



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

**Misc Appli 154 of 2005**

**REPUBLIC.....APPLICANT**

**VERSUS**

**CHAIRMAN TURBO LAND DISPUTES TRIBUNAL:.....1<sup>ST</sup> RESPONDENT**

**UASIN GISHU ;DISTRICT LAND AREGISTRAR:.....2<sup>ND</sup> RESPONDENT**

**BENJAMIN ;GICHUHI KURIA:.....INTERESTED PARTY**

**JOEL KOTUTWO KISOMBE:.....EX-PARTE APPLICANT**

**JUDGEMENT**

This is an application under inter alia, the provisions of Order 53, Rule (1) and (2) of the Civil Procedure Rules and Sections 8 and 9 of the law Reform Acts which seeks the following orders.

1. An order of prohibition against the adoption and execution of the Award in Edoret Chief Magistrate's court Award No.5 of 2005 and/or in any way any interference with the Exparte Applicant's use possession and/or ownership and/or all way any dealings relating to exparte Applicant's parcel land L.R. No. Kapyemit Plot No.322 pending the hearing of this application interparties.
2. An order of certiorari be and is hereby issued quashing the undated decision of the Turbo Land Disputes Tribunal and as filed in court in Award No.3 of 2005 in the Chief Magistrate's court at Eldoret.
3. An order of Mandamus to compel the 2<sup>nd</sup> Respondent to register the said parcel of land L.R. No.Kapyemit Plot No.322 measuring 50x100 in favour of and in the names of the Exparte Applicant.
4. Costs of the application to be provided for.

The Applicant claims to be the legal owner of the suit property known as L.R.No.Kapyemit/322 which he claims he bought for Kshs.20,000/= in 1990 from one Kipserem Arap Keronei. He further claims that he has been in full uninterrupted possession and use of the said land since 1990 to date, a period of 14 years. The interested party herein lodged a complaint or claim with the Turbo Land Disputes Tribunal claiming ownership of the said property. At the Tribunal the interested part claimed that he had purchased the property from one Isaac Kiago Nguro on 21.8.90 for kshs.50,000/=. The said Isaac Kiago Nguro allegedly told him that the property had been sold to him by a neighbour, Mr. Joel Kotutwo Kisombe. The Applicant herein.

Upon hearing the dispute, the Tribunal found in favour of the interested party and directed that he should

be issued with a Title Deed to the Land to be registered in his name once Land adjudication is complete in the area where the land is situated. The applicant was aggrieved by this decision and filed this application.

I have considered the application the Replying Affidavit and counsel's submissions. I have also perused the statutory statement. The only issue or question I find for this court's determination as a judicial review court is the claim in ground(u) in the statement which states:-

**“ U That in the circumstances the 1<sup>st</sup> Respondent lacked any legal basis to arbitrate over the aforesaid issued.”** \_

My understanding is that it is contended that the Tribunal did not have any jurisdiction to deal with the question of title to land. Miss. Wambua, for the Applicant said as much. The interest party is Mr. Kuria agreed that the land in question is registered land. It is common ground that the land is still registered in the name of Kipserem Arap Keronei who purportedly sold it to the Applicant.

This court found it quite puzzling and strange that parties can litigate over title to property yet the registered owner is not made a party even a nominal party for purposes of enforcement of any decision. I would observe that on this ground alone this decision of the Land Tribunal would be a nullity.

Be that as it may, within the parameters of this application for judicial review, I hold that the Tribunal did not have any jurisdiction to determine questions of ownership of land, and title to land and in particular to the extent of ordering the transfer and registration of the property from one party to another. This certainly abide the mandate and jurisdiction of the Land Disputes Tribunal.

It is unfortunate that the parties and the Tribunal have wasted money, time and expense in respect of these proceedings. The issues in dispute remain unresolved dispute all these. It is high time that the Land Dispute Tribunal are educated about the jurisdiction and mandate under the Land Disputes Tribunal.

I therefore, do hereby grant prayers 1 in the following terms:-

**“1. An order of prohibition be issued against adoption and execution of the Award in Eldoret Chief's Magistrate's Court Award No.5 of 2005.”**

I also grant prayer 2 as set out in the Notice of Motion.

I decline to grant prayer 3 as the issue of ownership is still unresolved and must be determined in the right forum.

Considering the background and circumstances of this case, there shall be no order as to costs.

Dated and Delivered at Eldoret on this 16<sup>th</sup> day of March,2006.

**MOHAMED K. IBRAHIM**

**JUDGE.**