



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR. ELC CASE NO. 64 OF 2011

REPUBLICAPPLICANT

V

GATHAITE FARMERS COOPERATIVE

SOCIETY LTD.....1ST RESPONDENT

CO-OPERATIVE TRIBUNAL NAIROBI.....2ND RESPONDENT

EX-PARTE

RICHARD NGANGA KAMIRO

JUDGMENT

By way of the notice of motion dated 29th February, 2012 Richard Nganga Kamiro who is the ex-parte applicant herein seeks orders as follows:-

1. **THAT** an order for CERTIORARI do issue to remove into the High Court for the purposes of QUASHING all the proceedings taken by the Co-operative Society Tribunal the 2nd respondent herein from 12th May,2011 **AND** the subsequent award made on the 11th January, 2012 touching and concerning land parcel MAKUYU/MAKUYU BLOCK 2/1085.

2. **THAT** an order of CERTIORARI do issue to remove into the High Court and QUASH the proceedings to hear the dispute between the applicant and the 1st Respondent. The effect of the Co-operative Tribunal in proceeding to hear the dispute is to involve itself in hearing matters relating to procedure and process of acquiring registered land which can only be competently tried by the High Court. The land parcel MAKUYU/MAKUYU BLOCK 2/1085 measures over 8.0 acres and valued more than kshs.5,000,000/=. No TRIBUNAL can have jurisdiction to determine dispute over it.

3. AN ORDER OF PROHIBITION to prohibit the Co-operative Tribunal from proceeding to enter the award as the DECREE and further proceeding to implement the decree or execution of its decree touching and concerning registered land parcel MAKUYU/MAKUYU BLOCK 2/1085.

4. THAT the costs of this application be provided for.

The application is supported by a statutory statement and a verifying affidavit sworn by the applicant all dated 16th June, 2011.

The applicant is the registered proprietor of L.R. No. Makuyu/Makuyu Block 2/1085. He bought the said parcel of land from Njiraini Njaramba, Gitau Ndungu and Robert Kimonye Karanja. Njiraini Njaramba and Gitau Ndungu are deceased. The said vendors were at one time officials of Githaite Farmers' Co-operative Society Limited (the Society). The Society is the 1st respondent in these proceedings. After change of management of the Society in 2007, the new officials caused a restriction to be placed on the applicant's parcel of land on the ground that the same had been fraudulently obtained. The officials of the Society subsequently filed Nairobi Tribunal Case No. 445 of 2009 before the Co-operative Tribunal (the Tribunal) which is the 2nd respondent herein. Before the Tribunal, the Society had claimed that the land parcel in question had been irregularly registered in the name of the applicant. After hearing the dispute, the Tribunal through an award delivered on 11th January, 2012 made the following decision:-

- 1. THAT the suit property land parcel No. Makuyu/Makuyu/Block 2/1085 belongs to the claimant society and not the 5th Respondent Mr. Robert Nganga Kamiro**
- 2. THAT the claimant society is entitled to have the title deed registered in its name and not the name of the 5th respondent, Mr. RICHARD NGANGA KAMIRO**
- 3. THAT the 1st and 5th Respondents to pay the costs of this suit.**

Even before the award was made, the applicant had moved to this court to challenge the jurisdiction of the Tribunal to hear the Society's claim against him. This was after the Tribunal overruled his objection to the claim on the ground that it did not have jurisdiction to entertain the matter.

The applicant's case therefore is that the Tribunal did not have jurisdiction to entertain the claim on two grounds. The 1st ground is that since he (the applicant) was not a member of the Society, then the Tribunal had no jurisdiction to entertain the dispute. Secondly, the applicant argued that the Tribunal had no jurisdiction to entertain a dispute touching on registered land.

The Tribunal did not file any papers in response to this application. The Society opposed the application through grounds of opposition dated 16th April, 2012. It is the Society's case that the parcel of land in question had been set aside for the construction of a community primary school and the same was therefore not available for sale or allocation to anybody. The Society argues that the applicant was all along aware of this fact and he cannot argue that he was a bona fide purchaser without notice. The Society also argues that the applicant ought to have first made an application for review before the Tribunal before filing the application before this court. The Society submits that the Tribunal had jurisdiction to hear and determine the dispute. Lastly, the Society argues that the Tribunal did not deal with registered land but only identified the disputed land by mentioning supporting documents like maps, inquiry report and minutes.

The question to be answered in this matter is whether the Tribunal had jurisdiction to deal with the matter that was placed before it.

It is noted that the applicant herein raised the issue of jurisdiction before the Tribunal. In answer to this objection the Tribunal decided that:-

“There is also undisputed evidence that the 5th Respondent has never been a member of the Claimant Society. The 5th Respondent raised a preliminary objection on jurisdiction of this Tribunal to hear this matter on the basis that he is not a member of the Claimant Society.

