



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

JUDICIAL REVIEW (JR) NO. 37 OF 2013

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN SIAKAGO LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

PRINCIPAL MAGISTRATE SIAKAGO LAW COURTS2ND RESPONDENT

NGARI MUNYI 1ST INTERESTED PARTY

HARRISON NYAGIKO MUNYI2ND INTERESTED PARTY

CHARLES NGARI MUNYI3RD INTERESTED PARTY

AND

KAMWOCHERE MORE EXPARTE APPLICANT

JUDGMENT

Having obtained leave on 19th September 2013, the applicant herein filed this Notice of Motion on 23rd September 2013 seeking the following orders:-

1. ***That this Honourable Court be pleased to issue an order of certiorari to call into this Court and quash the un-dated decision of Siakago Land Disputes Tribunal Committee in its Tribunal case No. 360 of 2008 and adopted by Principal Magistrate’s Court Siakago in LDT No. 4 of 2013***
2. ***That costs be provided for***

The said Notice of Motion was supported by the annexed verifying affidavit of the applicant and based on the grounds that the said Siakago Land Disputes Tribunal Committee acted contrary to the law and in excess of its jurisdiction in hearing and determining matters of title under the ***Registered Land Act*** (now repealed) and specifically by ordering that the parcel of land No. EMBU/GANGARA/2734 belonging to the applicant herein be sub-divided into three (3) portions and shared out as follows amongst the interested parties:-

NGARI MUNYI – 2 acres

HARRISON YAGIKO - 2 acres

According to the applicant's statement of facts, the main issue in these proceedings is that the Siakago Land Disputes acted contrary to the law and in excess of its jurisdiction in hearing and determining matters of title under the now repealed Registered Land Act.

The 1st and 2nd respondent filed grounds of opposition to the Notice of Motion arguing that the applicant ought to have appealed if aggrieved by the award rather than come under Judicial Review and in any case, this dispute will best be dealt with in a civil Court.

On behalf of the interested parties, the 1st interested party (NGARI MUNYI) filed a replying affidavit in which he deponed, inter alia, that land parcel No. EMBU/GANGARA/2734 and EMBU/GANGARA/2706 (herein after the suit property) were originally one block of land belonging to their father MUNYI MORI before being sub-divided into two portions and the interested parties settled in EMBU/GANGARA/2734 from 1975 and that is why they sought to be given six acres of the same. That the Siakago Land Disputes Tribunal heard the case in 2008 and forwarded the award to the Court where it was read on 1st August 2013 and therefore it is more than six months since the Tribunal made its award and this Notice of Motion is incompetent and ought to be dismissed.

Submissions have been filed both by Mr. Njeru Ithiga advocate for the applicant and Mr. Muyodi advocate for the 1st, 2nd and 3rd interested parties. I have considered those submissions, the application, the objection thereto and the 1st interested party's replying affidavit. I have also looked at the proceedings before the Siakago Land Disputes Tribunal in their case No. 360 of 2008 wherein the plaintiff was KAMWOCHERE MORI and the defendant was NGARI MUNYI and the subject matter in dispute was the suit property. After hearing the parties and their witnesses, the said Tribunal in an award which is un-dated ruled that the suit property be allocated as follows:-

1. **Parcel No. EMBU/GANGARA/2706 belonging to MUNYI MORI be divided as follows:-**
 - a. **Patrick Njagi Kamwochere - 2 acres**
 - b. **Shariekel Munyi Kamwochere - 2 acres**
 - c. **Stephen Ngari Kamwochere - 2 acres**

2. **Parcel No. EMBU/GANGARA/2734 belonging to KAMWOCHERE MORI be divided as follows:-**
 - a. **Ngari Munyi - 2 acres**
 - b. **Harrison Yagiko Munyi - 2 acres**
 - c. **Charles Ngari Munyi - 2 acres**

It is the Tribunal's orders as relates to the parcel No. EMBU/GANGARA/2734 that is the subject of this judgment.

The first issue raised by the interested parties both in their replying affidavit and in the submissions of the counsel Mr. Muyodi is that this Notice of Motion was filed more than six months since the Siakago Land Disputes Tribunal made its award in 2008 yet the application was filed on 23rd September 2013. However, in his submissions in support of this application, Mr. Njeru Ithiga stated that although the Siakago Land Disputes Tribunal heard the dispute in 2008, the award was only read to the parties on 1st August 2013. As indicated above, the award of the Tribunal is un-dated although the dispute was registered in 2008 being case No. 360 of 2008. It is not clear when the award was forwarded to the Principal Magistrate's Court at Siakago for adoption as required by **Section 7(2) of the repealed Land Disputes Tribunal Act** which empowered the Court to enter judgment and draw a decree in terms of the award. What is clear from the resultant decree dated 1st August 2013 is that Tribunal's award was registered as LDT Case No. 4 of 2013 and reads, in so far as is relevant for this judgment, as follows:-

“This suit coming for reading of Siakago Land Disputes Tribunal award and upon reading the award and adopting the same as judgment of this Court

IT IS HEREBY DECREED:

1. ***That Land Parcel Embu/Gangara/2706 belonging to Munyi Mori be divided as follows:-***
 - a. ***Patrick Njagi Kamwochere - 2.0 acres***
 - b. ***Shariemel Munyi Kamwochere - 2.0 acres***
 - c. ***Stephen Ngari Kamwochere - 2.0 acres***
2. ***That land parcel No. Embu/Gangara/2734 belonging to Kamwochere Mori be divided as follows:-***
 - a. ***Ngari Munyi - 2.0 acres***
 - b. ***Harrison Yagiko Munyi - 2.0 acres***
 - c. ***Charles Ngari Munyi - 2.0 acres***
3. ***That both parties to pay surveyors fees or costs***
4. ***That there be no order as to costs.***

GIVEN under my hand and the seal of the Court this 1st day of August 2013.

