



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
MISCELLANEOUS CIVIL APPLICATION NO. 47 OF 2007

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI

AND

IN THE MATTER OF: THE LAND DISPUTE TRIBUNAL ACT NO.18 OF 1990, SOUTH KINANGOP LAND DISPUTES TRIBUNAL CLAIM NO.67 OF 2007

BETWEEN

GODFREY NJAU MBURU.....1ST APPLICANT

MARY WANJIRU MBURU.....2ND APPLICANT

-VERSUS-

THE SOUTH KINANGOP LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

CHARLES KING'ARA.....2ND RESPONDENT

J U D G M E N T

By a Chamber Summons filed on 29th October 2007 under a Certificate of Urgency, the two ex parte applicants herein Godfrey Njau Mburu and Mary Wanjiru Mburu sought leave to commence judicial review proceedings against the respondents, the South Kinangop Land Disputes Tribunal (**1st Respondent**) and Charles Kang'ara (**2nd Respondent**) for orders of Certiorari to remove into this court for quashing proceedings made by the Land Disputes Tribunal at South Kinangop in claim No.67 of 2007 filed under the Land Disputes Tribunal Act of 1990.

The ex-parte applicants also prayed that leave once granted should operate as stay of all proceedings in Land Disputes Tribunal Case No.67 of 2007 relating to **LR. No. Nyandarua/South Kinangop/4485 and Nyandarua/South Kinangop/5127**. The application was placed before Visram J on 29th October 2007 who granted leave as sought and ordered that leave granted operates as stay of all proceedings relating to the applicants aforesaid parcels of land in the 1st respondent's Tribunal Claim No.67/07.

Pursuant to that grant of leave, the applicants filed Notice of Motion dated 16th November 2007 seeking orders of Certiorari to quash the proceedings in South Kinangop Land Disputes Tribunal Claim No.67/07 and all subsequent orders.

The Notice of Motion dated 16th November 2007 is supported by the statutory statement filed on 23rd

September 2011 as amended vide Court Order issued on 21st September 2011, the further amended affidavit filed on 28th September 2011 and annexures thereto.

Though severally served with the substantive motion and hearing notices as can be seen from the affidavits of service filed by the applicant herein, neither of the respondents filed any response to the substantive motion. The application is thus unopposed.

From the proceedings in Land Disputes Tribunal Claim No.67/07 filed with the 1st respondent by the 2nd respondent annexed to the further verifying affidavit and marked GNM – MWM – 2, it is clear that the 2nd respondent had sued the two applicants in the Land disputes Tribunal questioning their ownership of title Nos. Nyandarua/South Kinangop/4485 and 5127 and the validity of the title documents issued in their favour.

Evidence was adduced at the proceedings showing that the 2nd applicant had bought a portion of land of the 2nd respondent's father for Kshs.30,000/- while the 1st applicant had been gifted with one acre of the same land as a reward for good service rendered to the 2nd respondent's father for two years prior to his death. Annexed to the applicant's further verifying affidavit are registration records showing that title deeds had been issued in the Applicant's names for the parcels of land in question. They are exhibited as annexures GNM – MWM 1.

The 2nd respondent had moved the Kinangop Land Disputes Tribunal seeking to evict the two applicants from the aforesaid parcels of land and to nullify the two title deeds registered in the applicant's names as according to him they had been issued fraudulently.

The tribunal in its award read on 29th August 2007 proceeded to make orders *inter alia* cancelling the title documents registered in the names of the two applicants and ordering that the applicants remove their properties from the affected parcels of land within three months. It is this award that triggered the instant judicial review proceedings in which it is contended that the 1st respondent did not have jurisdiction to make such orders under the Land Disputes Tribunal Act.

Section 3(1) of the Act provides as follows:

“Section 3(1) subject to the 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”.

It is very clear from a reading of that section that the tribunal had no power or jurisdiction to entertain a claim concerning ownership of registered land and ordering cancellation of title deeds. I add my voice to the apparent frustration exhibited by J. Kasango in Republic –vs- The Meru Central District Land Disputes Tribunal & Another Misc. Civil Appl. No.51/05 where she observed that despite the wealth of decisions even from the Court of Appeal showing the limit of jurisdiction of land dispute Tribunals, the tribunals continue making decisions which are ultra vires the Land Dispute Tribunal Act.

In the instant case, this court is satisfied that the 1st respondent acted ultra vires the provisions of Section 3(1) of the Land Disputes Tribunals Act and the applicants deserve the orders prayed for in the Notice of Motion dated 16th November 2007. I consequently issue orders of Certiorari requiring that all

proceedings and award in South Kinangop Land Disputes Tribunal Claim No.67 of 2007 and all consequential orders be removed to the High Court to be quashed. Lastly, I wish to note that Charles Kang'ara was wrongly joined as a respondent in this case. He ought to have been joined in the proceedings as an interested party not as a respondent since being an individual sued in his private capacity, he is not amenable to orders of judicial review.

In the end, the application is allowed with no orders as to costs.

Dated, Signed and Delivered by me at Nairobi this 17th day of February, 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk

Mr. Njagi Wanjeru for Applicants
N/A for Respondents