



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT & LAND COURT
JUDICIAL REVIEW NO.2 OF 2012

HAMSOD GACHOKA MUKENGU.....APPLICANT

VERSUS

MARGARET WANJERI WANJIRU & 3 OTHERS RESPONDENTS

J U D G M E N T

Hamsod Gachoka Mukengu hereinafter referred to as the *ex parte* applicant is the registered proprietor of land parcel No.LOC.19 KANYENYAINI/1004. He seeks for the relief of an order of ***Certiorari*** to remove to the High Court and quash the proceedings and the decision of the Kangema Land Disputes Tribunal and the proceedings before the Senior Resident Magistrate Kangema being Land Dispute Tribunal Case No.21/11 in respect of land parcel No.Loc.19/Kanyenyaini/1004.

The grounds for seeking for the order is that the Tribunal acted ***ultra vires*** the mandate given by the Land Disputes Tribunal Act No.18 of 1990 in entertaining matters pertaining the title to land and that the decision is *ultra vires* the Registered Land Act Cap 300 Laws of Kenya (repealed) by impeaching rights of a registered owner.

The facts of the matter as verified by the affidavit of Hamsod Gachoka Mukenya of Kangema are that land parcel No.Loc 9/Kanyenyaini/1004 is registered in his name having been given the same by his late mother. The respondents commenced proceedings at the Land Disputes Tribunal Kangema claiming a portion of one acre out of the said land. The Tribunal proceeded to hear the claim and resolved that the suit land measuring 4 acres be subdivided into 2 portions one measuring 3 acres and the other measuring 1 acre. The appellant was to receive the 3 acre parcel whilst the respondents were to share the 1 acre parcel and that the executive officer of the court was to sign transfer documents. In accordance with the provisions of the ***Land Disputes Tribunal Act No.18/90***, the decision was read to them and subsequently sent to Senior Resident Magistrates Court Kangema and registered as L.D.T Case No.21/11 and thereafter judgment was entered in terms of the award on 4/8/11 upon which the respondents applied for the executive officer of the court to be allowed to sign all necessary documents on behalf of the applicant among other orders sought. He was informed by his advocate on record which information he believed to be true that the High Court could interfere with the decision of the tribunal by way of judicial review by ***quashing*** it because the tribunal acted in excess of its jurisdiction in entertaining a matter pertaining to title to land and further, acted beyond its powers by contravening the rights of a registered owner.

The applicant obtained the leave of the court on the 24/11/2012 as required by the ***Civil Procedure Rules***. The substantive Notice of Motion seeking Judicial Review Orders of *Certiorari* was filed on the 3/2/2012 within 21 days as required by law. The 1st respondent filed a replying affidavit whose import

is that she has authority from the 2nd respondent Jane Njambi Wanjiru who is her sister to swear that affidavit in reply to the notice of Motion. She admitted that the applicant is the registered owner of the land parcel but averred that the applicant has failed to disclose to the Honorable court that he was given the said parcel of land by their late grandmother for himself on the one hand and on the other hand to hold the same **in trust** for their deceased mother Wanjiru Mukenga from whom they inherited part of the land parcel. Further and in addition to the above she had lived and farmed on the said land parcel with her sister Jane Njambi Nyambura all their lives and have known no other home from the time they were born.

Moreover she states that they are entitled to live and own the portion of the said land parcel where they have lived all their entire lives because their deceased grandmother gave the land parcel to the applicant to own jointly with their deceased mother from whom they inherited the land parcel even though they have no title deed for the same. She argues that they had every right to seek justice and enforcement of their land rights in every way possible and the Land Disputes Tribunal had every right to give any remedy it deemed fit and that the award was legal because the applicant acknowledged that she and her sister are entitled to inherit the said land parcel.

The Attorney General filed Notice of appointment but did not file the replying affidavit and did not make any submission.

When the matter came up for highlighting of submissions Mr Gacheru for the exparte applicant briefly submitted that the Tribunal made an order that the suit land be subdivided and yet it had no jurisdiction to make such an order. Both parties were to meet the cost of the proceedings and the executive officer Kangema law courts was to sign all the transfer documents. The respondents did not attend court during hearing though they were served.

I have considered the application and evidence on record and do find that the Tribunal was not **properly constituted** as it was comprised of the Chairman and 9 members as opposed the Chairman and two or four elders selected by the District Commissioner from a panel of elders appointed under Section 5 of the Act. This was contrary to the provision of **Section 4 of the Land Disputes Tribunal Act No.18 of 1990 (repealed)** that provided as follows:-

4. (1) There shall be established a Tribunal to be called Land Disputes Tribunal for every registration district.

(2) **Each Tribunal shall consist of;**

(a) a chairman who shall be appointed from time to time by the district commissioner from a pannel of Elders appointed under section 5; and

(b) either two or four elders selected by the District Commissioner from a panel of elders under section 5

This alone makes the proceedings and decision null and void.

Moreover this court finds that the Land Disputes Tribunal lacked jurisdiction to entertain the dispute as the respondents claimed an interest in the disputed land under trust. Section 3(1) of the Land Disputes Tribunal Act No.18 of 1990 (repealed) provided for the jurisdiction of the tribunal thus;

a) The determination of boundaries to land including land held in common.

b) Claim to work on and occupy land.

c) Trespass.

The orders granted by the Tribunal were clearly not within Section 3(1) of the Act as the Tribunal

determined land ownership based on trust and therefore this court finds that the orders were issued without jurisdiction hence *ultra vires* the statutory provisions clothing the tribunals with their mandate.

The upshot of the above is that the application is allowed with costs to the applicant.

Dated, signed and delivered at Nyeri this 20th day of June 2014.

A. OMBWAYO

JUDGE