



REPUBLIC OF KENYA

High Court at Eldoret

Judicial Review 5 of 2011

REPUBLIC.....APPLICANT

VERSUS

THE UASIN GISHU LAND DISPUTES

TRIBUNAL THRO' THE ATTORNEY GENERAL.....1ST RESPONDENT

THE CHIEF MAGISTRATE ELDORET LAW COURTS.....2ND RESPONDENT

SAMUEL KIPYEGO KOGO.....INTERESTED PARTY

MORRIS SHIKUKU

MOSES MUTORO.....EXPARTE APPLICANTS

RULING:

The Notice of Motion is dated the 29th July 2011 and the Applicants seek for an order of certiorari to remove into court and quash the decision of the Uasin Gishu Land Disputes Tribunal.

The Application is grounded on the Notice of Motion, the statement and the Verifying Affidavit sworn by the Applicants and dated the 27th July, 2011.

The Applicants submitted that the Uasin Gishu District Land Disputes Tribunal acted ultrar vires as it did not have jurisdiction to determine matters pertaining to ownership of land nor did it have the mandate to grant an eviction order. The Tribunal also made an order for compensation. The Applicants stated that all the above mentioned actions were illegal in law as the Tribunal went beyond its mandate as provided under Section 3 of the Land Disputes Act (now repealed).

The Applicants averred that the Interested Party obtained the orders from the Tribunal on the 1th April, 2011 and thereafter obtained a decree from court on the 20th May, 2011. The Interested Party thereafter obtained an eviction order on the 14th July, 2011 and on the 16th July, 2011 awarded the Applicants land and demolished their houses and carried away the corrugated iron sheets.

The Applicants submit that it is now in dispute that the issues relate to contract and that it is not in dispute that they had bought the land.

The Applicants prayed that the order for certiorari be issued quashing the award number 14 of 2011

made by the Uasin Gishu Land Disputes Tribunal and the Eviction Order made by the 2nd Respondent.

The Application was strongly opposed by Counsel for the Interested Party who relied on the Replying Affidavit sworn by the Interested Party.

Counsel submitted that the Title was registered in the name of the Interested Party and a Certificate of Official Search was annexed to the Replying Affidavit to support this fact.

The Interested Party was not party to the Sale Agreement made between his mother and the Ex-parte Applicants.

The Interested Party submitted that he had filed a claim of trespass under Section 3 of the Land Disputes Tribunal Act and that the Elders decision was rightfully adopted by the court that issued the Eviction Order.

Counsel submitted that the Applicants were notified of the award and no appeal was preferred by the Applicants to the Provincial Land Disputes Appellate Tribunal nor had the decree been challenged.

In conclusion the Interested Party prayed that the Application be dismissed as the Tribunal case was not based on a claim of ownership but was based on a clear act of trespass.

Upon hearing the arguments of both Counsel to the Applicants and the Respondent this court finds that there is uncontroverted evidence that the suit land evidence that the suit land belonged to the Interested party. The Tribunal had received evidence that the Interested Party had bought the land from his late father and the Interested Party had duly registered the same in his name.

The Tribunal found that the matter before it did not relate to succession, nor ownership but related to trespass. The Interested Party sought to evict the Applicants from the land as they were trespassers.

In matters pertaining to Judicial review it is trite law that the courts mandate is not to go into the merits or demerits of the case.

The courts mandate is to look at the actions or decisions of the Tribunal and determine whether its actions were illegal and ultra vires to its mandate.

This court finds that under Section 3(c) of the Land Disputes Tribunal Act (now repealed) the Tribunal had jurisdiction to determine whether the Applicants were trespassers.

This court is satisfied that the Tribunal acted within its mandate and that there are no compelling reasons to issue the order for certiorari as prayed for in the Notice of Motion.

The application has no merit and is hereby dismissed with costs to the Interested Party.

It is so ordered.

Dated and delivered at Eldoret this 11th day of October 2012.

**A.MSHILA
JUDGE**

Coram: Before Hon. A Mshila J

CC: Andrew

Counsel for the Applicants:

Counsel for the Respondents:

Interested Party:

Exparte Applicant:

A.MSHILA

JUDGE