



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA**

Miscellaneous Application 79 of 2008

REPUBLIC APPLICANT

AND

THE CHAIRMAN, KANDUYI LAND DISPUTES TRIBUNAL RESPONDENT

AND

METRINE NAMALWA MISIKO APPLICANT

VRS

RAPHAEL KAKA WEKESA INTERESTED PARTY

RULING

This is an application 21/4/2008 seeking orders that this court removes and quashes the decision of Kanduyi Land Disputes Tribunal which was read and adopted as judgment of the on 8/2/2008 in BGM CM CC LDT No.32 of 2007. The Applicant Metrine Namalwa Misiko relies on the ground that, the tribunal had no jurisdiction to arbitrate on the dispute relating to land registered under Registered Land Act Cap.300. In her supporting affidavit sworn on the 21/4/2008, the Applicant depones that, she and her late husband bought a portion of land from one Makokha Wabuke Richard. Parcel namely:

L. R. NO. EAST BUKUSU/NORTH SANG'ALO/ 3808. The seller had sub-divided his original land into two parcel nos. 3807 and 3808. Parcel No.3808 measuring 1.2 acres was registered in the Applicant's name, while parcel no.3807 measuring 0.8 acres remained in the name of the vendor. The interested party Raphael Kaka Wekesa subsequently bought parcel no.3807 from the owner. The Applicant was not involved in the said land purchase agreement. Thereafter, the interested party launched a claim before Kanduyi Land Disputes Tribunal claiming that the acreage of his land was less than what he had bought from the owner and therefore claimed part of the Applicant's land. The tribunal gave orders in the favour of the interested party and the said award was adopted as judgment of the court in Bungoma court. It is the contention of the Applicant that, the tribunal lacked jurisdiction to arbitrate on the dispute relating to the two parcels of land and the same decision ought to be quashed.

The application was opposed by the interested party in his replying affidavit sworn on 30/7/2008. He

depones that he purchased 2 acres of land from one Richard Makokha Wabuke in the year 2002 which was to be excised from land parcel *East Bukusu/North Sangalo/3115*. The original parcel was subdivided under parcel and one of the new parcels no.3807 registered in the name of the interested party. In paragraph 6, he avers that the issue between the parties was one of trespass where the Applicant who was the registered owner of parcel No.3808 trespassed into parcel no.3807.

Mr. Situma for the Applicant submitted that, the tribunal had no jurisdiction to hear the matter which was registered land. The tribunal ordered that a surveyor determines the boundaries between two parcels of land. Under section 21 and 26 of the Registered Land Act, the power to determine boundaries disputes is conferred on the Land Registrar. The tribunal therefore had no jurisdiction to order that a surveyor resolves the said dispute. The claim before the tribunal was based on the land sale agreement between the interested party and a third party and did not in any way involve the Applicant.

The tribunal misdirected itself in its award by granting orders against the Applicant who was not a party to the sale agreement.

Mrs. Mumalasi for the interested party submitted that the Applicant has not satisfied the court that the tribunal lacked jurisdiction of arbitrating on the land dispute relating to land parcel no.3807 and 3808. There was a boundary dispute between the parties and which was rightly arbitrated on by the tribunal. The interested party argued that the Applicant admitted before the tribunal that she was using more land than the acreage of her parcel no.3808. The tribunal rightly found that the Applicant had interfered with the parcel of the interested party. The interested party contends that the application is defective because it is brought under the wrong provisions of the law. According to Mrs. Mumalasi, section 8 & 9 of the Land Disputes Tribunal Act ought to be cited in the application. She also argued that the interested party should not be condemned to pay costs of this application in the event that it succeeds.

The interested party presented his claim to the tribunal in two limbs. Firstly, it was a boundary dispute relating to the parcel no.3807 and no.3808. Secondly, he demanded two acres from the 1st objector who was the seller which he claimed that he was rightfully entitled to as opposed to the acreage of his parcel which was 0.81 acres. It is clear therefore that, the main claim before the tribunal was a portion which the interested party wanted excised from parcel no.3808 which belonged to the Applicant. The issue before the tribunal was one relating to land registered under the Registered Land Act. The tribunal heard the matter and made the following award.

I) The panel of elders unanimously orders that the first objector Mr. Richard Wabuke Makokha should consent and transfer the title deed to the claimant.

II) The panel of elders further orders that the new parcel numbers 3808 and 3807 should be cancelled to enable the land Registrar to facilitate new numbers from the original parcel No.E.BUKUSU/N.SANG'ALO/3115 which is still in the hands of Mr. Richard Wabuke Makokha of identity number 6087044.

III) The court to send non biased surveyors to the site to demarcate, determine and plant the boundary for the parcel of land measuring (2) two acres for the claimant through the Land Registrar.

The issue before this court is to determine whether the tribunal had jurisdiction to arbitrate on the matter before it. The jurisdiction of the tribunal is provided for by section 3(1) of the Land Disputes Tribunal Act, no.18 of 1990 which provides as follows:

“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.”

Section 4 which establishes the tribunal, including its composition states in sub section (1):

“There shall be established a tribunal, to be called the Land Disputes Tribunal, for every registration district.”

The jurisdiction of the tribunal is derived from section 159 of the Registered Land Act (300) and the relevant part states as follows:

“Section 159 civil suits and proceedings relating to the title to, or possession of, land shall be tried by the High Court and where the value of the subject matter does not exceed twenty five thousand pounds by the Resident Magistrate’s Court, or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunal Act, in accordance with that Act.”

The issue before this court is to determine whether the Kanduyi Land Disputes Tribunal had the jurisdiction to determine the dispute before it. The dispute involved land parcel *No.E.BUKUSU/N.SANG’ALO/3807 and 3808* which was registered under the Registered Land Act as shown by the application of official search and title deed annexed to the application.

It is clear from the proceedings of the tribunal that the land in issue was registered under the Registered Land Act Cap.300. Under section 159 of the Registered Land Act, proceedings relating to title to, or possession of land are triable by the High Court and the Resident Magistrate Court depending on the value of the subject matter. The jurisdiction of the tribunal is limited to disputes involving division of, or the determination of boundaries to land, a claim to occupy or work on land and trespass to land. The issues presented before Kanduyi Land Disputes Tribunal did not involve any of the disputes outlined in section 3(1) of the Land Disputes Tribunal Act. The tribunal therefore proceeded to hear a dispute in which it had no jurisdiction.

As argued by Mrs. Mumalasi, this application is brought under O.LIII r.3 (1) while Section 8 &9 of the Land Disputes Tribunal Act have been omitted. An application of this nature ought to be brought under both O.LIII r.3 (1) and section 8 & 9 of the Land Disputes Tribunal Act. The Applicant therefore omitted important provisions of the law. However, I find that the said omission does not render the application defective. This court is more concerned with the substance more than the form of pleadings.

Although the interested party complained of a boundary dispute, his main claim was on a portion of land from the parcel of the Applicant. The tribunal in its award arbitrated on the claim on the portion of land claimed by the interested party. The issue of boundary dispute does not arise. The tribunal went ahead to order that surveyors go to the site which was in excess of its jurisdiction. The power of fixing boundaries is vested in the Registrar of Lands under section 22 & 23 of the Registered Land Act.

The actions and the decision of the tribunal over the suit land were *ultra vires*. The Applicant has satisfied the court that the tribunal acted without jurisdiction in hearing the said dispute. The award of the said tribunal which was adopted by CM, Bungoma is hereby moved to this court and quashed accordingly. The application is therefore merited and it is allowed with costs to the applicants.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed at Bungoma this 7 th day of July 2009.