The Tribunal ruled that the land the subject matter of this suit belonged to the Claimant Society and since the 5th Respondent alleged that he bought it from members of the society, the Tribunal had jurisdiction to hear this case as it falls under Section 76 of the Co-operative Societies Act.”

For purposes of record the 5th respondent being referred to in the award is the ex-parte applicant herein. Section 76 of the Co-operative Societies Act, 2007 confers jurisdiction upon the Tribunal as follows:-

“76. (1) If any dispute concerning the business of a co- operative society arises:-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between members, past members or deceased members, and the society, its Committee or any officer of the society; or

(c) between the society and any other co-operative Society; it shall be referred to the Tribunal.

(2) A dispute for the purpose of this section shall include -

(a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not.

(c) a claim by a Sacco society against a refusal to grant or a revocation of license or any other due, from the Authority.”

From the evidence placed before this court, it clearly emerges that the applicant has never been a member of the Society. He did not file any claim through a member of the Society. He did not therefore fall under the jurisdiction of the Tribunal. He was out of the reach of the Tribunal and any claim the Society or any member of the Society had against him ought to have been litigated before a court with pecuniary jurisdiction to hear the matter.

I even doubt whether the Tribunal had authority to hear a dispute touching on title to land. It is noted that the land law regime has recently been overhauled. This matter was however heard under the previous land law system. Jurisdiction is everything and a court or tribunal can do nothing without jurisdiction. Jurisdiction cannot be implied but donated by statute. The jurisdiction of the Tribunal is to hear disputes concerning the business of a co-operative society if such a dispute arises among members, past members, deceased members or persons claiming through members. Section 76 (2) specifies what a dispute is for the purpose of Section 76. There is no mention of the Tribunal being given jurisdiction to hear land disputes in the said Section.

In Nairobi High Court Civil Appeal No. 460 of 2000 **MBUGUA THIGA v TERESIA WANGECHI MACHARIA & 2 OTHERS**, D. K. S. Aganyanya, J (as he then was) observed that:-

“But neither the District Land Disputes Tribunal at Maragua nor the Provincial Land Disputes Appeals Committee had any power to adjudicate over the issue of title to land, since this jurisdiction is still vested in the High Court and/or the Resident Magistrates Court depending on the pecuniary value of the subject matter- see Section 159 of the Registered Land Act.”

D.K.S. Aganyanya, J (as he then was) also made the same observation in Nairobi Civil Appeal No. 531 of 2000 **Mbogo Mwathi v John Chege Mbogo** thus:-

“But the Tribunal had no power to adjudicate over the issue of title to land since this jurisdiction is vested in the High Court and/or Resident Magistrate’s court, depending on pecuniary value of the subject matter - see Section 159 of the Registered Land Act.

Carrying out the orders of Gatanga Land Disputes Tribunal and that of the Provincial Land Disputes Appeals Committee would result in the rectification of the register which would go against the spirit of Section 143 of the Registered Land Act when conditions set in that section for such order to be made were not shown to exist in this case.”

R.P.V. Wendoh, J made similar finding in Nairobi High Court Misc. Application No. 1 of 2007 **MUNGAI NJOROGE v GITHUNGURI LAND DISPUTES TRIBUNAL AND OTHERS** when she observed that:-

‘It is clear that the proceedings before the Tribunal related to title to land and to beneficial interest in the land since the 3rd Respondent claimed to have been given the said land by her father before he died. This dispute in my view does not fall within Section 3(1) of the Land Disputes Tribunal Act. Such a dispute should be tried by the High Court or by the Resident Magistrate’s Court where the lower court has jurisdiction in terms of Section 159 of the Registered Land Act.’

Although the above cited decisions were in respect of the defunct land disputes tribunals which had been created by the repealed Land Disputes Tribunal Act, I am of the view that the same position is applicable to the Co-operative Tribunal. In my view the said Tribunal has no jurisdiction to make a decision that amounts to the revocation of title to land. It did not therefore have jurisdiction to revoke the applicant’s title to the land in question. At the moment such matters ought to be dealt with by the Land and Environment Court. Previously such disputes were the preserve of the High Court and the Resident Magistrate’s Court where the latter had pecuniary jurisdiction.

Considering the evidence placed before this court, I am satisfied that the Tribunal exceeded its jurisdiction in this case. An order of certiorari is therefore issued removing the proceedings and award of the Tribunal to this court and quashing the same. In my view the said order takes care of all of the applicant’s grievances and there is no need to issue any other order.

I must state that I was impressed with the manner in which Samwel Ndirangu, Nicholas Kigo Ndungu and Francisca Njeri Gakumo being the Chairman, Secretary and Treasurer of the Society respectively valiantly and vigilantly pursued this matter in the interest of the Society. They cannot in any way be blamed for the outcome of this matter. In my view, this is one case in which each party should meet own costs and I so order.

Dated, signed and delivered at Nairobi this 28th day of May, 2013

W. K. KORIR,

JUDGE