



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Misc Case 1686 of 2005**

**JOHN KAMAU KIRUGA ..... APPLICANT**

**V E R S U S**

**THE CHAIRMAN KIGUMO DIVISION LAND DISPUTES TRIBUNAL.....RESPONDENT**

**R U L I N G**

This ruling relates to a Notice of Motion dated and filed on 8-12-2005 in which the Applicant seeks the orders following:-

**(1) *an Order of Certiorari to remove into the High Court and quash the entire proceedings taken before the KIGUMO DIVISION LAND DISPUTES TRIBUNAL in its Land Disputes Case No. 10 of 2005 together with the award given by the said Tribunal on the 14-06-2005 in respect of L.R. No. Loc.18/Mariira/1773 and read to the parties by the Senior Resident Magistrate, Kigumo in S.R.M. – L.D.T Case No. 28 of 2005 on the 28-10-2005.***

**(2) *An Order of Prohibition prohibiting the Senior Resident Magistrate Kigumo from proceeding with S.R.M. – LDT Case No. 28 of 2005 in respect of L.R. No. Location 18/Mariira/1773 do issue forthwith;***

**(3) *The costs of these proceedings be borne by the Respondents.***

The grounds for the application are set out in the fate of the application. I shall refer to the facts as set out in the Verifying Affidavit in the course of this Ruling.

Leave to commence proceedings for the said judicial review orders were granted on 1.12.2005. The Notice of Motion was filed on 8.12.2005. The said orders granting leave and motion were not served until 10-02-2006 when they were served upon the Hon. The Attorney-General, the Senior Resident Magistrate, Kigumo, the Chairman, Kigumo Land Division, Land Disputes Tribunal and the Interested Party, George Kariuki.

It is necessary to set out these particulars of service because George Kariuki also referred in the statement as George Kariuki Joseph never appeared in these proceedings either in person or through an Advocate despite service of process in this matter.

The antecedents or history of the dispute before the Kigumo Division Land Disputes Tribunal began way back on 24-09-1987. On that date, the Interested Party, George Kariuki Joseph entered into a Sale Agreement with John Kamau Kiragu (*the Applicant*) for sale to the Applicant of a portion of land measuring 0.4 acres out of the Interested Party's parcel of Land L.R. No. Loc. 2/Mariira/1773 for

Kshs.22,000/= . Despite payment in full of the purchase price, by the Applicant, the Respondent refused to obtain the necessary Land Control Board Consent to transfer.

Following failure to obtain such Consent, the Applicant sued the Respondent obtained judgement for refund of Kshs.24,300/= plus costs and interest (in RMCC No. 3561 of 1988). The Applicant executed the judgement by the sale of the same portion of land to one Partick Maina Ndekere on 21-06-1989, and the sale of the land was confirmed on 18-07-1989. The interested applicant was paid his money in the sum of the decretal amount and costs and interest and has never concerned himself with the Respondent any further until the Interested Party filed the Kigumo Division Land Disputes Tribunal Case No. 10 of 2005, and sought to enforce the decision of the said Tribunal before the Senior Resident Magistrate in LDT No. 28 of 2005.

Those are the antecedents. The Applicant's case is that the Kigumo Land Disputes Tribunal had absolutely no jurisdiction to entertain the application by the Interested Party. There are two principal grounds for this contention.

Firstly, the Land Disputes Tribunal's jurisdiction is by Section 3 (1) of the Land Disputes Tribunals Act 1990 (No. 18 of 1990) limited to cases of a civil nature involving a dispute as to –

- (a) the division of, or the determination of boundaries to land, including land held in common;
- (b) a claim to occupy or work land; or
- (c) trespass of land.

The Applicant contends that the portion of land having been sold through the execution of lawful court order, and such sale having been confirmed by the Court the Land Tribunal Disputes Tribunal had absolutely no jurisdiction over the matter. In any event the Applicant has argued, he has absolutely no interest in the subject land, he having been paid a refund of the purchase price way back in July, 1989.

The Applicant's Counsel Mr. Kingara relied both on the provisions of the said Land Disputes Tribunal as stated to say that the Land Disputes Tribunal had no jurisdiction on the matter and on the case of *DIRECTOR OF PENSIONS –VS- COCKAR* [2000] I.E.A. 38 where the Court of Appeal said *inter alia:-*

***...the scope of the remedies of judicial review has not diminished. It is being broadened. In recent years the trend is to correct ex facie wrong administrative decisions by judicial review or declaratory suits.***

In ***RAICHAND KHIMJI & CO. –vs- ATTORNEY –GENERAL*** [1972] E.A. 536 Law AVP said at page 540-

***“The High Court has power to quash a decision of a statutory tribunal for want of jurisdiction or excess of jurisdiction, breach of rules of natural justice, error of law on the face of the record, fraud or collusion. In the case of a decision of a statutory tribunal or person exercising judicial or quasi-judicial powers, as was the case here, the High Court is usually moved an application for an order of **MANDAMUS, PROHIBITION OR CETIORARI** as the case may be...”***

In this case in particular, the Land Disputes Tribunal has no jurisdiction to entertain any disputes relating to sale of land or title. In entertaining the Interested Party's application, it clearly acted in excess of its jurisdiction, and for this reason alone its decision is liable to be quashed.

