



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
JUDICIAL REVIEW NO. 29 OF 2011

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, KAPSABET LAND DISPUTES TRIBUNAL....RESPONDENT

AND

LEAH TUWEI.....1ST INTERESTED PARTY

VERONICA BIRECH.....2ND INTERESTED PARTY

DAVID KIPROP.....EX-PARTE APPLICANT

JUDGMENT

The Ex-Parte Applicant filed the Notice of Motion dated 3rd May, 2011 against the Respondent and the 1st and 2nd Interested Parties. It is brought under Order 53 Rule 3 of the Civil Procedure Rules.

The Ex-Parte Applicant prays for an Order of Certiorari to remove into this court for purposes of quashing the Kapsabet Land Disputes Tribunal's (Respondent) award and the order of the Principal Magistrate's Court Kapsabet adopting the award and the consequent decree given on 22nd February, 2011.

He also prays for costs of both the application for leave to file this motion and of this application.

The application is premised on the following grounds:-

- (a) That the land parcel Nandi/Kamobo/2818 is a registered land under the Registered Land Act in the name of DAVID KIPROP who is the Ex-parte applicant.***
- (b) That being a registered land Kapsabet Land Dispute Tribunal lacked jurisdiction to adjudicate and pass a verdict or decision on ownership and title as they purported to do on 22nd February, 2011.***
- (c) That Kapsabet Land Dispute Tribunal acted ultravires its mandate by adjudicating and passing a decision to break the title and subdivide a registered land to wit Nandi/Kamobo/2818.***
- (d) That this application for leave has been brought expeditiously and launched in good faith***

and full disclosure of the facts relevant hereto.

(e) The applicant stands to suffer great prejudice, damage and loss if the award of the tribunal is left to stand.

In support of the application is a verifying affidavit sworn by David Kiprop, the Ex-Parte Applicant on 3rd May, 2011 as well as a statement outlining the facts upon which the application is brought and the relief sought. The same is dated 3rd May, 2011.

In the Verifying Affidavit, the Ex-Parte Applicant depones that he was given the parcel of land No. Nandi/Kamobo/2818 measuring 3.1 acres as a gift by the grandfather of one Mr. Kibet Ngeny in 1987. Thereafter he bought 0.5 acres from the said grandfather. The land was solely registered in his name and he annexed a copy of the title deed (DK.1). For this reason, the Tribunal lacked jurisdiction to deal with a matter on land that was registered.

He depones that the award was adopted as a Judgment of the court on 20th February, 2011 and he annexed the order as DK.3.

Both Interested Parties did not enter appearance despite being served with the application.

The Respondent was represented by the Hon. The Attorney General. Learned state counsel Mr. Ngumbi informed the court that the Respondent did not oppose the application.

Learned Counsel for the Ex-Parte Applicant, Mr. Z. K. yego submitted that the Tribunal had no jurisdiction to hear and determine the matter as it revolved around a registered land. In particular, that the Tribunal had no power to order that the property be sub-divided. The court was referred to the case of **HEZEKIAH KUNG'U KINUTHIA -VS- ERNEST KAMAU KINUTHIA (NAIROBI HCCA. NO. 202 OF 1999** in which Kuloba, J. held that the Tribunal had no jurisdiction to sub-divide a registered land by ordering that the proprietor of the land surrenders a portion of the land to someone else.

The only issue for determination herein is whether the Kapsabet Land Disputes Tribunal had the jurisdiction to determine the matter before it.

It is then important that I duplicate the award made by the Tribunal. The same was signed by the elders on 5th November, 2010. It read;

- 1. The parcel of land known as Nandi/Kamobo/2818 of 3.6 acres to be sub-divided into two portions of 3.0 and 3.6 acres.***
- 2. The portion of 0.6 acres to be transferred to Leah Tuwei and 3.0 acres to remain with David Kiprop.***
- 3. The panel of elders has favoured Leah Tuwei because Daniel Kiprop is the son of Veronica Jemutai Birech and therefore her shares were taken by her son David Kiprop.***

The jurisdiction of the Land Disputes Tribunal was provided under Section 3 (1) of the then Land disputes Tribunal Act, No. 18 of 1990. The same read;

“3. (1) Subject to this Act, all 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 to land,

shall be heard and determined by a Tribunal established under section 4. ”

Under the above provision, the Tribunal had no jurisdiction to deliberate on a dispute touching on interest in land. This of course included matters of proprietorship of a registered land.

