



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JR CASE NO. 301 OF 2011

REPUBLICAPPLICANT

VERSUS

LAND DISPUTE TRIBUNAL, GITHURAI1ST RESPONDENT

CHIEF MAGISTRATE'S COURT, THIKA2ND RESPONDENT

FRANCIS MWANGI.....1ST INTERESTED PARTY

STEPHEN KIBE2ND INTERESTED PARTY

EX-PARTE

CHARLES JOHN MURAGURI

JUDGEMENT

Charles John Muraguri, the ex-parte Applicant (the Applicant) has through the notice of motion dated 7th December, 2011 and amended on 6th April, 2012 sought an order of certiorari to bring up into this court and quash the Award and proceedings of the Land Disputes Tribunal at Githurai in case No. Ref Rur/LDT/03/2011 and registered as Chief Magistrate's Court Thika D.O. Case No. 46 of 2011. The Applicant also seeks an order of prohibition to restrain the Chief Magistrate's Court at Thika from enforcing the decision of the Tribunal. The Land Disputes Tribunal Githurai is the 1st Respondent and the Chief Magistrate Court, Thika is the 2nd Respondent. Francis Mwangi is the 1st Interested party whereas Stephen Kibe is the 2nd Interested party.

The respondents conceded the application when the matter came up for hearing on 1st July, 2013. The interested parties did not file any replies despite being served with the application.

In summary, the Applicant's case is that he is the registered owner of LR No. RUIRU/KIU/BLOCK 12/352 and the 1ST Respondent did not have any jurisdiction to hear a dispute involving the said parcel of land. The jurisdiction of the defunct Githurai Land Disputes Tribunal (the Tribunal) was, according to Section 3(1) of the repealed Land Disputes Tribunal Act, 1990, limited to cases of a civil nature involving a dispute as to:-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; or
- c. Trespass to land.

There is nowhere in which it is indicated that the Tribunal was to hear disputes concerning ownership of land. Jurisdiction is given by statute and not assumed. The Tribunal by entertaining a matter in which the Applicant had a certificate of lease clearly exceeded its jurisdiction.

The proceedings and the Award of the Tribunal are thus called into this court and quashed. An order of prohibition will also issue prohibiting the 2nd Respondent from adopting and or enforcing the decision of the Tribunal. There is no order as to costs.

Dated, signed and delivered at Nairobi this 5th day of December, 2013

W. K. KORIR,

JUDGE OF THE HIGH COURT