



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Appeal 10 of 2005

BENJAMIN K. BETT APPELLANT

VERSUS

TENDENEI MARITIM RESPONDENT

RULING

Following an award by the Land Disputes Tribunal, the Resident Magistrate at Eldoret ordered on 17/9/2004 that the District Surveyor do rectify the Index Map pertaining to boundaries of between Eldoret Municipality/Block 3/Kingongo/270 and 271, within 45 days thereof with a view to reflecting the proper compensation of land, which Tendenei Maritim would compensate Benjamin K. Bett with, it having been found that the former had encroached upon Bett's land. The learned Magistrate also ordered Maritim to meet the Surveyors costs, and that in default, the boundaries would remain as originally marked upon which Bett would be at liberty to apply for the eviction of Maritim from the area upon which he (Maritim) had encroached. It would appear that the said order was not complied with in time and Maritim's application for stay of execution at the first instance was denied by the said learned Magistrate. Maritim thereafter moved to this court and filed an appeal against that decision. He simultaneously filed this application for stay pending the hearing and determination of his appeal, as in his opinion the appeal would otherwise be rendered nugatory.

Mr. Omondi, who appeared for Bett whom I shall now refer to as "the respondent" has raised a Preliminary Objection to the application, which objection is based on the grounds that this court lacks the jurisdiction to entertain the appeal and secondly, that there is no right of appeal to this court from execution of an award of a Land Disputes Tribunal in proceedings under the Land Disputes Tribunal Act No. 18/1990 (hereinafter referred to 'the Act'). He relied on various sections of the said Act but of more relevance would be section 8 (9) which stipulates that *'either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of: Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved.'*

Mr. Mitei, for Maritim who I shall now refer to as 'the applicant' was of a very different view, and it was his submission that this court which is a superior court has jurisdiction whether or not it is expressly granted to entertain the appeal, especially in view of the fact that they are at this stage merely applying only for stay and not arguing the appeal. Further, that it is not the decision of the Tribunal, which is challenged in the appeal.

In this connection, I am guided by the Judicature Act Cap 8 of the Laws of Kenya, where conferment of jurisdiction is clearly spelt out. Section 3 of the said Act stipulates that:

“(1) The jurisdiction of the High Court, the Court of Appeal and all subordinate courts shall be exercised in conformity with-

(a) the Constitution;

(b) subject thereto, all other written laws, including the Acts of

Parliament of the United Kingdom cited in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule;

(c) subject thereto and so far as those written laws do not extend

or apply, the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th August, 1897, and the procedure and practice observed in courts of justice in England at that date;

but the common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.”

It is trite that ‘*in matters where a court is required to supervise the judicial process, such jurisdiction is as expressly conferred on it by statute.*’ It is also trite that “*there no right of appeal by mere implication or by inference. (Anna Rita Njeru v. R (No2) [1979] KLR 162)*

It cannot be gainsaid that the same principle would apply to this Court in matters emanating from quasi-judicial bodies and tribunals, which would obviously mean that where the particular statute under which such a body is established does not confer the powers to this Court to sit an appeal, then this Court shall not have the jurisdiction to entertain such an appeal. Needless to say, such powers must be expressly conferred. They cannot be implied. I find that ‘the Act’ does not donate right to appeal directly to this court against decisions of the Tribunals.

But the issue that arises then is whether I can validly shut out this applicant. I have perused the Memorandum of Appeal, which clearly demonstrates that the appellant questions the ruling by the learned Magistrate, who as I stated earlier denied him an extension of time within which to comply with the orders of that court, which order merely dealt with the re-establishment of boundaries between the two plots, and quantification of compensation payable by this applicant. Indeed, and rightly so, his counsel stated that the only appeal for enlargement of time within which to comply with the said order. In my mind, a litigant such who finds himself in a similar position as this applicant would not have any right of audience before the Land Board Appeals Tribunal, which has no jurisdiction to entertain appeals from decisions of Magistrates. I regret I cannot shut him out of this court, for I would in effect deny him justice.

I do in the circumstances allow this application for stay, pending the hearing and determination of his appeal. Costs shall however be in the cause.

Dated and delivered at Eldoret this 7th day of February 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Kathili holding brief for Mr. Omondi for the respondent

Mr. Mutei for the applicant