The proceedings of the Tribunal that were conducted on 13th October, 2010 clearly show that one of the documents handed to the panel of elders was a title deed for L.R. No. Nandi/Kamobo/2818 which is a disputed land. A copy of the same is marked annexure DK.1 to the Notice of Motion. It shows that as at 1st July, 1997, the land was registered to the Ex-Parte Applicant.

In total disregard of the restricted powers given to it, the Tribunal went ahead and ordered for its subdivision as spelt out in its award. This was in violation of the law.

To buttress the above point, let me refer to a few decided cases;

In the case of **JIDRAPH NYORO KANGETHE -VS- SILAS KANGETHE** as cited in **MGANDI DUME MGANDI -VS- CHARO KIRAO RANDU CIVIL APPEAL NO. 72 OF 2004** it was held that:-

“The jurisdiction of the Tribunal to deal with land registered under the Registered Land Act (Cap. 300) is found in Section 159 of that Act. That jurisdiction is limited by Section 3 (1) of Land Disputes Tribunal Act No. 18 of 1990 which provides for cases which may be heard and determined by the Tribunal.

These are 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 on land; or***
- (c) Trespass to land.”***

These are the only matters which the Tribunal has power to deal with. Act No. 18 of 1990 does not confer upon the Tribunal to interfere with the interest of a registered proprietor whose title is protected by Section 27 and 28 of Cap. 300.

In **REPUBLIC -VS- OLOLOLUNGA LAND DISPUTES TRIBUNAL EX PARTE ISIAH KIPLANGAT CHELUGET (NAIROBI H.C. MISC. CASE NO. 926 OF 1999** Aganyanya J. faced with a similar situation stated:-

“Yet under the Land Disputes Act – No. 1 of 1990, the functions of the Tribunal are limited to the division of, or the determination of boundaries to land including land held in common, a claim to occupy or work on land or trespass to land. (See Section 3 of the Act ... (W)hat the Tribunal in the case subject to this application engaged itself in, would end up with the rectification of the Registrar but in the circumstances prevailing herein, this would go against the spirit of Section 143 (1) of the registered Land Act – Chapter 300-

....(W)hen the (Land Disputes) Act gives a member of the Tribunal power to decide on the division or occupation of land it is not saying that the tribunal should encroach on land registered in individual name and begin dividing it for the benefit and occupation of third parties (T)he tribunal has no jurisdiction to change the position for a registered land ...”

“More recently, in GIBSON SENELE MATO -VS- EASTERN PROVINCE LAND DISPUTES COMMITTEE & OTHER (NAIROBI MISC. C.A. 331 OF 2003) Ibrahim, J. held that the Makueni District Land Disputes Tribunal Appeal Committee had no jurisdiction to hear and determine question of ownership and title to land registered under the RLA, and that the

Committee, in doing so, acted ultra vires the statute and the entire proceedings became a nullity once it pronounced on the question of ownership of title.”

The Court of Appeal in **JOTHAM AMUNAVI -VS- THE CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL & ANOTHER CIVIL APPEAL NO. 256 OF 2002** as cited in **REPUBLIC - VS- KIAMBU DISTRICT LAND DISPUTE TRIBUNAL & ANOTHER EX-PARTE TERESIAH WAMBUI GIKUNA & ANOTHER J.R. ELC NO. 13 OF 2011** held that;

“.....if the implementation of the decision of the Tribunal entails the subdivision of the suit land into two parcels opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre, it is clear that the proceedings before the Tribunal related to both title to land and to beneficial interest in the suit land and such a dispute is not within the provisions of Section 3 (1) of the Land Disputes Tribunal Act as such disputes can only be tried by the High Court or by the Resident Magistrate's Court in cases where such latter court has jurisdiction.”

In effect, the Tribunal had no jurisdiction to order for the sub-division of a registered land. It thus acted ultra vires its jurisdiction. Accordingly, this application is allowed in terms of prayer number (a). Costs to the Ex-parte Applicant which shall be paid by the Interested Parties jointly and severally.

DATED and DELIVERED at ELDORET this 9th day of October, 2014.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:

Mr. Yego for the Ex-parte Applicant

Mr. Wabwire for the Respondent

No appearance for the 1st Interested Party

No appearance for the 2nd Interested Party