



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
JUDICIAL REVIEW NO. 11 OF 2010

ZIPPORAH WANJIRU MUGO..... APPLICANT

versus

TERESA WANGECHI MUGO

JOSHUA WAMBUGU NGARI & ANOTHER.....RESPONDENTS

JUDGMENT

1. The exparte applicant has moved the court for an order of certiorari removing into this court the order of Mweiga Land Dispute Tribunal Kieni West Division No. 11 of 2005 in respect of Nyeri/Uasonyiro/145.
2. She further sought an order of prohibition prohibiting the Chief Magistrate Nyeri from proceeding with and or hearing Nyeri CMCC Award case No. 18 of 2005.
3. The statement of facts thereon indicated that the tribunal dealt with matter which was beyond its jurisdiction by awarding the registered proprietor 12 acres of the parcel in dispute and dealing with issue of succession when there was no representative.
4. It was supported by the affidavit of ZIPPORAH WANJIRU MUGO which is self explanatory.
5. The application is opposed by JOSHUA WAMBUGU NGARI through a replying affidavit sworn on 14th May 2010 in which he stated that the application was filed out of time and that the applicant did not have locus standi to bring the application since she was not a party to the tribunal.
6. It was further stated that the tribunal had jurisdiction since the board members were gazetted.
7. Directions were given that the matter be heard by way of written submissions which have now been filed.
8. It was submitted on behalf of the application that the 1st Respondent sought the intervention of the Tribunal to finish a sale transaction between her deceased husband and the 4th respondent and that the tribunal reached the following award.
9. ***“Defendant to give to the plaintiff 1 acre (one acre)of Land since she had no where to settle if evicted.***

10.

11. The exparte applicant is the daughter of the 1st Respondent and is beneficial entitled to the subject matter of the tribunal award since she resides on the suit land.

12. It is submitted that the tribunal exceeded its mandate under section 3 of the repealed Act and that all the parties except the 4th Respondent have conceded to the application.

13. On behalf of the Respondent it was submitted that the 4th Respondent was already registered proprietor of the land and that the accused buyer did not pay for the land.

14. It is submitted that there are no proceedings to be quashed since the award of the tribunal was made judgment of the court on 30th November 2005 by the Chief Magistrate and that the proceedings granting the exparte applicant leave were flawed as she was not a party to the proceedings before the tribunal.

15. It was submitted that this matter was governed by the Land Dispute Tribunal Act No. 18 of 1990 sections 7(2) and 8(9) and that the Act does not grant relief to any applicant to apply for judicial review and in support thereof relied upon HIGH COURT CIVIL CASE NO. 361 OF 2006 NAIROBI MBOGO Vs KENYA SUGAR BOARD OTHERS (2007) EA. and MWICHWIRI FARMERS CO. LTD. Vs M'RUKARIA & 139 OTHERS NYERI HCC MISC. NO. 10 OF 2001

16. From the submissions herein it seems that the main issue for the courts determination is of whether the tribunal had jurisdiction to determine the issue in dispute.

17. From the records of the proceedings before the tribunal and the decision herein it is clear that the subject matter was an enforcement of the terms of an agreement for sale entered into between the 4th Respondent and the father of the exparte applicant dated 13th July 1987.

18. It is therefore clear that the tribunal handled the issue of rights and obligations under a contract of sale beneficial interest and title to the said land as stated in the funding No. 4

19. *“The Tribunal Elders have found that the sales transactions started in the years 1987 at a cost of Kshs. 150,000/- for 13 acres.*”

20.

21. **No. 6**

22. *The Tribunal Elders have found that the plaintiffs husband failed to honour all the agreements on sale contract”*

23.

24. The award was that “the defendant to give the plaintiff 1 acre (one acre) of land since she has no where to settled if evicted. This excludes the permanent development made by the defendant.”

25. It is therefore clear to my mind that the tribunal acted in excess of jurisdiction as it was only a court of law which could have determined whether the exparte applicant's father defaulted on the term of the agreement herein since the tribunal does not have jurisdiction to determine issue related to contract for sale.

26. I have noted that the authority relied upon by the Respondent in opposition to the application are not relevant to the issue in question since the authority of MBOGO vs KENYA

SUGAR BOARD and others is in respect of resjudicata and preliminary objection and the authority of MWICHWIRI FARMERS CO. LTD. Vs M'RUKARIA & 139 OTHERS is in respect of enlargement of time within which to lodge an appeal from the decision of the High Court to the court of Appeal.

27. I would therefore allow the application herein and quash the award of the tribunal herein as adopted by court on 30th November 2005 with no order as to cost.

28. Finally I would like to state for record purposes that this matter came before this court before the establishment of the Environmental and Land Court and therefore this court had jurisdiction to determine the same under the transition clause thereof.

29. Dated and delivered at Nyeri this 25th July 2013.

J. WAKIAGA

JUDGE

Ruling read in open court in the presence of Mr. Ng'ang'a for Mr. Mahan for the 4th Respondent and in the absence of Counsels for the applicant the 1st ,2nd and 3rd Respondents.

J. WAKIAGA

JUDGE