

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Misc Civ Appli 49 of 2005

REPUBLIC
APPLICANT

AND

THE CHAIRMAN THE LAND DISPUTES TRIBUNAL

LURAMBI DIVISION RESPONDENT

AND

SIMON ANDAYI INTERESTED
PARTY

RULING

The ex-parte applicant, Anyangu Kutoto Kulikula, filed the application dated 3.8.05 seeking an order of Certiorari to quash the decision of Lurambi Land Disputes Tribunal made on 29.3.05 in Tribunal Land Disputes case No. 12 of 2004 affecting land title No. Butso/so/Bukura/24. The main ground for the application was that the said Tribunal lacked jurisdiction to deal with title to land or to enforce a contract by giving the remedy of specific performance.

The interested party, Simon Andayi, was the party allegedly in possession of the land. It seems he had entered into a written agreement dated 1-12-88 to purchase a portion of the said land from the Applicant and taken possession of the said portion in pursuance of the agreement. In his affidavit in reply to the application, he annexed a copy of the said agreement marked "S.A.1". His contention was that the Tribunal did not overstep its powers because he was already in possession of the land and the question of specific performance did not arise. He lamented that the exparte applicant had declined to go to the Land Control Board to facilitate the grant of consent to the sale.

The proceedings and decision of the Tribunal exhibited in the verifying affidavit show that the issue before the Tribunal concerned the Contract for the sale of the land by the exparte applicant to the interested party. The Tribunal's decision was to the effect that the said land would be subdivided and a portion of 2 acres transferred to the Interested Party. In effect, the Tribunal purported to determine the rights of the parties under the said Contract and gave a remedy of specific performance. It had neither the power to hear the dispute nor award the remedy. The proceedings and the decision were a complete nullity.

I allow the application. I grant the order sought and quash the decision dated 29.3.05 by Lurambi Land Disputes Tribunal. Each party shall bear its own costs.

Dated, signed and delivered at Kakamega this 2nd day of March, 2006

G. B. M. KARIUKI

J U D G E