



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

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 208 OF 2006**

**REPUBLIC .....APPLICANT**

**VERSUS**

**LAND DISPUTES TRIBUNAL**

**GITHUNGURI.....<sup>1ST</sup> RESPONDENT**

**DISTRICT MAGISTRATE GITHUNGURI.....<sup>2ND</sup> RESPONDENT**

**PATRICK NDUNG’U WATHINGIRA.....INTERESTED PARTY**

**EX-PARTE**

**THENDU WATHINGIRA**

**JUDGEMENT**

The initial Applicant in these proceedings was Thendu Wathingira. He passed away on 16<sup>th</sup> April, 2007 and I will henceforth refer to him as the deceased. His wife Warimu Thendu and son Peter Mwachu Thendu were allowed to substitute the deceased. They are therefore the 1<sup>st</sup> Applicant and 2<sup>nd</sup> Applicant respectively. The 1<sup>st</sup> Respondent is the Land Disputes Tribunal, Githunguri. The District Magistrate’s Court, Githunguri is the 2<sup>nd</sup> Respondent. Patrick Wathingira is the Interested Party.

Briefly, the Interested Party herein was the claimant in Land Dispute Case No. 16/20/11/2005 before the Land Disputes Tribunal, Githunguri (the Tribunal). The deceased was the objector. The two are brothers.

The Interested Party’s claim was that L.R. No. Githunguri/Nyaga/284 which was measuring 3.50 acres should be sub-divided into two equal portions with one half being awarded to him and the other half being awarded to the deceased. At the hearing before the Tribunal it emerged that the said parcel of land had been sub-divided into two portions and registered as L.R. No. Githunguri/Nyaga/701 and L.R. No. Githunguri/Nyaga/702. L.R. No. Githunguri/Nyaga/701 was registered in the name of the deceased and L.R. No. Githunguri/Nyaga/702 was allegedly registered in the name of the Interested Party. The Interested Party told the Tribunal that he could not verify from a search in the land office that this particular parcel of land was indeed registered in his name. It also emerged that L.R. No. Githunguri/Nyaga/701 measured 2.0 acres whereas L.R. No. Githunguri/Nyaga/702 measured 1.5 acres.

At the conclusion of the hearing the Tribunal revoked the titles for Githunguri/Nyaga/701 and

Githunguri/Nyaga/702 and directed that the land parcel in question be sub-divided into two equal portions with the Interested Party getting one piece and the deceased getting the other piece. The deceased was aggrieved by the decision of the Tribunal and subsequently filed these proceedings seeking to quash the decision of the Tribunal.

A perusal of the pleadings reveal that the application is premised on the grounds that the Tribunal had no jurisdiction to handle the matter and that it acted in breach of the rules of natural justice by failing to afford the deceased an opportunity to avail his witnesses. It is also alleged that the decision of the Tribunal should be quashed on the ground that it is tainted with corruption as the Secretary of the Tribunal received a bribe of Kshs.85,000/= in order to influence the ruling in favour of the Interested Party.

The Interested Party opposed the application through a replying affidavit sworn on 9<sup>th</sup> June, 2006. The Interested Party averred that parcels No. Githunguri/Nyaga/701 and Githunguri/Nyaga/702 were all registered in the deceased's name. He denied bribing the secretary to the Tribunal so as to get a favourable ruling.

The Respondent/Tribunal appears not to have filed any response to the application. On 13<sup>th</sup> April, 2011 Mr. Nguyo for the Respondent told the Court (Gacheche, J) that the Respondent would not be opposing the substantive notice of motion dated 15<sup>th</sup> May, 2006. It is therefore concluded that the Respondent is not opposed to the application.

Before proceeding to the substantive issue, I find it important to establish whether the application before this court being an application for an order of certiorari was filed within six months as required by Order 53 Rule 2 of the Civil Procedure Rules, 2010. A perusal of the court file shows that the application for leave to commence these proceedings was received in the registry on 26<sup>th</sup> April, 2006. The decision of the Tribunal was read out to the parties on 15<sup>th</sup> August, 2005 and filed in court on 28<sup>th</sup> October, 2005. The decision of the Tribunal was adopted as a judgement of the court on 12<sup>th</sup> January, 2006.

In the notice of motion application dated 15<sup>th</sup> May, 2006 the following orders are sought:-

- “1. THAT an Order of Certiorari do issue to remove into this Honourable Court and quash the Judgment of the 2<sup>nd</sup> Respondent dated 12<sup>th</sup> February, 2006 and made in accordance with an Award of the 1<sup>st</sup> Respondent made on 15<sup>th</sup> August, 2005 in Land Dispute Number 16/20/11 of 2005 and further quash proceedings arising therefrom and ensuing thereto.**
- 2. THAT an Order of Prohibition do issue prohibiting the Respondents from continuing or pursuing the actions pertaining to sub-division of Githunguri/Nyaga/701.**
- 3. THAT costs of this Application be provided for.”**

Looking at the way prayer No.1 of the application is framed, it is clear that the decision being attacked is that of the 2<sup>nd</sup> Respondent dated 12<sup>th</sup> February, 2012. The application before this court was filed within six months from that date. If the application succeeds, and the decision of the 2<sup>nd</sup> Respondent is quashed, the decision of the 1<sup>st</sup> Respondent even if left untouched would be of no use to anybody. The law, which has since been revealed, in respect of the decisions of the 1<sup>st</sup> Respondent was that the same could not be enforced without adoption by the 2<sup>nd</sup> Respondent. I therefore find and hold that this application is properly before this court.

The main question in this matter is whether the Tribunal had jurisdiction to determine the dispute that was filed before it by the Interested Party. The Tribunal was a creature of the repealed Land Disputes Tribunals Act, 1990 which at Section 3(1) provided that:

**“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 is clear from a reading of the said Section that the Tribunal had no jurisdiction to revoke titles for L.R. No Githunguri/Nyaga/701 and L.R. No Githunguri/Nyaga/702. The application before this court therefore succeeds.

The decisions of the respondents in respect of parcels numbers Githunguri/Nyaga/701 and Githunguri/Nyaga/702 are quashed and the 2<sup>nd</sup> Respondent is prohibited from taking any further action in respect of the decision of the 1<sup>st</sup> Respondent in relation to the said parcels of land. Considering the circumstances of this matter, I make no orders as to costs.

Dated, signed and delivered at Nairobi this 21<sup>st</sup> day of February , 2014

**W. K. KORIR,**

**JUDGE OF THE HIGH COURT**