



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE 97 OF 2009

**IN THE MATTER OF AN APPLICATION BY SUSAN WNAGUI MURIU FOR JUCIAL
REVIEW ORDERS OF PROHIBITION AND CERTIORARI**

AND

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

AND

IN THE MATTER OF D. O NUMBER 47 OF 2009 AT THIKA LAW COURT.

REPUBLIC APPLICANT

VERSUS

THE ATTORNEY GENERAL 1ST RESPONDENT

DISTRICT LAND DISPUTES TRIBUNAL2ND RESPONDENT

(RUIRU)

DAMARIS WANJIRU KAMAU 3RD RESPONDENT

SUSAN WANGUI MURIU EXPARTE

RULING

1. The applicant has filed a Notice of Motion dated 1.12.09, under Order LIII 3(1) of the Civil

Procedure Rules, section 23 of the Registration of Titles Act Cap 281, section 3 of the land dispute Tribunal Act. Cap 18, seeking the following orders;

i. That an order of Certiorari do issue quashing the proceeding of District Land tribunal read in Award number 47 of 2009 of Thika Law Courts.

ii. That an order of Prohibition do issue restraining the respondents from interfering with the applicants peaceful enjoyment of parcel of land number Ruiru/Mugutha I/T 2495

2. The application is supported by the verifying affidavit Susan Wangui Muriu which states as follows in brief:- that she bought land parcel Number Ruiru/Mugutha I/T.2495 from Carie Wangari Njoroge in 2003; that she then had the title deed belonging to the vendor herein transferred to her name and followed all the required procedure; that in the year 2004 the 3rd respondent claimed ownership of her parcel of land and reported the matter to the district officer Ruiru but was advised to seek legal redress in a Court of Law; that she has been in possession of the parcel of land until sometime this year the 3rd respondent took her to the District Land disputes tribunal at Ruiru; that the 3rd respondent instead of seeking legal address in a Court of Law has gone to the Ruiru Land Tribunal; that the tribunal orders her to surrender her land title deed to the District Land Thika; that she is informed by her advocate on record that the tribunal cannot challenge the ownership of her title; that she is apprehensive that this matter proceeds before the said tribunal the 3rd respondent she shall use her influence to dispossess her title deed; that the 3rd respondent herein refused to accept her evidence in form of the statement.

3. I have perused the Court file and I find as follows; the applicant filed and exparte Chamber Summons dated 26th November 2009, her statement of facts dated 25th November 2009 and her verifying affidavit dated 25th November 2009. On the 17th December 2009, the applicant filed the Notice of Motion seeking the orders already mentioned. The 3rd respondent raised a Preliminary Objection which was heard and, a ruling was given by Justice Mbogholi on 12th April 2011. This matter came up in Court again on the 17th October 2011 when the 3rd respondent sought direction on the ruling of Justice Mbogholi and the Notice of Motion under consideration. When the matter came for hearing on the 30th January 2012 the applicant though served did not attend. Mr. Kiage for the 2nd respondent told the Court that they had no interest in the matter as the bone contention was between the applicant and 3rd respondent. Mr. Ndichu for the 3rd respondent proceed to argue the application, he stated that the 3rd respondent was relying on the replying affidavit dated 4th June 2010 and the skeleton arguments dated 2nd July 2010 was adopted the same for the Notice of Motion dated 1st December 2009. He stated that the 3rd respondent is the lawful owner of the subject land based on the documents annexed on the replying affidavit and that the applicant has no proper title on the land, that the Court should dismisses the Notice of Motion. The applicant filed written submissions dated 14th July 2010 to the Preliminary Objection.

4. In the 3rd respondent replying affidavit she states that the application is incompetent and bad in law at paragraph 3. At paragraphs 4 she states how she acquired the property. At paragraph 5, 6 and 7 she states why she believes the applicant has a fraudulent title. I will not go into the issue of who owns the property or whether the title the applicant is holding is an illegal one or the District Land Dispute Tribunal Jurisdiction in determining the issue of ownership of the suit premises. However I note that section 3(1) of the Land District Tribunal (now repealed by Act No. 19 of 2012) gave the Tribunal's jurisdiction on land matters. In the applicant's skeleton arguments she has raised the issue that the applicant is seeking an order of prohibition against all the respondents, but the 3rd respondent is not a public body clothed with any legal authority to perform any public duty by statutes or warrant of such orders to be issued against her and that the prayer for prohibition against the 3rd respondent cannot be served and restricted to the other respondents because the Law Reform Act and Order LIII are not, in their operation, subjected to any other Act or Rules. The applicant has also raised other arguments to show that the application is incompetent and defective. I will not address them now as I find that the vital one to be addressed is the one I have stated. The 3rd respondent is an individual and not a public body. The order of certiorari the applicant seeks can only be granted against a public body but not an individual as stated on the Notice of

Motion. This issue cannot be ignored even if the applicant has raised a valid issue on the tribunal jurisdiction and the order it gave.

5. I therefore find that the applicant is seeking a prohibition order against the 3rd respondent who is not a public body clothed with any legal authority to perform any public duty by statutes or warrant of such orders to be issued against her, on this point alone I find that the 3rd respondent has shown that the application is incompetent. The 3rd respondent has cited authorities as shown in his skeleton arguments that support this fact. On this fact alone I find that the Notice of Motion cannot stand against the respondents and I therefore strike out the Notice of Motion dated 11th December 2009 with costs to the 3rd respondent. Orders accordingly

Dated and delivered this 26th Day of April 2012

R. OUGO
JUDGE

In the Presence of:-

..... For the Applicant

..... For the Respondent

..... Court Clerk