



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS APPLICATION NO. 101 OF 2010

IN THE MATTER OF AN APPLICATION BY STEPHEN REREU OLE KIITA FOR ORDERS OF CERTIORARI AGAINST THE DECISION OF THE LAND DISPUTES TRIBUNAL CENTRAL DIVISION, NAROK AND THE PROCEEDINGS OF THE SENIOR PRINCIPAL MAGISTRATE NAROK

AND

REGISTERED LAND ACT CAP 300- LAWS OF KENYA AND

IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

BETWEEN

STEPHEN REREU OLE KIITA..... APPLICANT

VERSUS

AND

**THE LAND DISPUTES TRIBUNAL, CENTRAL DIVISION, NAROK
..... 1ST RESPONDENT**

**THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT
NAROK2ND RESPONDENT**

AND

TOBIKO KASIKUA1ST INTERESTED PARTY

RULING

1. Pursuant to leave granted on 22nd October, 2010 to commence Judicial Review Proceedings, the *ex parte* Applicant filed a notice of motion dated 5th November, 2010 seeking the following orders:

(i) An order of certiorari to bring to the High Court for purposes of being quashed the decision of the Land Disputes Tribunal Central Division, Narok involving the applicant's parcel of land known as Cis

Mara/Sakutiek /358 (hereinafter referred to as the suit land) dated 16th September, 2010.

(ii) An order of certiorari to bring to the High Court for purposes of being quashed the proceedings of the Senior Principal Magistrate's court, Narok in case No. Narok SPM Misc. Land case No. 30/2010 and the orders made on 28th September, 2010 adopting the award of Land Dispute Tribunal Narok, Central division of 16th September, 2010 involving the applicants suit land.

2. The application is supported by the affidavit of the applicant/ subject sworn on 22nd October, 2012 in which reference is made to the statement of facts accompanying the application for leave, the affidavit verifying the facts and the order of the court granting him leave to apply for Judicial review.

3. The application is premised on the grounds:

(a) That the applicant is the registered proprietor of **Title No. Cis Mara / Sakutiek /358** (herein after referred to as the suit land)

b. That the 1st respondent's decision was reached at without the applicant's knowledge

(c) That the applicant was not given a chance to be heard before the decision was reached hence was in breach of the rules of natural justice.

d. That the decision of the 1st respondent is ultra vires its powers as set out under section 3 of the Land Disputes Tribunal Act.

e. That the 1st and 2nd respondents decision were unfair, improper and unlawful and the same are null and void.

(f) That unless the said decisions are stayed and eventually quashed the same may be acted upon to the applicant's detriment as he will suffer irreparable damage.

4. The subject, **Stephen Rereu Ole Kiita** contends that he has been the registered proprietor of the suit land since 2009. The interested parties had instituted a claim at the Land Disputes Tribunal, Central Division Narok involving the suit land against Mary Wambui Mureu as the objector but did not involve him as a party or as a witness despite the fact that he is the owner of the suit land. After hearing the claim the tribunal issued an award as follows:

"Three and a half acres (3 ½) acres out of the suit property be given to Tobiko Ole Kasikua, the objector because this parcel was not included in the six (6) acres the land which the objector had bought from Mureu Kabue"

5. The award of the Tribunal was subsequently adopted by the Narok Senior Principal Magistrate's court as judgment of the court on 28th September 2010, which is the subject of challenge in this judicial review.

6. The applicant on his part, filed well researched submissions which his counsel chose to fully rely on. In summary, he submitted that the applicant was not given a hearing by the 1st respondent contrary to the rules of natural justice, therefore the proceedings before the 1st respondent were not properly conducted; that the 1st respondent lacked jurisdiction to try a matter relating to title, subdivision of land and rectification of the register: That the tribunal exceeded its mandate as stated in section 3(1) of the Land Disputes Tribunal Act as read with section 159 of the Registered land Act Cap 300(now repealed): that the adoption of the award of the tribunal by the Magistrates court was improper as the court was adopting something that did not exist due to lack of jurisdiction. Finally he submitted that the applicant was entitled to the orders sought as the 1st respondent had violated his rights by denying him a right to be heard and yet the decision reached directly affected his property: that although the applicant did not appeal to the appeals tribunal, he still had a right in law to seek the orders sought.

He relied on the following authorities:-

- i. **Prime Salt Workers Ltd vs Kenya Industrial Plastic Ltd** (2001) 2 EA 528
 - (ii) **Mpungu & Sons Transporters Limited vs Attorney General & Anor** (2006) 1 EA 212
 - (iii) **Republic Vs Chairman Meru Central Disputes Tribunal & 2 others Ex-parte Japhet Kinyua Muthamia** (2010) eKLR
 - (iv) **Charles Muchemi Kariuki vs Moses Gthirimu Kimari** (2008) eKLR
 - (v) **Peter Macharia Wanugu vs Nganga Wanugu & 6 others** (2008) eKLR
 - (vi) **Owners of the Motor Vessel "Lilian" vs Caltex Oil (Kenya) Ltd.**
 - (vii) **Association of Member Episcopal Conference in East AFRICA (Amecea) vs Alfred Roman t/a Romani Architects and Others civil appeal (application) No. 22 of 2001.**
 - (viii) **John Musamia Ramadhani vs Ali Wakhulunya Wasabo Bungoma High COURT MISCELLANEOUS Application No.168 of 2002 in ODUNGA'S DIGEST ON CIVIL CASE LAW AND PROCEDURE,vol III page 2380-2381**

which I have read and considered.

