



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

JUDICIAL REVIEW APPLICATION NO. 24 OF 2013

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDER OF CERTIORARI

AND

IN THE MATTER OF THE LAND DISPUTE TRIBUNAL ACT NO. 18 OF 1990

AND

IN THE MATTER OF PROVINCIAL APPEALS COMMITTEE CASE NO. 14 OF 2009

AND

IN THE MATTER OF WANGURU SENIOR RESIDENT MAGISTRATE

ARB. NO. 9 OF 2009

REPUBLIC APPLICANT

VERSUS

PROVINCIAL APPEALS COMMITTEE1ST RESPONDENT

WANGURU SENIOR RESIDENT MAGISTRATE2ND RESPONDENT

EUNICE MUTONYI3RD RESPONDENT

JESEE MURIITHI GATIMU 4TH RESPONDENT

JOSPHAT KAMAU GATIMU 5TH RESPONDENT

JAMES GATHARA GATIMU 6TH RESPONDENT

ESTHER WANJIRU MUTUGI7TH RESPONDENT

AND

PETER GATIMU KANYONYOEX-PARTE APPLICANT

JUDGMENT

Pursuant to the leave granted by Lady Justice Githua on 13th March 2013, the Ex-parte applicant herein namely PETER GATIMU KANYONYO moved this Court by a Notice of Motion filed on 18th March 2013 seeking to quash the 2nd respondent's decision made on 21st February 2013 in Wanguru Senior Resident Magistrate's Court Arbitration Case No. 9 of 2009.

Though the respondents were served, only the 3rd, 5th, 6th and 7th respondents attended Court and addressed me on the application with the 3rd respondent supporting the applicant.

The thrust of the application is that the dispute between the parties involved land parcels MUTIRA/KIAGA/1672, 1673 and 1677 which were registered in the applicant's names yet the Mwea South Land Dispute Tribunal purported to hear the dispute and made an award which was filed at the Wanguru Senior Resident Magistrate's Court in Arbitration Case No. 9 of 2009 and was adopted. The Provincial Appeal Committee also adopted the award which directed that the land parcels No. MUTIRA/KIAGA/1672, 1673 and 1677 be divided and shared among the 3rd to 7th respondents. It is the applicant's case that the said award was a nullity and ought to be quashed because the Tribunal had no jurisdiction to entertain a dispute relating to title to land.

The 3rd respondent supports the application.

The 5th respondent says the orders sought to be quashed have already been implemented and the land sub-divided and respective title deeds issued.

The 6th respondent argues that if the award is quashed, he will have nowhere to go as the land has already been sub-divided.

The 7th respondent accused the 3rd respondent of conspiring with the applicant.

I have heard the submissions of Mr. Omayya advocate for the applicant as well as the submissions of the respondents who appeared and the replying affidavits on record.

It is clear that the original land in dispute was MUTIRA/KIAGA/76 and in its award, the Kirinyaga South District Land Tribunal ordered that the same be divided among the following:-

1. **PETER GATIMU KANYONYO** - 1 Acre
2. **EUNICE MUTHONI** - 1/3 Acre
3. **AGNES WANJIKU** - 1/3 Acre
4. **ESTHER WANJIRU** - 1/3 ACRE

The award was adopted by the Senior Resident Magistrate's Court at Wanguru on 25th June 2009 and a Decree followed. An appeal was filed to the Appeals Committee which confirmed the award. It is the applicant's case that Appeals Committee acted ultra-vires.

The applicant's case is justified. The subject matter of the dispute between the parties was a registered parcel of land known as MUTIRA/KIAGA/76 which the Tribunal ordered to be shared out as indicated above. Under **Section 3 (1) of the now repealed Land Dispute Tribunal Act**, a Tribunal had no power to determine a dispute involving title to land. In the case of **JOTHAM AMUNAVI VS THE CHAIRMAN SABATIA DIVISIONAL LAND DISPUTES TRIBUNAL & ANOTHER C.A NO. 256 of 2002**, the Court of Appeal expressed itself as follows:-

"It is clear that the proceedings before the Tribunal related to both title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3 (1) of the Land Disputes Tribunal Act. By Section 159 of the Registered Land Act such a

dispute can be tried by the High Court or by the Resident Magistrate's Court in cases where the latter has jurisdiction".

That decision is binding on me. I note from the award of the Tribunal herein that the parties are a man (applicant) and his children. No doubt the Tribunal may have been motivated by the best interests of distributing the land among the parties. However, the law as demonstrated in the ***AMUNAVI*** case (supra) and many other cases is that where the disputed involves registered land, a Tribunal has no jurisdiction to entertain such a dispute and whatever decision such a Tribunal renders, becomes a nullity and certiorari is about quashing nullities. I appreciate the 5th, 6th and 7th respondents' cases that the land has since been sub-divided to give rise to other parcels of land. However, a Court exercising judicial review jurisdiction has inherent powers to quash a decision that was arrived at by an inferior Court or Tribunal acting in excess of its jurisdiction. A decision arrived at in the absence of jurisdiction cannot be allowed to stand. It follows therefore that the decision of the Tribunal as adopted by the Senior Resident Magistrate's Court and the Appeals Committee were all in excess of jurisdiction and must be quashed.

I accordingly grant the orders sought in the applicant's Notice of Motion dated and filed herein on 18th March 2013 and quash the decision of the Appeals Committee. As mentioned above, the parties herein are a father and his children. I would encourage them to find an amicable settlement to their dispute. Each party to meet their own costs.

B.N. OLAO

JUDGE

17TH FEBRUARY, 2014

17/2/2014

Coram

B.N. Olao – Judge

CC – Mwangi

Applicant – present

Respondent – absent

COURT: Judgment delivered in open Court this 17th day of February, 2014.

Applicant present in person

No appearance for respondent.

B.N. OLAO

JUDGE

17TH FEBRUARY, 2014