



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPLICATION 33 OF 2010

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL CLAIM NO.413 OF 2009 AND THE LANDS DISPUTES TRIBUNAL CASE NO.9 OF 2010 SIAKAGO

BETWEEN

REPUBLIC APPLICANT

VERSUS

1. NYAGA RUNGU a.k.a LAWRENZIA NYAGA RUNGU

2. THE CHAIRMAN, LAND DISTRICT TRIBUNAL MBEERE DISTRICT

3. THE PRINCIPAL MAGISTRATE SIAKAGO LAW COURTS..... RESPONDENTS

AND

STANLEY NYAGA KUVUTA

a.k.a.NYAGA KUVUTAEX-PARTE APPLICANT

RULING

The Applicant filed this Notice of Motion dated 20th July 2010 pursuant to the Leave granted by this Court on 1/7/2010. It was filed on 20/7/2010. He seeks the following orders;

- 1. That an order of Certiorari be issued to remove into the High Court and quash the proceedings and verdict of the District Land Disputes Tribunal, Evurore, Mbeere District dated 25/2/2010 granted in Tribunal Claim No.413 of 2009 AND the pursuant decree of the Siakago Principal Magistrate's Court dated 27/5/2010 (issued on 31/5/2010) adapting the said verdict as the Judgment of the subordinate Court vide the Tribunal Case No.9 of 2010 at Siakago.***
- 2. That the cost of this application be provided for.***

The application is supported by the grounds on the face of the application plus the statement of facts, verifying affidavit and annexures. The 1st Respondent filed a replying affidavit opposing the application

on the ground that he had bought the land from the Exparte Applicant vide a written sale agreement. He also states that he was not served within 21 days as per the law. And that if the application is allowed he will lose irreparably.

Mr. Mugambi filed written submissions where he expounded the issues in the replying affidavit of the 1st Respondent. He says the 1st Respondent had not been served with the Notice of Motion to date.

The position of the A.G. is that the Respondent acted without Jurisdiction. I first wish to address the issue of service of the Notice of Motion. In as much as Mr. Mugambi states that the 1st Respondent was never served, the replying affidavit shows otherwise. At paragraph 2 of the said replying affidavit the 1st Respondent depones;

“THAT THE CONTENTS IN THE EX-PARTE APPLICANT'S NOTICE OF MOTION DATED 20TH JULY 2010 HAVE BEEN READ TO ME BY MY ADVOCATE ON RECORD AND I HAVE UNDERSTOOD THE SAME”.

It clearly confirms that he was served and that's how he was able to file a response. This issue of service had been raised on 8/11/2010 and the Court ruled as follows;

“TIME WITHIN WHICH TO SERVE THE NOTICE OF MOTION EXTENDED AND THE EXTENSION WILL COVER THE SERVICE ON THE 1ST RESPONDENT”

The issue of service was therefore dealt with by Hon. Justice Wanjiru Karanja and will not be revisited.

The main contention of the Exparte Applicant is the lack of jurisdiction by the 2nd Respondent as concerns the matter in issue. In the matter at hand the 1st Respondent filed a claim against the Exparte Applicant at the Evurore Land Dispute Tribunal. His claim was based on a sale agreement between the two parties where the 1st Respondent was buying land from the Exparte Applicant. The findings of the Tribunal were as follows;

A) Transfer of the parcel should be carried out according to official sale agreement made before the chief Salesio Runji Nganiari in 1995.

B) According to the agreement, the whole parcel was bought and therefore there should be no sub- division.

The Tribunal then made the following decision;

“The Land Dispute Tribunal members orders the registrar to De-register the parcel No.Evurore/ Kathera/57 from the ownership of Nyaga Kabutu to Nyaga Rungu.”

The Exparte Applicant was the registered owner of the land EVURORE/KATHERA/57. In making the above decision the Tribunal interfered with the proprietary rights of the Exparte Applicant. This is what section 3(1) of the Land Dispute Tribunal Act (now repealed) provided in terms of jurisdiction of the Tribunal.

“Subject to this Act, all cases of civil nature involving a dispute as to;

a) The division of, or the determination of boundaries

to land, including land held in common;

b) A claim to occupy or work land;

c) Treapass to land

shall be heard and determined by a tribunal established under section 4”.

It is clear from the above that purchases and sale of land was not part of the mandate in section 3(1) of the Land Dispute Tribunal Act. Secondly the Act did not allow the Tribunal to determine issues of ownership or interest in land, and/or cancellation of title deeds.

In ordering the cancellation of the Exparte Applicant's title deed, the Tribunal exceeded its jurisdiction. The Attorney General has rightly conceded to this. The 1st Respondent will not suffer irreparably as he says. He should file his claim before the right forum.

I therefore allow the application and call into this Court the Award in Evurore Land Dispute Tribunal claim No.413/09 and the pursuant Judgment and decree of the Principal Magistrate's Court Siakago in Tribunal case No.9/10. Both the Award and Judgment are quashed and the Decree set aside. Considering that there could have been a sale between the two parties I will order that each party bears his/her own costs.

DATED, SIGNED AND DELIVERED IN OPEN AT EMBU THIS 11TH DAY OF JUNE 2013

H.I. ONG'UDI

J U D G E

In the presence of;

Mr. E. Njiru for Exparte Applicant

Njue – C/c