages or mesne profits. The Applicant however insisted that he was entitled to the order stopping the Applicant ploughing his land.

Having considered the application, the Replying Affidavit and submissions, I am of the view that the Tribunal acted in excess of statutory jurisdiction in awarding mesne profits in the sum of Kshs. 74,710/= against the Applicant. However, the Tribunal has jurisdiction to determine the claim of trespass and granting the order restraining the Applicant from entering the suit premises and ploughing the said land. At the hearing the Interested Party produced in evidence his title deed to the land which was specifically identified as Title Number Ngeria/Kesses Block 5 (Bayete) 49.

Does this Court as a Judicial Review Court have the power, authority and/or jurisdiction to save the Award such that it quashes the offending order and retaining the lawful order in respect of trespass? I think that this court exercising its inherent jurisdiction and its powers of supervising inferior tribunals by way of judicial review has the power, authority and jurisdiction to do so and make the orders of the Tribunal, effectual, wholesome and consistent with the objectives of the Act.

I therefore do hereby issue an order of Certiorari quashing the order in respect of the Award of mesne profits in the sum of Kshs. 74,710/= only. I also do hereby issue an order of prohibition prohibiting the enforcement of the said Award and any consequential Decree to the said extent only. The order stopping and restraining the Applicant from entering upon and ploughing the suit premises shall remain, be retained and enforced. Accordingly, I do hereby order rectification of the Award and the Decree on the said lines and to the said extent.

As no costs was awarded by the Tribunal, it shall remain as so.

The First Respondent which was responsible for the said decision did not defend this application. I therefore do hereby order that the costs of this application shall be paid to the Applicant and the Interested Party by the First Respondent. Orders accordingly.

DATED AND DELIVERED AT ELDORET ON THIS 13TH DAY OF JUNE, 2007.

M. K. IBRAHIM

JUDGE