There is a second and good reason why the decision of the Kigumo Land Disputes Tribunal should be quashed – the application by the Interested Party was made to the Tribunal some sixteen (16) years after the events complained of took place. The Land Disputes Tribunal is forbidden from entertaining any complaint even those it has power to under Section 3 (1) of the Land Disputes Tribunal Act allows, where

the time for bringing such proceedings is barred under the law relating to the limitation of actions or to any proceedings which had been heard and determined by any court. That is what Section 13 (3) of the Land Disputes Tribunal act provides.

These prohibitions under Section 13 (3) aforesaid may be divided into two provisions-

**(a) *the proceedings are barred by limitation of actions law and***

**(b) *the matter in question had been determined in proceedings which had been heard and determined in the Resident Magistrates Court, Sheria House, Nairobi, Civil Suit No. 3561 of 1988 between the Applicant (as Plaintiff) and the Interested Party (as Defendant). Judgement had been entered for the Plaintiff, and was duly executed as already outlined above.***

The Tribunal had therefore no jurisdiction to entertain the Application by the interested party.

The question of limitation of actions may be looked at two angles, firstly on the basis of a claim under contract, and secondly, on the basis of a claim for land or interest in land.

On the angle of contract, Section 4 of the Limitation of Actions Act (Cap 22, laws of Kenya) provides that an action based on contract may not be brought after the end of six years from the date on which the cause of action arose.

If the cause of action arose out of a contract, it would be founded on the Sale Agreement dated 24-09-1987, and six (6) years thereafter would have ended on 23-09-1993. In any event the Interested Party being the Party in breach of the Sale Agreement he would have no cause of action against the Applicant whose money (in the form of the purchase price) he had taken pocketed and refused to transfer the land to the Applicant.

Similarly apart from being barred under Section 7 of the Limitation of Actions Act:- which Section provides that an action may not be brought by any person to recover land after end of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person; the Interested Party would have had no cause of action against the Applicant. If the Interested Party had a cause of action for recovery of his land (that is what he was claiming before the Land Disputes Tribunal) he should have made the claim at least twelve (12) years ago. Again if the action arose from the date of the Sale of the Land (21-06-1989), the same ought to have been brought on or before 20-06-2001, and not April, 2005 or thereabouts.

Having brought his claim even though before the wrong forum (the Land Disputes Tribunal) well after the limitation period both under contract, and for recovery of land, the decision of the Kigumo Land Disputes Tribunal cannot of course stand, and I would ordinarily have ended my ruling on this note. I am however constrained to comment on the "Award" by the Kigumo Land Disputes Tribunal.

I observe that the proceedings of the Tribunal are typed upon paper carrying the letter-head-"**Office of the President**" Office of the District Officer, Kigumo Sub-District, Kigumo, and is eventually signed a major (Rtd) Peter Gitau, Chairman D.L.T. Kigumo Division. If the Chairman is also the D.O. Kigumo Kigumo Sub-District, I would imagine that (even if he does not have any minimum training in law) he is nevertheless sufficiently informed not to make sweeping comments such as that the sale pursuant to a Court Order was null and void; or that the sale of the whole land was not done in open and transparent matter; or the sale was done by the Defendant and his Advocate in the Advocates office. There may be not have been a High Court in Sheria House in 1989. But there was a Court of the Resident Magistrate. It is improper for the Board to make sweeping conclusions without any basis. I direct this Ruling be made available to the Chairman of the Kigumo Land Disputes Tribunal to note particularly its jurisdiction to declare any land transaction null and void. It cannot adjudicate on matter of little..... It cannot apportion title to land as it purported to do.

More importantly, the Applicant, has no interest in the land in issue. He recovered the purchase price

from the Interested Party. It is the Interested party who must deal with the purchaser of land not the Applicant herein, and he must do so quickly enough for ..... from the lapse of time since the sale of the land through execution of the decree of Court, the Interested Party may have lost the entire piece of land, and not just 0.4 acres.

Over all however, the Kigumo Land Disputes Tribunal had no jurisdiction to make the award if made, and more importantly also, its actions were time-barred by the Limitations of Actions Act, and were thus incompetent.

For those reasons, the Applicants Notice of Motion dated and filed on 8-12-2005 succeeds and the entire proceedings of the Kigumo Division of the Land Disputes Tribunal in its Land Dispute Case No. 10 of 2005 together with the award by the said Tribunal on 14-006-2005 in respect of Title No. Loc. 18/Mariira/17773 and read to the parties by the Senior Resident Magistrate, Kigumo in S.R.M. L.D.T. Case No. 28 of 2005 on 18-10-2005 and are removed by order of certiorari into this court and quashed.

Likewise an order of prohibition shall issue prohibiting the Senior Resident Magistrate Kigumo from proceeding in S.R.M. – L.D.T. Case No. 28 of 2005 in respect of Title No. Loc. 18/Mariira/1773.

The Applicant shall also have the costs of this application against the Interested Party.

Dated and Delivered at Nairobi this 30<sup>th</sup> day of June, 2006.

**ANYARA EMUKULE**

**JUDGE.**