



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CONSTITUTIONAL & JUDICIAL REVIEW APPLICATION NO. 60 OF 2011

AND

IN THE MATTER OF L.R.NO. KIINE/KIANGAI/111

AND

IN THE MATTER OF CENTRAL PROVINCE LAND DISPUTES APPEAL'S COMMITTEE(KIRINYANGA)NO. 18 OF 2009

AND

IN THE MATTER OF BARICHO SENIOR RESIDENT MAGISTRATE'S LTD NO. 12 OF 2009

REPUBLIC OF KENYA

.....**APPLICANT**

VERSUS

THE CHAIRMAN CENTRAL PROVINCE LAND DISPUTE'S APPEAL'S COMMITTEE.....1ST RESPONDENT

LYDIAH NJOKI KARIUKI

.....**2ND RESPONDENT**

AND

EPHANTUS GATHEE KARIMI alias EPHANTUS KAGUNDA KARIMI

.....**EXPARTE**

JUDGMENT

The subject of this decision is the Notice of Motion dated 8th November, 2011 in which **Ephantus Gathee Karimi alias Ephantus Kagunda Karimu**, the exparte applicant herein sought for the following orders:

1. **That an order for certiorari and prohibition do issue quashing the decision of the Central Province Land Disputes Appeals Committee dated 7th July, 2011 in respect of L.R.No. Kiine/Kiangai/111 in Central Province Land Dispute's Appeal Committee case (Kirinyaga) No. 18 of 2009 and the proceedings of the Baricho SRM's Court vide Baricho SRM LTD**

Number 12 of 2009 and prohibiting the Baricho Senior Resident Magistrate's Court and/or other Court from entering judgment in terms of the said award in respect of Kiine/Kiangai/111.

2. That the costs of this application be provided for.

The Applicant filed a verifying affidavit to support the Motion. The Motion is also accompanied by a statement of facts. **Lydiah Njoki Kariuki**, the 2nd Respondent filed a replying affidavit to oppose the Motion. The 1st Respondent did not deem it fit to file any response to the motion despite having been served.

I have considered the rival oral submission presented by learned counsels from both sides. I have further taken into account the material placed before me. The main ground relied upon by the Applicant is that the Land Disputes Tribunal and the Appeals Committee had no jurisdiction to hear and determine the dispute referred to it. It is the submission of **Mr. Wahome**, learned counsel for the Applicant that the Land Disputes Tribunal/Appals Committee, made a decision to consolidate parcels of land which action was beyond the jurisdiction donated under **Section 3(1)** of the **Land Disputes Tribunals Act**. **Mr. Kebuka Wachira**, learned advocate for the 2nd Respondent was of the view that the Land Disputes Tribunal had jurisdiction to hear and determine the dispute referred to it by the court. Mr. Wachira pointed out that parties involved in this dispute appeared before **Justice Makhandia**, as he then was, to cause the case referred to Baricho Land Disputes Tribunal to hear and determine as a boundary dispute as well as a trespass dispute.

I have taken into account the material placed before this court. It is not in dispute that the case that was before this court i.e. **Nyeri H.C.C.C No. 49 of 2003** was treated as a boundary dispute and an action based on the tort of trespass. That suit was withdrawn or terminated and transferred to the Land Disputes Tribunal at Baricho to hear and determine the same. This court also directed the parties to cause the resultant decision to be filed at the Magistrate's Court for adoption for purposes of execution. The Land Disputes Tribunal heard the dispute and came to the conclusion that **L.R. No. Kiine/Kiangai/168** should be 6.0 acres. The Tribunal further ordered the Land Surveyor to rectify the registry map to tally with the existing ground boundary. It is important to examine what dispute faced the Land Disputes Tribunal from the decision annexed to the Applicant's verifying affidavit. When the 2nd Respondent appeared before the Land Disputes Tribunal at Baricho, she claimed that she has been using 6.0 acres from the time of demarcation believing the same to be comprising **L.R. No. Kiine/Kiangai/168**. She alleged that when the Applicant bought **L.R.No. Kiine/Kiangai/111** in 1976 he found her on the land and he knew that the parcel he bought measured 2 acres. It is said the Applicant lived on the land until 1994 when he started claiming a portion of the 2nd Respondent's land. The Applicant told the Land Disputes Tribunal that he lived harmoniously with the 2nd Respondent from 1976 until 1994 when she started claiming a portion of **L.R.No. Kiine/Kiangai/111**. He claimed he bought 2 acres but later learnt that the land he bought actually measures 3.4 acres (*i.e 1.27 acres*) as per the official search. The official search in respect of **L.R.No. Kiine/Kiangai/168** shows the parcel measures 4.5 acres. The exparte Applicant was not happy with the decision of the Baricho Land Disputes Tribunal hence he appealed to the Provincial Appeals Committee. When the Applicant appeared before the Appeals Committee he told them that he bought **L.R. No. Kiine/Kiangai/111** measuring 3.4 acres and later found that part of the land is in **L.R. No. Kiine/Kiangai/168**. The 2nd Respondent on the other hand claimed that she has been utilizing **L.R.No. Kiine/Kiangai/168** as measuring 6.0 acres but later discovered that the same measures 4.5 acres. She stated that she claims 1.5 acres to be excised from **L.R.No. Kiine/Kiangai/111**. The Appeals Committee considered the competing claims and upheld the decision of the Baricho Land Disputes Tribunal. The Appeals Committee went ahead to clarify that the Applicant was entitled to 2 acres while the 2nd Respondent was entitled to 6 acres. Having given in detail the case that was before the Land Dispute's Tribunal, it is now convenient to pose the question as to whether the Land Disputes Tribunal acted within its mandate? It is obvious from the material placed before this court that the Land Disputes Tribunal and the Appeals Committee acted beyond its jurisdiction when it purported to change the acreage of land from that shown in the respective registers. The Land Disputes Tribunal went beyond the handling of a boundary dispute and proceeded to award land. The green card in respect of **L.R.No. Kiine/Kiangai/168** shows the land measures 4.5. acres yet the Land Disputes Tribunal went ahead to state that the same

should be 6.0 acres. The green card in respect of **L.R. No. Kiine/Kiangai/111** shows that the same measures 1.37 hectares which is approximately 3.425 acres yet the Land Disputes Tribunal purported to reduce it to 2.0 acres. In sum, I am convinced the Motion dated 8th November, 2011 is well founded. It is allowed as prayed.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

**In open court in the presence of Mr. Kingori holding brief for Wahome for Applicant
Miss Kahinga holding brief for Respondent**