



REPUBLIC OF KENYA

High Court at Embu

Miscellaneous Civil Application 71 of 2010

IN THE MATTER OF GICHUGU LANDS DISPUTES TRIBUNAL CASE NO.19 OF 2010 AND  
GICHUGU LTD SUIT NO.33/2010

REPUBLIC OF KENYA .....1<sup>ST</sup> APPLICANT

NANCY MUTHONI NDAMBIRI ..... 2<sup>ND</sup> APPLICANT

VERSUS

GICHUGU LAND DISPUTES TRIBUNAL ..... 1<sup>ST</sup> RESPONDENT

ELITHA WAKATHAIYA ..... 2<sup>ND</sup> RESPONDENT

S.R.M. GICHUGU COURT ..... 3<sup>RD</sup> RESPONDENT

RULING

The *ex parte* Applicant having been granted leave to file for Judicial Review on 14/2/2011 did file the present application dated 8/3/2011 and filed on 11/3/2011. The *Ex parte* Applicant seeks an order of Certiorari to quash Gichugu Land Disputes Tribunal Award No.19/10 and Judgment by Gichugu Senior Resident Magistrate's Court on 3/11/2010 in Gichugu Land Disputes Tribunal case No.33/2010. The main ground is that the said award is *ultra vires* and was made without jurisdiction by the said Tribunal contrary to section 3(1) of the Land Disputes Tribunal Act.

The 2<sup>nd</sup> Respondent filed a replying affidavit saying the *Ex parte* Applicant participated in the proceedings before the Tribunal and never raised the issue of Want of Jurisdiction by the Tribunal. She also submits that the 1<sup>st</sup>- 3<sup>rd</sup> Respondents ought to have been cited as Interested Parties. For her the failure to do so renders the application incompetent.

Secondly she states that the Orders granting Leave for filing Judicial Review were not complied with by the Applicant.

Counsels agreed to dispose of the application by way of written submissions.

Mr. Muraguri in his submissions stated that the Law then was that the Land Disputes Tribunal had no jurisdiction to sub-divide and distribute land. Hence the 1<sup>st</sup> Respondent acted *ultra vires* the law. He dismissed paragraph 3-6 of the replying affidavit as being irrelevant. On the other hand Mr. Mwonwonga for the 2<sup>nd</sup> Respondent expounded on the averments in the replying affidavit. He cited the case of **REPUBLIC -VS- NYANDARUA DISTRICT LAND DISPUTES TRIBUNAL AND ANOTHER AND**

**GITAU GICHURE – EXPARTE APPLICANT MISC. CIVIL APPLICATION NO.108/05** where the issue of incorrectly citing parties was dealt with. He therefore submitted that the mistake was fatal and incurable and rendered the application incompetent.

Before me are therefore 3 issues to deal with which are as follows;

**1. Whether the application was filed within 21 days as directed in the order granting leave.**

**2. Whether the parties were wrongly intitled to the extent that the application should be rendered incompetent.**

**3. Whether the actions of the 1st Respondent were ultra vires their mandate.**

The leave giving rise to the filing of the application dated 8/3/2011 and filed on 11/3/2011 was granted on 14/2/2011. The order is in the following words;

**“A SUBSTANTIVE APPLICATION TO BE FILED AND SERVED WITHIN 21 DAYS FROM TODAY”.**

The 21 days therefore lapsed on 6/3/2011 which was a Sunday. The latest day this application should have been filed was 7/3/2011, and that is the day the leave expired. A perusal of the Notice of Motion filed herein confirms that it was dated 8/3/2011 and filed on 11/3/2011. It is therefore clear that the application was filed outside the 21 days. The interpretation of this is that the Notice of Motion dated 8/3/2011 and filed on 11/3/2011 was filed without leave of the Court and is therefore improperly before this Court. And that being the case I do find there to be no competent application before this Court for me to rule on. I will therefore not get into dealing with the 2<sup>nd</sup> and 3<sup>rd</sup> issues.

The incompetency of the application results into the dismissal of the same with costs to the supposed to be Interested Party (ELITHA WAKATHAIYA). The 1<sup>st</sup> and 3<sup>rd</sup> Respondents never participated in the proceedings. I therefore make no orders concerning them.

Orders accordingly.

**DATED AND DELIVERED AND SIGNED AT EMBU THIS 17<sup>TH</sup>**

**DAY OF APRIL 2013**

**H.I. ONG'UDI  
J U D G E**

In the presence of;

Mr. Mogusu for Muraguri for Respondent

Njue – C/c