



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**MISCELLANEOUS APPLICATION NO. JR. ELC 15 OF 2010**

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**IN THE MATTER OF ORDER 53 RULE 1 THE CIVIL PROCEDURE ACT**

**AND**

**IN THE MATTER OF THE LAND DISPUTE TRIBUNALS ACT**

**AND**

**IN THE MATTER OF AN APPLICATION BY PRISCILLA WANGARI KIONGO TO APPLY  
FOR JUDICIAL REVIEW**

**REPUBLIC .....APPLICANT**

**VERSUS**

**THE DISTRICT COMMISSIONER KIAMBU.....1<sup>ST</sup> RESPONDENT**

**THE LAND DISPUTES TRIBUNAL KIAMBU .....2<sup>ND</sup> RESPONDENT**

**MUNGAI MUHOHO .....INTERESTED PARTY**

**Ex-parte PRISCILLA WANGARI KIONGO**

**JUDGEMENT**

Through a letter dated 21<sup>st</sup> December, 2009 the District Commissioner, Kiambu wrote to the District Officer, Kiambaa requesting him to suspend the determination of a case before the Land Disputes Tribunal in respect of L.R. No. KIAMBAA/WAGUTHU/2166. On 30<sup>th</sup> December, 2009 the Land Disputes Tribunal Kiambu District terminated the case in the following words:-

**“The claimants and objector are informed of the termination of the case vide the District Commissioner’s letter referring to High Court case No. 443 of 2005.”**

The action of the Land Disputes Tribunal has brought Priscilla Wangari Kiongo (the ex-parte applicant) to this court. By way of a notice of motion dated 8<sup>th</sup> April, 2010 the ex-parte applicant prays for orders as follows:-

**1. An order of certiorari to remove into the High Court for the purpose of its being quashed a decision made by the Kiambu District Commissioner and embodied in his letter REF. NO. LND. 16/20/VOL.XV1/86 dated 21<sup>st</sup> day of December, 2009 instructing the Kiambu District Land Disputes Tribunal to suspend and/or terminate the determination of Tribunal Land Case No. LND/16/20/19/2009 (KIAMBU DISTRICT) on the ground that the tribunal lacks jurisdiction;**

**2. An order of mandamus directed to the Kiambu District Land Disputes Tribunal to compel the said tribunal forthwith or within a reasonable time to hear and determine according to law Tribunal Land Case No. LND/16/20/19/2009 and make an award as required by statute;**

**3. An order of prohibition prohibiting the Kiambu District Commissioner from interfering with, meddling into and/or impeding the hearing and determination of Tribunal Land Case No. LND/16/20/19/2009.**

**4. The costs of this application be provided for**

The District Commissioner, Kiambu District and the Land Disputes Tribunal Kiambu District are named as the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively. The application is supported by a statement dated 15<sup>th</sup> March, 2010 and a verifying affidavit sworn by the applicant on 15<sup>th</sup> March, 2010.

The respondents opposed the application through grounds of opposition dated 18<sup>th</sup> October, 2011. The grounds of opposition are:-

**1. The 2<sup>nd</sup> respondent lacks jurisdiction to hear matters of ownership over registered property.**

**2. The applicant is guilty of material non-disclosure. A plain reading of the claim before the 2<sup>nd</sup> respondent reveals that it is one of title which the 2<sup>nd</sup> respondent had no jurisdiction to determine.**

### **3. The Honourable Court would issue the sought orders in vain.**

Mungai Muhoho who is named as an interested party opposed the application through a replying affidavit sworn on 30<sup>th</sup> August, 2010 and a supplementary affidavit sworn on 7<sup>th</sup> April, 2011. It is the interested party's argument that the case which the ex-parte applicant herein had presented to the Land Disputes Tribunal had already been determined by the High Court through Civil Suit No. 443/2005 and the Tribunal had no jurisdiction over the matter.

The best way to understand the facts of this case is to look at the pleadings of the parties. In Nairobi High Court Civil Case No. 443 of 2005 Fredrick Mbugua and Priscilla Wangari Kiongo were the plaintiffs and Mungai Muhoho was the Defendant. The plaintiffs who were the administrator and administratrix of the estate of Mungai Kaburu sued the defendant for adverse possession. They were claiming that the deceased had occupied part of the defendant's parcel of land number Kiambaa/Waguthu/351 and they were entitled to that particular portion of the defendant's parcel of land. After hearing the case, M. A. Ang'awa, J found that the defendant had sold 1/8<sup>th</sup> of his parcel of land to the deceased and he had already given that piece to the plaintiffs. The plaintiffs therefore had no further claim against the defendant. She concluded that the plaintiffs were trying to get another 1/8<sup>th</sup> from the defendant's parcel of land and this could not be accepted. She therefore dismissed their claim.

