



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPEAL 57 OF 2010

IN THE MATTER OF: AN APPLICATION BY MARY WAIHIRA CHEGE FOR LEAVE TO APPLY FOR

JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF: THE LAND DISPUTE ACT NO.18 OF 1990

BETWEEN

MARY WAIHIRA CHEGE.....APPLICANT

-VERSUS-

THE LAND DISPUTES TRIBUNAL GITHUNGURI.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE’S COURT GITHUNGURI.....2ND RESPONDENT

THE LAND REGISTRAR KIAMBU.....3RD RESPONDENT

AND

HANNAH WANJIKU CHEGE.....INTERESTED PARTY

J U D G M E N T

The Notice of Motion dated 12th August 2010 filed in this Court on 16th August 2010 pursuant to leave granted on 27th July 2010 under Order 53 Rule 1(1) of the Civil Procedure Rules refers.

By the aforesaid Notice of Motion, the Exparte Applicant Mary Waithira Chege seeks Orders of Certiorari to quash the entire proceedings relating to Githunguri District Land Dispute Tribunal Case No.LND/16/20/21/2005 and the resultant decree issued by the 2nd Respondent, the Principal Magistrate’s Court Githunguri on 2nd June 2010 in Land Case No.20F of 2006 and all consequential orders. She also prays for orders of Prohibition prohibiting the 3rd Respondent, the Land Registrar Kiambu or officers working under him from acting on the decree issued by the 2nd Respondent in respect of Land known as Komothai/Kiratina/937 and Komothai/Kiratina/938.

The application is supported by the statement of facts dated 23rd July 2010 and the verifying affidavit sworn by the Exparte Applicant on 23rd July 2010.

The Respondents though duly served with the Notice of Motion did not file any response and chose not to participate in these proceedings.

The Interested Party, Hannah Wanjiru Chege who has been acting in person opposed the motion through a replying affidavit filed on 5th November 2010.

The brief facts of this case are that the Exparte Applicant is the Interested Party's biological daughter and is the registered owner of land known as Komothai/Kiratina/937 and Komothai/Kiratina/938 as shown by copies of title deeds attached to the application and marked MW C4.

The two parcels of land had apparently been excised from land originally owned by the Interested Party known as Komothai/Kiratina/444 and though the Interested Party admits to having given the Applicant the two parcels of land voluntarily, she filed a claim at the Land Disputes Tribunal Githunguri registered as Land Case No.16/20/40/2005 seeking revocation of titles issued in respect of Land Parcels Nos. Komothai/Kiratina/937 and Komothai/Kiratina/938 and that the same be transferred into her names.

The claim was based on the allegation that the Applicant had fraudulently caused herself to be registered as owner of the said parcels of land without the Interested Party's knowledge.

After deliberating on the dispute, the Land Disputes Tribunal gave its award directing that title deeds for Komothai/Kiratina/937 and Komothai/Kiratina/938 be revoked and that 30 points of an acre be excised from Komothai/Kiratina/938 and be added to Land Parcel Komothai/Kiratina/937 which was to be transferred to the Interested Party. The Executive Officer of the 2nd Respondent was authorized to sign documents to facilitate the sub-division of title No. Komothai/Kiratina/938 and transfer to the Interested Party.

The Exparte Applicant subsequently filed an appeal against the award to the Land Disputes Appeals Committee Central Province which she apparently later withdrew as can be seen from annexure marked MW CI. The result of the said withdrawal was that the Land Disputes Appeals Tribunal confirmed the award made by the Land Disputes Tribunal Githunguri which was adopted as an order of the 2nd Respondent on 27th May 2010 and a decree in terms of that award was issued.

The Applicant, aggrieved by the said award and orders of the 2nd Respondent moved this court seeking the judicial review remedies of Certiorari and Prohibition.

Given the undisputed facts in this case as summarized herein above, it is clear and obvious that the Land Disputes Tribunal Githunguri had no jurisdiction to hear and purport to determine disputes involving registered land and particularly to order revocation of titles issued under the Registered Land Act, Cap.300 Laws of Kenya.

There are numerous decisions from the High Court and from the Court of Appeal which have consistently confirmed that Land Disputes Tribunals have no jurisdiction to arbitrate on disputes concerning ownership of registered land or to order cancellation of titles or subdivision of registered land. It is surprising that this notwithstanding, the tribunals continue to make decisions which are *ultra vires* the Land Disputes Tribunal Act.

The jurisdiction of Land Disputes Tribunals is clearly specified in Section 3(1) of the now repealed Land Disputes Tribunal's Act which provides as follows:

“S3(1) Subject to this Act, all cases of 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 clear from the foregoing that Land Disputes Tribunals do not have jurisdiction to deal with disputes relating to ownership of registered land or to order subdivision of registered land. The Tribunals do not also have jurisdiction to order revocation or cancellation of title documents. This is the preserve of the High Court or the Subordinate Courts under Section 159 of the Registered Land Act where value of the land in question does not exceed the value specified in the said provision of the law.

The Court of Appeal had occasion to deal with a similar matter in Jotham Amunavi –Vs- The Chairman Sabatia Division Land Disputes Tribunal & Another, Civil Appeal No.256 of 2002 where it expressed itself in the following terms:

“The implementation of the decision of the tribunal entails the sub- division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (see Section 89 of the RLA).

It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3(1) of the Land Disputes Tribunal Act. By Section 159 of the Registered Land Act such a dispute can only be tried by the High Court or by the Resident Magistrates’ Court in cases where such latter court has jurisdiction”.

From the foregoing, it is clear that the Land Disputes Tribunal Githunguri acted *ultra vires* Section 3(1) of the Land Disputes Tribunal’s Act by arbitrating over registered land and ordering revocation of documents of title issued in the names of the Exparte Applicant and ordering sub-division of Land No. Komothai/Kiratina/938.

The award of the tribunal was therefore null and void *ab initio* and the 2nd Respondent acted contrary to the law by adopting an illegal award as a judgement of the Court and issuing the decree dated 27th May 2010 which was in law a nullity.

In the circumstances, I find that the Exparte Applicant has proved her case by demonstrating that she is deserving of the orders sought.

I therefore find that the Notice of Motion dated 12th August 2010 is merited and it is hereby allowed with the result that the following orders are hereby issued:-

1. An Order of CERTIORARI to remove into the High Court the entire proceedings and award in Githunguri District Land Disputes Tribunal Case No.16/20/21/2005 and the Order of the 2nd Respondent in Tribunal Case No.2 of 2006 and decree issued on 27th May 2010 which are hereby quashed.
2. An Order of PROHIBITION against the District Land Registrar Kiambu prohibiting him or any officer subordinate to him from acting on Decree issued on 27th May 2010 in respect of Land known as KOMOTHAI/KIRATINA/937 and KOMOTHAI/KIRATINA/938.
3. There shall be no orders as to costs.

Dated, Signed and Delivered by me at Nairobi this 30th day of March 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk

Mr. Munyororo holding brief for M/s Fundi for Applicant

N/A for 1st, 2nd & 3rd Respondents

N/A for Interested Party