



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW APPLICATION NO. 22B OF 2011

CYPRIAN KITHINJI MUCHAI.....EXPARTE APPLICANT

VERSUS

REPUBLIC.....1ST RESPONDENT

IMENTI SOUTH DISTRICT LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

SENIOR PRINCIPAL MAGISTRATE NKUBU LAW COURTS.....3RD RESPONDENT

JUDGMENT

BACKGROUND

These Judicial proceedings was commenced Exparte by way of a Chamber Summons under **Order L111 Rule (1) (2) & (4) CPR as read with Sections 8 & 9 Law Reform Act Cap – 26** Laws of Kenya dated 6th April, 2011.

The Application was placed before the duty Judge who having considered the materials placed before her certified the application urgent to be heard in the first instance and granted leave to the Exparte Applicant to commence judicial proceedings for an order of prohibition to prohibit execution and/or implementation of the award made by the Senior Principal Magistrate Nkubu Law Courts on 16.07.2008 vide LDT Case No. SPMCC LDT No. 1/2008 and the decree made thereon.

It was also ordered that the leave so granted to operate as a stay of further proceedings in the said SPMCC LDT Case No. 1 of 2008 and execution and/ or implementation of the award made on the 16.07.2008, made vide LDT No. 35 of 2008 and adopted as a judgment of the 2nd Respondent on 3.11.2010. On 29.4.2011, the Applicant filed the substance Notice of Motion in accordance with **Order 53 Rule 3 CPR** as read with **Section 8 & 9 of the Law Reform Act Cap 26** Laws of Kenya. When the application came up for directions before Justice Mbugua on 16.4.2018, the parties were granted 30 days to file their response to the said Notice of Motion.

EX-PARTE APPLICANT'S CASE

The Ex parte in his pleadings averred that he is the registered owner of all that parcel of land known as NKUENE/UKUU/791 where a title was issued to him on November 2000. The Ex parte Applicant further contends that the Disputes Tribunal No. 18 of 1990 (Repealed) did not confer jurisdiction to the Respondent to determine matters under the **Land Registration Act**.

INTERESTED PARTY'S POSITION

The interested party in his grounds of opposition dated 21.07.2018 stated that the first Respondent did not offend the provisions of **Section 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990** (repealed).

ANALYSIS AND DECISION

I have perused the pleadings and proceedings of the Imenti South District Land Tribunal in Case No. 35 of 2008. I have also considered the averments by the Applicant and the Interested Party in the application and their submissions. The Ex-parte Applicant is the registered owner of Land Parcel No. NKUENE/IKUU/791 measuring 0.405 Ha. From the proceedings and the decision of the said Tribunal, it shows that the claimant who is also the interested party in these Judicial Review proceedings had alleged that he transferred the same to the Exparte Applicant without his knowledge. He stated that he does not know how to read and write and he even has a hearing problem.

He was therefore challenging the transfer and issuance of the title to the Ex-parte Applicant. After hearing the Claimant/Interested party and the Objector/Ex parte Applicant, the Imenti South Land Disputes Tribunal ordered the Land Registrar Meru Central to make a transfer of the

Ex parte Applicant's Land Reference No. NKUENE/UKUU/791 to the Claimant/Interested Party herein. They also directed the 2nd Respondent who is also the Senior Principal Magistrate Nkubu Law Courts to order the Court Executive Officer to sign the consent forms on behalf of the Ex parte Applicant.

When that award was presented before the Magistrate, Nkubu Law Courts on 3.11.2010, the learned Magistrate read the award and adopted it as an order of the court and a decree issued.

I have noted **Section 3 (1) of the Land Disputes Tribunal Act** which stipulates the mandate of the Land Disputes Tribunal 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”

When the Land Disputes tribunal purported to transfer suit property registered in favour of the Ex parte Applicant, they were acting in excess of their jurisdiction conferred under **Section 3 of the Land Disputes Tribunal Act No. 18 of 1990 (repealed)**. The Tribunal did not have jurisdiction to entertain disputes pertaining to ownership of land registered under the then **Registered Land Act Cap 300** Laws of Kenya. That power lay with the Environment and Land Court. In my view, the award made by the Tribunal on 16.07.2008, is null and void and of no effect. Consequently, I order that an order for Judicial Review of certiorari be and is hereby issued to remove into this Honourable Court and quash the award of the Imenti South District Land Disputes Tribunal case No. 35 of 2008 dated 16th July 2008 and read in open court on 3.11.2010 vide Nkubu Senior Principal Magistrates Land Disputes Tribunal No. 1 of 2008.

In view of the Repeal of the **Land Disputes Act No. 18 of 1990**, I make no order as to costs.

DATED AND SIGNED THIS 18TH DAY OF OCTOBER, 2018.

E. C. CHERONO

ELC JUDGE - KERUGOYA

DELIVERED IN OPEN COURT AT MERU THIS 31ST DAY OF OCTOBER, 2018

LUCY N. MBUGUA

ELC JUDGE - MERU

In the presence of:

Thangicia for exparte applicant

Miss Maamu H/B for Mutuma for the interested party

C/A: Janet/Galgalo