A.N. MAKAU

Ag. Senior Resident Magistrate”.

In his replying affidavit, the 1st interested party has deponed in paragraphs 14 and 15 that the Siakago Land Disputes Tribunal heard and decided the dispute in 2008 and forwarded the same to the Court the same year but it was not until 1st August 2013 that the award was read and therefore it is more than six months since the Tribunal made its decision. It is not clear when the award was forwarded to the Siakago Principal Magistrate’s Court for adoption. Indeed it is not even clear when the award was arrived at because it is un-dated. However, the award could only be confirmed as a judgment of the Court once it is read to the parties and only then could it be acted upon because **Section 7(2) of the repealed Land Disputes Tribunal Act** provided as follows:-

“The Court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered, a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act”.

Indeed under the law, the parties would not know about the decision of the Tribunal until the Tribunal Chairman files it with the Court. Therefore, the applicant only became aware of the Tribunal’s award when it was read to him and made a judgment of the Court on 1st August 2013. He could not have known of the award in 2008 even if that is when it was made. The applicant therefore moved the Court within the required six months because he filed this Notice of Motion on 23rd September 2013.

In his submissions on behalf of the interested party, Mr. Muyodi has made a strong submission that the interested parties have lived on and developed the six acres allocated to them and that it was only fair that the Tribunal awards them those portions. That may be so. However, in Judicial Review, the Court is concerned about the illegality, irrationality or impropriety of administrative actions. The purpose of Judicial Review is to check that public bodies do not exceed their jurisdiction while carrying out their duties. It is not about examining the evidence that was adduced in the Tribunal with a view to forming its own view about the dispute. Judicial Review is only concerned with the decision making process and not with the merit or otherwise of the decision itself. In **MUNICIPAL COUNCIL OF MOMBASA VS REPUBLIC AND UMOJA CONSULTANTS LTD CIVIL APPEAL NO. 185 of 2001 NBI (2002 e**

K.L.R., the Court of Appeal described the scope of Judicial Review in the following terms:-

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision – maker take into account relevant matters or did it take into account irrelevant matters? These are the kind of questions a Court hearing a matter by way of Judicial Review is concerned with, and such Court is not entitled to act as a Court of appeal over the decider, acting as an appeal Court over the decider would involve going into the merits of the decision itself – such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of Judicial Review”.

It was submitted by the Hon. Attorney General on behalf of the respondent that this matter can only properly be dealt with in a Civil Court and that the applicant ought to have appealed against the decision of the Tribunal. It is of course true that the applicant had a right to file an appeal within 30 days from the date the decision was made. However, as was held by Nyamu J. (as he then was) in REPUBLIC VS THE COMMISSIONER OF LANDS EX-PARTE LAKE FLOWERS LIMITED MIS CIVIL APPLICATION NO. 1235 of 1998 (NBI), availability of other remedies is no bar to the granting of Judicial Review reliefs. I agree and do not see the reason why any Court should stand in the way of a party who wishes to invoke its Judicial Review jurisdiction especially where the issue raised is one of want of jurisdiction by the decision making body.

Having made the above findings, this Court must now examine if indeed, from the evidence available, the applicant is entitled to the remedy sought in his Notice of Motion dated 23rd September 2013.

It is clear from the proceedings before the Siakago Land Disputes Tribunal that the dispute between the parties involved two registered parcels of land being EMBU/GANGARA/2734 and EMBU/GANGARA/2706 (the suit property). The Tribunal went on in its award to order the sub-division of EMBU/GANGARA/2734 into three (3) portions and awarded two (2) acres to each of the interested parties. As the dispute involved ownership of registered land, the Siakago Land Disputes Tribunal had no jurisdiction to entertain it and even make the orders that it did sub-dividing such land – JOTHAM AMUNAVI VS THE CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL AND ANOTHER, COURT OF APPEAL CIVIL APPEAL NO. 256 of 2002. See also the case of DOMINICA WAMUYU KIHU VS JOHANA NDURA WAKARITU COURT OF APPEAL, CIVIL APPEAL NO. 269 of 2007 (NYERI) which was cited by Mr. Ithiga in his submissions. It follows therefore that since the Siakago Land Disputes Tribunal had no jurisdiction to entertain the dispute before it and make the orders that it did, those orders and their subsequent adoption by the Principal Magistrate’s Court Siakago in Case No. LDT 4 of 2013 were all nullities which must be called into this Court for quashing. The applicant has been able to demonstrate that those orders were arrived at in excess of jurisdiction.

I accordingly grant the applicant the orders sought in his Notice of Motion dated 23rd September 2013 and issue an order of certiorari and call into this Court for quashing the un-dated decision of Siakago Land Disputes Tribunal in Tribunal Case No. 360 of 2008 as adopted by the Principal Magistrate’s Court in Siakago Land Disputes Tribunal No. 4 of 2013.

As the parties are related, each shall bear their own costs.

B.N. OLAO

JUDGE

13TH MARCH, 2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Njeru Ithiga for Applicant – present

Attorney General for Respondents – absent

Mr. Okwaro for Interested parties – absent

COURT: Judgment delivered this 17th day of March, 2015 in open Court.

Mr. Njeru Ithiga for Applicant present

Mr. Okwaro for Interested parties absent

Attorney General for Respondents absent.

B.N.OLAO

JUDGE

17TH MARCH, 2015