



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CONSTITUTIONAL REFERENCE NO. 4 OF 2012

PAUL NDIANG'UI MURIITHI APPLICANT

VS

WANJIRU WAHOME1ST RESPONDENT

THE HON.ATTORNEY GENERAL(SUED ON BEHALF OF DISBANDED

LAMURIA LAND DISPUTE TRIBUNAL & NANYUKI

SENIOR PRINCIPAL MAGISTRATE COURT) 2ND RESPONDENT

RULING

The application dated 9/5/2012 seeks prayers that the Court does declare as a nullity the award by the Lamuria Land District Tribunal made on the 18th October, 2011 in Lamuria Land Dispute Tribunal Case Number 15 of 2011. That the Court does declare as a nullity all subsequent orders emanating from the aforementioned Lamuria Land Dispute Tribunal which are the reading of the said award and entering of the award as a judgment of the Court and the subsequent decree dated 14th February 2012 issued by Senior Principal Magistrate Nanyuki. The warrant to the plaintiff to give possession of Land Parcel Number TIGITHI/MATANYA BLOCK 3/284. The applicant also seeks an order from the Court to declare the eviction of the Applicant from TIGITHI/MATANYA BLOCK 3/284 on 24th April 2012 illegal and order the applicant to take back possession of Land Parcel Number TIGITHI/MATANYA BLOCK 3/284.

The application is based on grounds that the Lamuria Land Dispute Tribunal made an Award on 18th October, 2011 way after the Statutory Legislation Land Dispute Tribunal Act No. 18 of 1990 that had granted it power had been repealed thereby making the award a nullity in Law. That subsequent orders have been issued on the null award which orders are also a nullity. That it is only mete and just that the orders sought are granted.

The application is supported by the affidavit of Paul Ndiang'ui Muriithi who states that he was a defendant in Land Case Number 15 of 2011 before Lamuria Land Disputes Tribunal that revolved around parcel of land TIGITHI/MATANYA BLOCK 3/284 (Matanya Center). That after the proceedings he was informed by his wife that she was told that the Tribunal would make its ruling on 19th October 2011. Upon visiting the Tribunal's offices on 19th October 2011 he was advised that if he wanted to know the outcome of the Award he would have to go to the Nanyuki Principal Magistrate Court. That he received a Notice of Motion dated 9th December, 2011 to appear in Nanyuki Senior Principal Court on 19th February 2012 which Notice of Motion was seeking to Read the Award of the Lamuria Land Control Board and enter the same as a judgment of the court. However the court read the Award and entered judgment in terms of the said Lamuria Land Dispute Tribunal Award on 1st February 2012. That upon

perusing the award it showed that the award was dated 18th October, 2011 at Lamuria Central District and allegedly read to the parties on the same date and signed by one Charles Kagumba (Chairman), Nancy Muriithi (Member) and Antony Maina and a decree was subsequently issued on 14th February 2012 by the Senior Principal Magistrate Court Nanyuki.

The applicant was vide a Notice of Motion dated 7th February 2012 summoned once again by to the Senior Principal Magistrate's Court Nanyuki in which application it was sought that he be evicted from TIGITHI/MATANYA BLOCK 3/284 (Matanya Center). That subsequently thereafter, a warrant to plaintiff to give possession of land and an order for eviction did issue and on 24th April 2012 the applicant was evicted from the said land thus TIGITHI/MATANYA BLOCK 3/284 Matanya Centre. That he was advised by his advocate on record that as at 18th October, 2011 the day the Lamuria Land Control Board delivered the award the Land Disputes Tribunal Act No. 18 of 1990 the Statutory Legislation upon which the Lamuria Land Control Board was acting on had since been repealed by the Environment and Land Court Act Number 19 of 2011 in its section 31 which commenced on 30th August 2011. That he was further advised by his advocate on record that the making of the award on 18th October, 2011 was a nullity as it was not sanctioned following the aforementioned Environment and Land Court Act Number 19 of 2011 which commenced on 30th August 2011. He was further advised by his advocate on record which advise he verily believed to be true that any subsequent orders that had been issued based on the award that was a nullity are also a nullity.

The Attorney General was sued on behalf of the disbanded Land Disputes Tribunal. The Attorney General argues that the application is an abuse of the process of the court and that the applicant has not annexed title and that the documents exhibited shows that the 1st respondent has title to the property.

