



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JR. MISC. CIVIL APPLICATION NO. 101 OF 2009

REPUBLICAPPLICANT

VERSUS

GITHUNGURI LAND DISPUTE TRIBUNAL.....1ST RESPONDENT
GITHUNGURI PRINCIPAL MAGISTRATE’S COURT.....2ND RESPONDENT
AND

RAHAB WANJIKU KARANJA1ST INTERESTED PARTY

JOSEPH G KARANJA2ND INTERESTED PARTY

EX-PARTE

ANDREW MUIRURI KIBEAPPLICANT

JUDGEMENT

Through the notice of motion filed in court on 11th January, 2010 Andrew Muiruri Kibe (the ex-parte applicant) seeks orders against Githunguri Land Disputes Tribunal (the 1st respondent) and Githunguri Principal Magistrate’s Court (the 2nd respondent) as follows:-

- 1. That an order of certiorari do issue to remove to this honourable Court and quash the decision and order of the Githunguri Land Disputes Tribunal adopted by Githunguri Magistrates Court on 17th September, 2009.**
- 2. That an order of mandamus to issue directed to the Magistrates Court Githunguri compelling her to expunge the decision of the Land Disputes Tribunal in Tribunal case number 12 of 2007.**
- 3. An order of prohibition directed at the respondents prohibiting each one of them from implementing and executing any orders emanating from the adoption of Land Disputes Tribunal order (Githunguri) on the 17th September, 2009.**
- 4. Costs of this application be borne by the respondents.**

Among the grounds in support of the application are that the 1st respondent acted ultra vires the Land Disputes Tribunal Act, 1990 and that the applicant is a beneficiary who was entitled to a share in L.R. No. Githunguri/Riuki/425 and plot No. T. 197 Githunguri which were held in trust by the husband of the 1st interested party (Rahab Wanjiku Karanja). Joseph G. Karanja is named as the 2nd interested party.

The facts as gleaned from the verifying affidavit of the applicant sworn on 7th January, 2010 show that the two parcels of Land (L.R. No. Githunguri/Riuki/425 and plot No. T. 197) belonged to the late Goi Kibe who was the grandfather of the applicant. The late Goi Kibe had two sons namely Kibe Goi and Peter Karanja Goi . When Goi Kibe passed away Peter Karanja Goi the uncle of the applicant had the two parcels of land registered in his name as a trustee. Each of the two parcels of land was divided into two portions with the applicant getting a portion from each parcel. When Peter Karanja Goi passed on, the

interested parties (Rahab Wanjiku Karanja and Joseph Githii Karanja) obtained letters of administration for his estate. The applicant's attempt to object to their appointment as administrators of the estate of the deceased Peter Karanja Goi was unsuccessful. Thereafter the respondents proceeded to Githunguri Land Disputes Tribunal where they obtained orders on 9th July, 2007 to evict the applicant from the parcels of land in question. The decision of Githunguri Land Disputes Tribunal was adopted on 17th September, 2009 by the Principal Magistrate's Court at Githunguri.

In a replying affidavit sworn on 5th February, 2010 the interested parties strongly opposed the applicant's application. The interested parties argue that the application for an order of certiorari is time barred because the decision of Githunguri Land disputes Tribunal was made on 9th July, 2007 and the applicant came to court on 17th December, 2009 which was outside the statutory period of 6 months. The interested parties also argue that the Tribunal acted within the law in that it had powers to hear disputes relating to trespass and issue eviction orders.

The Land Disputes Tribunal's jurisdiction is found in Section 3(1) of the Land Disputes Tribunal Act which states:-

“3(1) Subject to this Act, all 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, shall be heard and determined by a Tribunal established under Section 4.”**

If a tribunal acts outside the mandate granted by Section 3(1) its orders would be ultra vires the Act and they ought to be called into the High Court for purposes of quashing.

In the case before me, I find two broad issues to be addressed by this judgement namely:-

- (1) Whether the applicant's suit is statute barred; and
- (2) Whether the Githunguri Land Disputes Tribunal acted in excess of its jurisdiction.

Is the applicant's case statute barred? Counsel for the interested parties thinks so. If indeed the operational date is 9th July, 2007, then one can easily conclude that this suit is indeed statute barred. I however hold a different view. The decision of a Land Disputes Tribunal can only become operational once it is adopted by a Magistrate's Court. Before adoption the said decision amounts to nothing because it cannot be enforced. The decision of Githunguri Land Disputes Tribunal was adopted by the Magistrate on 17th September, 2009 and the applicant came to court on 17th December, 2007. That means he came to the court in good time. I therefore do not agree with the interested parties when they claim the applicant's case is statute barred.

The remaining issue is whether the decision of the Tribunal was ultra vires the Land Disputes Tribunal Act. The applicant cited the decision of Kimaru, J in **Nakuru High Court Misc. Application No. 314 of 2004 REPUBLIC VS. NYANDARUA LAND DISPUTES TRIBUNAL & ANOTHER Ex-parte NAFTALE MWATHI MWANGI** in which it was held that the Land Disputes Tribunal had no jurisdiction to hear and determine an issue relating to the determination of title to land or a dispute regarding a parcel of land registered under the Registered Land Act. In the said case, the Tribunal had cancelled a title issued under the Registered Land Act.

The facts in the case before me are slightly different. The interested parties are the registered owners of the two parcels of land in question. The Land Disputes Tribunal confirmed this fact and directed that the applicant was a trespasser who should be evicted.

What would have happened had the 1st respondent accepted the applicant's case? It would most likely

have gone ahead to cancel the interested parties' titles. In short, the 1st respondent heard and determined a case touching on title to land. It had no jurisdiction to do so. It therefore exceeded its mandate. As such the applicant's application succeeds as prayed.

I make no orders as to costs.

Dated and signed at Nairobi this 23rd day of January, 2012.

W. K. KORIR
JUDGE