



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E & L CASE NO.8 OF 2013

REPUBLIC..... APPLICANT

VERSUS

CHAIRMAN TURBO/UASIN GISHU

LAND DISPUTES TRIBUNAL..... 1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT AT ELDORET.....2ND RESPONDENT

THE DISTRICT LAND REGISTRAR..... 3RD RESPONDENT

THE ATTORNEY GENERAL..... 4TH RESPONDENT

AND

HOSEA KIBIRIR KIPKETER..... INTERESTED PARTY

AND

DANIEL KIPKEMEI TENAI..... EXPARTE APPLICANT

RULING

(Judicial Review seeking to quash award of Land Disputes Tribunal; Tribunal having awarded land; whether tribunal had such jurisdiction; award made out of jurisdiction; award quashed alongside the decree of the magistrate's court that adopted it)

This is an application seeking orders of certiorari to quash the award of the Uasin Gishu/Turbo Land Disputes Tribunal dated 30 August 2010 and adopted by the Eldoret Chief Magistrate's Court on 23 September 2010 as Award No. 6 of 2010. It also seeks orders of prohibition prohibiting the implementation of the award or the order of the Magistrate's Court. The core reason given is that the award was made outside jurisdiction. The application is supported by the affidavit of Daniel Kipkemei Tenai, the applicant, and is opposed.

The subject matter of the award is land parcel Uasin Gishu/Sosiani Settlement Scheme/37 measuring 29.5 hectares. That land is registered in the name of the ex-parte applicant. The interested party Hosea Kibirir Kipketer lodged a claim over a part of this land before the Uasin Gishu Land Disputes Tribunal, which claim, was registered as Claim No. 7 of 2010. Briefly, it was the case of the interested party that he alongside the ex-parte applicant, jointly purchased the suit land, but the land was registered in the name of the ex-parte applicant. He claimed a half portion of the said land which is 14.75 hectares. The ex-parte

applicant is his brother in law as he is married to his sister. The tribunal heard the dispute, and held that the land was jointly purchased, and that the interested party (as claimant) was entitled to half of the said land. It made an order that the Magistrate court do apply to the Land Control Board for consent to subdivide the land into two equal portions, one to be registered in the name of the ex-parte applicant, and the other to be registered in the name of the interested party. It is this award which the ex-parte applicant wants quashed. That award was adopted as a decree of the court by the Chief Magistrate's Court at Eldoret on 23 September 2010 and a decree was duly issued. It is this decree that the ex-parte applicant also wants quashed. As earlier stated, the core reason is that the award was made outside jurisdiction.

The interested party filed a replying affidavit. He stated that the award upon adoption, ceases to exist and cannot be quashed by an order of certiorari. He also stated that the order of prohibition cannot also be granted in the circumstances. He also stated that no verifying affidavit was annexed to the application and the application is therefore defective. He also averred that no leave to apply for the order of certiorari was ever granted.

The respondent opted to file grounds of opposition. It is stated that the applicant is seeking to challenge the merit of the award rather than the decision making process. It is also stated that the award was made pursuant to Section 3(1) of the Land Disputes Tribunal Act and that the Tribunal did not exceed its jurisdiction.

I have considered the matter alongside the written submissions of counsel. Some technical issues have been raised by the interested party, which I can quickly address. It was said that leave was not sought, leave to apply for the orders herein was sought and granted on 23 November 2010. It was also said that the application did not have a verifying affidavit but I have seen the verifying affidavit.

On the substance of the application, the core complaint is that the Tribunal exceeded its jurisdiction. The jurisdiction of the now defunct Land Disputes Tribunals was donated by Section 3 (1) of the Land Disputes Tribunal Act (repealed by the Environment and Land Court Act in 2011). The said provision stated as follows :-

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.

It will be seen from the above, that the jurisdiction of the tribunal, was only on matters related to the division or determination of boundaries; claims to occupy or work land; and trespass to land. The Land Disputes Tribunal did not have jurisdiction to issue declaratory orders on the ownership of land and neither did it have jurisdiction to determine disputes revolving around ownership of land.

The dispute presented before the Tribunal in this instance was whether or not the interested party was entitled to ownership of one half of the suit land. Clearly, that dispute was neither one of division of land held in common, nor was it a claim to occupy or work land, and neither was it a claim of trespass to land. To me it was a claim for ownership of land by virtue of purchase, which was outside the ambit of the Land Disputes Tribunal. A decision made outside jurisdiction is liable to be quashed by an order of certiorari. I proceed to quash that award alongside the decree in Eldoret CMs Award No. 6 of 2010. I also issue an order of prohibition, prohibiting the execution of that award and decree.

As to costs, the fault was with the Tribunal and I take note that the Land Disputes Tribunals are now defunct. It is best that I make no order as to costs.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 11TH DAY OF NOVEMBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

Mr. J.B. Kibet present for the ex-parte applicant

Mr. S.M. Mathai present for Interested party.

Mr. M.W Odongo present for Respondent