



REPUBLIC OF KENYA

High Court at Nakuru

Judicial Review 87 of 2010

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI

AND

**IN THE MATTER OF AN APPLICATION BY STEPHEN MACHARIA KIHARA UNDER
ORDER LIII OF THE CIVIL PROCEDURE RULES**

AND

IN THE MATTER OF NAKURU LAND DISPUTES TRIBUNAL CASE NO.1 OF 2010

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

AND

IN THE MATTER OF THE REGISTERED LAND ACT CHAPTER 300 LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

NAKURU LAND DISPUTES TRIBUNAL.....RESPONDENT

EX PARTE

STEPHEN MACHARIA KIHARA.....SUBJECT

AND

JOHN MUHINDI NDUNGU.....INTERESTED PARTY

RULING

Pursuant to the leave granted on 29th September, 2010 the subject, Stephen Macharia Kihara, brought the notice of motion dated 8th October, 2010 seeking an order of *certiorari* to remove to this court for purposes of being quashed the proceedings and decision of the respondent, the Nakuru Land Disputes Tribunal, delivered on 20th April, 2010.

The application is premised on the grounds that the respondent acted in excess of its statutory powers, failed to observe the rules of natural justice and contravened mandatory provisions of the law.

The interested party, John Muhindi Ndungu, has sworn an affidavit deponing that the subject was served with hearing notices but deliberately failed to avail himself for hearing of the case at the Tribunal; that the case at the Tribunal was meant to compel the subject to honour the contract signed with the interested party; and that the proceedings before the tribunal were well founded and proper.

I have considered the rival arguments together with the submissions filed in support thereof.

It is trite learning that an order of *certiorari* will issue where the court is satisfied that the impugned decision was made without or in excess of jurisdiction, or where the rules of natural justice were not complied with. See **Kenya National Examination Council V. Republic Ex parte Geoffrey Gathenji Njoroge and others**, Civil Appeal No.266 of 1996.

It is common ground that the subject was the registered proprietor of Title No. KIAMBOGO BLOCK 2/257 (the suit property) measuring 4.5 Ha. It is also a matter of fact that in 1999 a portion (1 acre) of the suit was sold to the interested party. Apparently, there was a breach of contract on the part of the subjects who refused to facilitate the transfer of the portion sold to the interested party. Consequently, the interested party instituted a claim at the Nakuru District Land Disputes Tribunal (the respondent), seeking to compel the subject to honour the agreement and to transfer the portion bought to the interested party.

The respondent, after ascertaining that the subject was served with hearing notice and failed to attend the hearing, heard the dispute *ex parte* and held:

“We have considered that the dispute against the objector group is merited and have unanimously allowed the claimant dispute against the objector. We therefore compel the objector to transfer the said one acre piece of land to the claimant forthwith...”

Under Section 3 of the Land Disputes Tribunal (now repealed), the respondent's jurisdiction is restricted to hearing and determining cases involving:

- (a) the division of, or determination of boundaries to land, including land held in common;
- (b) a claim to occupy or work land; or
- (c) a claim on trespass to land.

Civil suits and proceedings relating to the title to, or possession of, land, or to the title to a lease or charge, registered or registrable or expressed not to require registration under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) are the preserve of the High Court or the Resident Magistrate's courts depending in the case of the latter, on the monetary value of the suit property. See **Section 159** of the Act.

It has been held in a long list of authorities, that the land disputes tribunals established under the Land Disputes Tribunals Act, No. 18 of 1990 have no jurisdiction to try disputes involving title to land or enforcement of contracts. See **Wamwea V. Catholic Diocese of Murang'a Registered Trustees** (2003) KLR, and **Republic V. The Nakuru District Land Disputes Tribuna Nakuru** Misc Application No. 39 of 2010 to name but a few.

Clearly the dispute before the respondent involved enforcement of contract by way of transfer of land which the respondent did not have jurisdiction to entertain. In determining the dispute the respondent acted in excess of its jurisdiction and its decision is liable for quashing by an order of *certiorari*.

Having found that the Tribunal acted in excess of its jurisdiction I need not consider the other issues raised by the applicant, to quash the impugned decision.

For the foregoing reason the application has merit and is allowed as prayed with costs.

Dated and Signed at Nakuru this 4th day of February, 2013.

**W. OUKO
JUDGE**

Dated, Signed and Delivered at Nakuru this 13th day of February, 2013 by Hon. Justice M. J. Anyara Emukule.

JUDGE