Priscilla Wangari Kiongo the ex-parte applicant herein and Fredrick Mbugua appeared not to have been satisfied by the decision of M.A. Ang'awa, J and they proceeded to the Land Disputes Tribunal where they filed a claim. According to the application made before the Land Disputes Tribunal, the material facts on which the claimants relied on were:-

- (a) Claimants are the administrators of the estate of the late Mungai Kiongo Kaburu who bought 1.5 acres of Land from the Objector to be excised from the original title Kiambaa/Waguthu/351.**
- (b) The deceased died before sub-division and determination of his portion.**
- (c) In 2004 the objector with the assistance of the District Land Surveyor subdivided the land and allocated the estate of the deceased title number Kiambaa/Waguthu/2166 measuring 0.195 hectares (0.5 acres) instead of 1.5 acres.**
- (d) The objector has remained with the portion now known as Kiambaa/Waguthu/2165 measuring 1.365 hectares.**
- (e) The claimants seeks from the objector an additional one acre of land to be excised from title number Kiambaa/Waguthu/2165 which is registered in the objector's name as the absolute owner.**

At this stage, it is necessary to reproduce the pleadings in Nairobi H.C.C.C. No. 443 of 2005. The case was commenced by way of an originating summons and the reasons given in support of the claim for adverse possession were:-

- 1. That the estate of MUNGAI KABURU has acquired one hectare out of the defendant's 7/8 shares in KIAMBAA/WAGUTHU/351 by adverse possession.**
  
- 2. That the Land Registrar and District Registrar Kiambu do effect the transfer of one hectare out of the defendant's 7/8 shares in KIAMBAA/WAGUTHU/351 to the estate of Mungai Kabiru.**
  
- 3. That the Land Registrar do dispense with the production of the original title in effecting the transfer.**
  
- 4. That the court do make such other and further orders it may deem just for the ends of justice.**

When this case came up for highlighting of submissions on 6<sup>th</sup> February, 2012 Mr. Kisaka for the ex-parte applicant submitted that the District Commissioner, Kiambu had no powers over the Land Disputes Tribunal and his directive to the Tribunal to terminate the proceedings because the matter had been heard and determined in court was unlawful. It is the applicant's case that the dispute before the Tribunal was different from the dispute that was before M.A Ang'awa, J. He argued that the dispute before the Tribunal was for determination of boundaries and the respondents and interested party cannot be heard to say that the Tribunal had no jurisdiction to hear the matter. The applicant also argued that the Tribunal did not accord her a hearing before adopting the directive from the District Commissioner. It was argued for the respondents that the Act of Parliament which had created Land Disputes Tribunals was no longer in force and there was no Kiambu District Land Disputes Tribunal in place to be directed to give a decision. Counsel for the respondents also argued that the Tribunal had no jurisdiction to hear the matter since the claim was about ownership of land. Counsel for the respondents also submitted that the District Commissioner had requested but not ordered the Tribunal to terminate the case.

On his part the interested party submitted that the case before the Tribunal was about ownership of land and the Tribunal did not have jurisdiction to handle the matter. The interested party also submitted that by going to the Tribunal the ex-parte applicant was attempting to appeal against the decision of Ang'awa, J.

In reply to the submissions by the respondents and the interested party, counsel for the ex-parte applicant argued that what is before the court is whether the action by the District Commissioner was proper. He argued that the respondents and the interested party have submitted on the merits of the case and not on the procedure used to terminate the case before the Tribunal.

I have looked at the evidence placed before the court. It is clear that the Tribunal acted upon the letter of the District Commissioner and terminated the case that was before it. It is also clear that the Tribunal did not make a decision on the evidence that had been placed before it by the parties. The evidence placed before this court also clearly shows that the dispute that was taken before the Tribunal had been dealt with by the High Court and a decision made.

It is also quite clear that the dispute taken before the Tribunal by the ex-parte applicant herein touched on ownership of land. The Tribunal had no jurisdiction to hear such a dispute. This court has held in many cases that Land Disputes Tribunals have no powers to hear disputes touching on ownership of land. See **JAMES ALUKOYE WERE v LURAMBI DIVISIONAL LAND DISPUTES TRIBUNAL & another [2006] eKLR** and **REPUBLIC v CHAIRMAN MERU CENTRAL LAND DISPUTES TRIBUNAL & another Ex-parte M'MIRITI M'NJAU [2006] eKLR**. The ex-parte applicant herein tried to camouflage her claim by calling it a boundary dispute but her pleadings before the Tribunal clearly shows that this was a dispute about ownership of land.

Although the Tribunal erred by accepting the directive given to it by the District Commissioner, the Tribunal did not have jurisdiction to handle the claim that had been presented to it. The same was also a veiled appeal from the decision of the High Court and the Tribunal even in its wildest imagination could not have sat as an appellate court over the decisions of the High Court. The ex-parte applicant's action should not have therefore been entertained by the Tribunal from the beginning. May be the ex-parte applicant did not disclose to the Tribunal that the matter had been heard and determined by the High Court. The District Commissioner was therefore correct in alerting the Tribunal to the fact that it was overstepping its boundaries.

One can say that the Tribunal erred by terminating the case without making a decision but the only decision that the Tribunal was expected to make was to declare that it had no jurisdiction to handle the matter. Judicial review remedies are meant to assist parties in getting justice. Allowing the ex-parte applicant's application will amount to an exercise in futility since the Tribunal had no jurisdiction to make any decision on the matter that the ex-parte applicant is asking this court to direct the Tribunal to make a decision on. Orders should not be issued in futility.

It is also important to note that the law that created the 2<sup>nd</sup> respondent has been repealed. The 2<sup>nd</sup> respondent is therefore no longer in existence. Counsel for the respondents was therefore correct when she submitted that there is no tribunal in existence which can be directed to deliver a judgment. Granting the applicant the orders sought will be a useless exercise.

In the circumstances of this case, the ex-parte applicant's application must fail and the same is therefore dismissed. Considering the fact that the ex-parte applicant had no other avenue but to resort to judicial review, I make no order as to costs.

Dated and signed at Nairobi this 21st day of March ,2012 .

**W. K. KORIR**

**JUDGE**