7. The application was not opposed. The interested party did not file any response to the application. When the matter came up for hearing before me on 3rd October, 2013 Counsel for the 2nd and 3rd respondents stated that they were not opposing the application as the Central Division Narok Tribunal established under the Land Disputes Tribunals Act No.18 of 1990, did not have the jurisdiction to adjudicate over land registered under the Registered Land Act and that by determining the issue of ownership and title to the suit property the tribunal acted in excess of its powers under section 3(1) of the Land Disputes Tribunals Act.

8. From the pleadings and the submissions filed by the parties, I find the issues for determination are:

- (i) Whether the Tribunal exceeded its mandate
- (ii) Whether the applicant was given a hearing by the 1st respondent
- (iii) What is the order as to costs.

Mandate of the Land Dispute Tribunal.

9. The question arising from this fact is whether the tribunal had power to hear and determine a claim touching on ownership of the land leave alone to order for the cancellation of the subject's title. If the decision was made in excess of the tribunal's power, it matters not that the decision was the right decision in the circumstances. If the decision was *ultra vires*, unlawful,

unreasonable and/or against the rules of natural justice, this court will have no option but to quash the decision. See **Kenya National Examination Council V. Republic Ex parte Geoffrey Gathenji Njoroge and others.**

10. The remedy of judicial review is concerned not with the private rights or merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See **Republic V Secretary of state for Education and Science (Ex parte) Avon County Council** (1991) 1 ALL ER 282 at

285. The point is more succinctly made in the English case of **chief Constable of North Wales Police Vs Evan (1982) 1 W.L.R 1155, by Lord Hailsham of St Marlebone.**

Thus:

“the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court”

Therefore, a decision of an inferior court or public authority may be quashed (by an order of certiorari made on application of Judicial review) where the court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where these rules are applicable, or where there is an error of law on the face of the record or the decision is unreasonable in the Halsbury sense.

11. Under Section 3 of the Land Disputes Tribunals Act, the Tribunal's jurisdiction is restricted to hearing and determining cases involving-

(a) the division of, or determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) a claim on trespass to land.

12. Disputes relating to title or the possession of land registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) were the preserve of the High Court or the Resident Magistrate's courts depending on the monetary value of the suit property. Section 159 of the Registered Land Act Cap 300 states:

" Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act."

13. There is no doubt that the issue before the Tribunal and subsequently before the Principal Magistrate's Court Narok related to ownership of the suit property which was at the material time registered in the name of the subject. In determining the issue of ownership of the suit property, the Tribunal no doubt exceeded its jurisdiction. Any action done without jurisdiction is in law a nullity, that is to say of no legal force. As such it could not and was not validated by its adoption by the lower court.

Was the Applicant given a hearing by the tribunal?

14. In the Affidavit verifying the facts dated 21st October 2010, paragraphs 4,5 and 6, the applicant avers that he was not informed of the claim before the Land Disputes Tribunal Central Division Narok nor was he involved in the proceedings before the Tribunal despite being the registered owner to the suit land. No evidence has been adduced to counter this assertion made by the applicant.

15. This is against the principle of '*audi alteram partem*' a foundational pillar of natural justice, which affords all parties the chance to have their day in court. It underscores their right to be heard.

16. As the court exercises its jurisdiction of judicial review granted under section 8 and 9 of the Law

Reform Act, I find that the applicant was indeed not given a chance to be heard by the Tribunal because he was not aware of the proceedings involving him.

17. Before I rest the matter there I feel the need to address an issue raised by the applicant's counsel in his submissions. He submitted that the applicant was

entitled to the orders sought in his application even though he did not file an appeal before the Appeals Committee as required under section 8(1) of the Land Disputes Tribunals Act.

8.(1) Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.

When a party appeals to the Provincial Tribunal the appeal should be on matters of fact. An application for judicial review is concerned with the decision making process and not the merits of the decision. The issues raised in this application are issues relating to the process of the decision made by the tribunal and could not have been dealt with by the appeals committee. Further the committee did not have jurisdiction to deal with the claim that went before the subordinate tribunal in the first place. I find that the applicant properly moved the court in this application.

14. Having found the order of the Tribunal to have been a nullity in law, permitting it to continue forming the record of the Tribunal or the lower court is, in my view, a violation of the subject's rights.

15. It is on these grounds that the court quashes the decision of the Land Disputes Tribunal Central Division, Narok. There shall therefore issue an order of certiorari to bring to this court, and quash the decision of the Land Disputes Tribunal, Central Division, Narok dated 16th September 2010, and adopted by Narok SPM on 28th September 2010.

Costs are awarded to the applicants.

Dated, Signed and Delivered at Nakuru on this 15th day of November, 2013.

L N WAITHAKA

JUDGE

Present

Mr Njuguna holding brief for Mr Kurgat for the Applicant

N/A for the respondent

N/A for the I.P

Emmanuel Maelo : Court Assistant

L N WAITHAKA

JUDGE