Mr. N'gan'ga on his part filed grounds of opposition that the application is bad in law, frivolous and gross abuse of court process and that the applicant lacks locus standi.

The **gravamen of Mr. Muhoho's** submissions is that by the time the Lamuria Land Disputes Tribunal was making its decision, the law had been repealed on 30/8/2011 to disband the Tribunals. The award was adopted on 1/ 2/2012 upon which the respondents moved the court to evict the applicant which orders were obtained.

Mr. Makori vehemently opposed the application. He argues that the applicant has no title to property and that the applicant has never filed an appeal. He submits that section 30 of the Environment and Land Court Act provides for transition.

Lastly, that the applicant has not come under Articles 22,23 and 47 of the Constitution of Kenya.

Mr. N'gan'ga associated himself with the Attorney General's submissions and added that the proceedings herein were made after the award was made. This court finds that the award was made on the 18/10/2011 at Lamuria in Laikipia Central District by the elders who intimated that an appeal if any was to be submitted to Provincial Land Dispute Tribunal within 30 days from the date of the award.

To determine whether the Tribunal had the power to make the decision as it did, I will first of all consider the provisions of **Section 30 of the Environment and Land Court Act NO 19 OF 2011 which is transitional and provides that all proceedings related to environment or to the use and occupation and title to land pending before any court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.**

This is to be read with Section 23 (3)(e) of the Interpretation and General Provisions Act Cap 2 Laws of Kenya which provides that where a written law repeals in whole or in part another written law, then, unless a contrary intention appears, the repeal shall not affect an investigation, legal proceeding or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment maybe imposed, as if the repealed written

law had not been made. The import of this section is that the repeal of an Act of parliament does not imply the death of a legal action commenced under the repealed Act

The Court was established on 30/8/2011 but became operational on 9/2/2012 vide Gazette Notice No. 1617 in the Kenya Gazette of 17/2/2012. On this date of operationalization, the honorable Chief Justice gazetted Practice directions in exercise of the powers conferred unto him by the sixth schedule part 5 section 22 of the Constitution of Kenya 2010 and in pursuance to Section 30(1) of the Environment and Land Court Act No. 19 of 2011 of the Laws of Kenya on transitional provisions relating to the environment and the use and occupation of all title to land as read with section 31 of the Act. Practice direction No. 2 provides that all proceedings pending before the District Land Disputes Tribunals as at the date of the enactment of the Environment and Land Court Act, 2011 were to be moved to the nearest Resident Magistrate's court for hearing and determination by a court presided over by a magistrate, of the rank of Resident Magistrate. There appear to be a conflict between the Environment and Land Court Act, no 19 of 2011 and the Practice direction on proceedings relating to the Environment and the use and occupation of Land on the issue of transition. Whereas the Act speaks of "as at the date of operationalization" the practice note speaks of "the date of enactment" Moreover whereas the Act does not exempt the Land disputes Tribunal's, the Practice Directions do so in direction No1. I do hold that where the Practice directions are in conflict with the provisions of an Act then the Act prevails. The implication of the above is that I find that the Land Disputes Tribunals ceased to exist on the enactment of the Act however for purposes of proceedings pending before the tribunal the said tribunal had the power to hear and determine the same until the operationalization of the court.

This court finds and agrees with **Mr. Ng'ang'a and Mr. Makori** that the District Land Tribunals had the powers to continue with the proceedings relating to the use and occupation of land and make a determination subject to the said Tribunal having competent jurisdiction until the operationalization of the court. However ,the tribunal had no jurisdiction to entertain any dispute as pertains to environment and title to land. The decision of the Tribunal was adopted as a judgment of the court on the 1st of February 2012 before the publication the gazette NO1617 at page 383 of the Kenya Gazette of 17th February, 2012 of the practice directions and before thereafter courts became operational and therefore the same was done within the provisions of law.

I do not agree with **Mr. Muhoho** that time begins running at the enactment of the law. I do find that time begins running when the courts become operational. The upshot of the above is that the application is dismissed with costs.

SIGNED AND DATED AT ELDORET THISDAY OF..... 2015

ANTONY OMBWAYO

JUDGE

DELIVERED AND SIGNED AT NYERI THIS 27TH DAY OF JANUARY,2015

LUCY WAITHAKA

JUDGE