



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

Misc. Judicial Review No. 25 Of 2010

REPUBLIC APPLICANT

=VERSUS=

KIPKAREN LAND DISPUTES TRIBUNAL 1ST RESPONDENT

KIPKURGAT TARUS 2ND RESPONDENT

JOSEPH KIPSANG TARUSEX-PARTE APPLICANT

JUDGMENT

The Ex-parte Applicant , **JOSEPH KIPSANG TARUS**, has come to this Court, seeking an order of CERTIORARI, to quash the decision of the **KIPKAREN LAND DISPUTES TRIBUNAL** dated 12th September, 2006. The Applicant also asks for the consequential order, that would quash the decision by the Principal Magistrate's Court, Kapsabet, adopting the decision of the Tribunal.

The Primary reason advanced by the applicant, for seeking those reliefs, was that the decision of the Tribunal was *ultra vires*, and was therefore illegal.

The Respondent has pointed out that the Ex-parte Applicant adequately participated in the proceedings before the Tribunal. Therefore, the Respondent believes that the Applicant was peddling falsehoods, by alleging that he had not been accorded a fair hearing by the Tribunal.

In any event, if the Applicant was in need of more time, he could easily have asked the Tribunal to allow him more time. But because he did not seek more time before the Tribunal, the Respondent submitted that that was an indication that the Applicant was accorded sufficient time and opportunity to advance his case.

The 2nd Respondent added that he was in occupation of the suit property, and that he had made developments on the said land. Therefore, he felt that it could be unjust to grant the orders sought by the Applicant.

Having given due consideration to the matters in issue, I note that the 2nd Respondent herein, **KIPKURGAT TARUS**, was the Plaintiff in the case before the Tribunal, whilst the Defendant was **JOSEPH KIPSANG TARUS**.

The Plaintiff told the tribunal that his claim was for the land which he had purchased from the Defendant. As far as the Plaintiff was concerned, he had paid the full purchase price, amounting to Kshs 40,000/=.

The record of the proceedings before the Tribunal shows that the Defendant conceded having sold a portion of his land to the Plaintiff.

After the members of the Tribunal had given due consideration to the evidence tendered, they concluded as follows:-

ELDERS VERDICT

After a keen observation the panel has finally resolved that:-

- *The Plaintiff bought this land and that he paid all the money required by the Defendant because he paid the agreed cost of 40,000/= (forty thousand only) of which he paid at once. Later on he proceeded bought an extra three points. The Plaintiff then has a right of his share of 1.3 acres.*
- *That may the honourable Court award the Plaintiff Mr. Kipkurgat Tarus 1.3 acres land and transfer the same to him.*

1. JOSHUA TANUI	-	CHAIRMAN	<i>(Signed)</i>
2. KIPKOLUM BIRGEN	-	MEMBER	<i>(Signed)</i>
3. PRISCA LETTING	-	MEMBER	<i>(Signed) ”</i>

There is absolutely no doubt at all that the Plaintiff was claiming land which he had bought from the Defendant.

The Tribunal awarded him the said land, after he persuaded the Tribunal that he had paid the whole purchase price, for the 1.3 acres of land.

It is common ground that the land in issue is Title Number **NANDI/KURGUNG/497**. There is a Land Certificate issued under the Registered Land Act, and it is in the name of **JOSEPH KIPSANG TARUS**.

That parcel of land is said to be 1.6 Hectares, and the Land Certificate was issued on 3rd April, 1981.

As the proceedings before the Kipkaren Land Disputes Tribunal were conducted on 12th September, 2006, that meant that the Tribunal adjudicated over the issue when the Land Certificate had already been issued.

Having been convinced that the Respondent had purchased 1.3 acres from the Applicant, the Tribunal concluded that the Applicant herein should transfer that portion of land to the Respondent.

At no time did the Applicant complain that the Tribunal denied him either more time or an opportunity to call any witness.

Therefore, it does appear to me that there is no merit in the Applicant's contention that he had not been accorded a fair hearing.

The Land Disputes Tribunals derive their Jurisdiction from Section 3(1) of the Land Disputes Tribunal Act.

Pursuant to that provision, the Tribunal has jurisdiction over all cases of a civil nature, involving disputes relating to;

- i. The division of or the determination of boundaries to the land, including land held in common;
- ii. A claim to occupy or work land; or
- iii. Trespass to land.

In my understanding, the Kipkaren Land Disputes Tribunal did not limit itself within the Jurisdiction conferred upon it by law. I say so because the Tribunal made a determination on the issue of ownership of the 1.3 acres, which the Respondent said he had bought from the Applicant.

By directing that the portion of land be transferred to the Respondent, the Tribunal acted in excess of its Jurisdiction. Therefore, their said determination was a nullity. I do now quash the decision which the Kipkaren Land Disputes Tribunal handed down on 12th September, 2006, in relation to Title Number **NANDI/KURGUNG/497**. The same was a nullity, for want of jurisdiction.

Secondly, the order made by the Principal Magistrate's Court, Kapsabet, adopting the award of the Tribunal, is also quashed.

The Ex-parte Applicant and the 2nd Respondent had willingly participated in the proceedings before the Tribunal. It would thus be unfair to the 2nd Respondent to be condemned to pay the costs of the proceedings before either the Tribunal or before the Principal Magistrate's Court, Kapsabet. I order that each party bears his own costs before those two bodies.

However, the costs of these Judicial Review proceedings are awarded to the Ex-parte Applicant. The same shall be paid by the 2nd Respondent.

DATED, SIGNED AND DELIVERED AT ELDORET,

THIS 5TH DAY OF FEBRUARY, 2014.

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FRED A. OCHIENG

JUDGE.