



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JR/ELC MISC. APPLICATION NO. 98 OF 2011

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1999

AND

IN THE MATTER OF RUIRU LAND DISPUTES TRIBUNAL CASE NO. 18 OF 2010

AND

IN THE MATTER OF THIKA CHIEF MAGISTRATE'S CASE NO. DO 76 OF 2011

REPUBLIC.....APPLICANT

VERSUS

RUIRU DISTRICT LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THIKA CHIEF MAGISTRATE.....2ND RESPONDENT

***EX PARTE:* LUCIA WAITHIRA MUIRURI**

OLIVER MURUTHI

JUDGEMENT

Introduction

1. By a Notice of Motion dated 30th November, 2011, the *ex parte* applicants herein, **Lucia Waithira Muiruri** and **Oliver Muruthi** seek the following orders:

1. THAT an order of Certiorari do issue directed at the decision of the Ruiru Land Disputes Tribunal Case No. DO 18 of 2010 and to quash proceedings in Thika Chief Magistrate Court Case No. DO 76 of 2011.

2. THAT costs be borne by the Respondents.

Applicant's Case

2. The application was supported by an affidavit sworn by **Lucia Waithira Muiruri** on 18th November,

2011.

3. According to the deponent, she was a shareholder of Nyakinyua Investments Limited and a fully paid up member vide a share certificate No. 4771 dated 5th September 1991 which has a ballot No. 3106 which enabled her to be allotted the suit plot and took possession after allocation and done great investment on that plot.

4. According to her she had built 20 residential rooms and since 1991 I have been in occupation of the plot which houses many tenants. However in 2008 or thereabouts the Interested Party, **Njeri Kihato** started claiming the plots belong to her through assistance of some officials of Nyakinyua Investments Limited. From 2008 upto 2010 the said interested party disappeared and when she resurfaced she revived her allegations that she was the owner of the said plot without adducing any evidence in support of the said claim.

5. The deponent then filed a Civil Suit No. 1991 of 2010 at Thika Law Courts which matter was still pending.

6. According to the deponent, she and the said **Njeri Kihato** severally appeared before the Nyakinyua Investment Limited officials and it was established that she was the undisputed owner though the interested party unlawfully extended her claim to a plot owned by **Oliver Muruthi**.

7. According to the deponent, he on 10th August, 2010 received a handwritten letter by a District Officer dated 22nd July 2010 asking him to appear before the DO on 10th August 2010.

8. According to the deponent, despite the fact that the interested party knew the truth she was being assisted by some officials to help her grab the deponent's plot vide ballot No. 3106 and her co-Applicant's plot vide ballot No. 3107 hence sought the order that the Tribunal be restrained from awarding the said interested party the 2 plots.

9. In the submissions filed on behalf of the applicant it was submitted that the Tribunal had no powers to handle disputes arising from registered land under the **Registered Land Act**, Cap 300.

10. By purporting to award titles regarding the title to land, it was submitted that Tribunal acted ultra vires since the Tribunal purported to usurp the powers of the High Court.

Respondents' Case

11. On behalf of the Respondents, the following grounds of opposition were filed:

1. THAT the application as drawn and filed is fatally defective as it contravenes the mandatory provisions of order 53 rule 2 of the Civil Procedure Rules and The Law Reform Act Section 9(3).

2. THAT the application is defective as it offends the provisions of Order 53 Rule 7(1) of the Civil Procedure Rules.

3. THAT the application is unmeritorious as the threshold for the grant of the orders sought has not been met. The orders sought are not available to the Petitioners.

4. THAT the Petition is inept, incompetent and a gross abuse of the court's process.

5. THAT the application is frivolous, vexatious and an abuse of the process of the court as it is based on presumptions.

12. On behalf of the Respondent it was submitted that the application was brought out of time since

whereas the Tribunal sat in the year 2010, this application was filed on 2nd December, 2011.

13. It was further submitted that the applicant failed to adhere to Order 53 rule 7(1) of the Civil Procedure Rules which required that the decision be exhibited.

Determination

14. It is clear that the applicant did not annex a copy of the decision sought to be quashed contrary to the provisions of Order 53 rule 7 of the **Civil Procedure Rules**. I am of the view that where the *ex parte* applicant for any reason is unable to exhibit the decision sought to be quashed, he ought to satisfy the Court on his failure to exhibit the decision which decision is required to be verified by affidavit with the registrar. Failure to comply with this mandatory provision similarly rendered the application incompetent since the Court cannot be in a position to find whether there is in fact an order capable of being quashed and if it exists whether the application was made within the stipulated time.

15. A reading of the verifying affidavit, an affidavit which with due respect was very thin on the facts did not disclose the existence of any court order.

16. It was upon the applicant not only to convince the Court that there was an order capable of being quashed but also that the decision was made within the six months of the application seeking to quash the same.

17. In this application I do not have sufficient material to enable me exercise my discretion in favour of the applicants.

18. It follows that the instant application is incompetent and is hereby struck with costs to the Respondents.

Dated at Nairobi this 26th day of November, 2014

G V ODUNGA

JUDGE

Delivered in the presence of: