



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CIVIL APPLICATION 64 OF 2010

IN THE MATTER OF: RUIRU DISTRICT LAND TRIBUNAL CASE NO.3 OF 2010

AND

IN THE MATTER OF: THIKA COURT CASE NO.D.O.62 OF 2010

BETWEEN

REPUBLIC.....APPLICANT

-VERSUS-

RUIRU DISTRICT LAND TRIBUNAL.....1STRESPONDENT

THE SENIOR PRINCIPAL MAGISTRATE THIKA.....2NDRESPONDENT

NYERI LAND DISPUTES APPEAL TRIBUNAL.....3RDRESPONDENT

AND

RUTH WANJIRU GITUAMBA.....INTERESTED PARTY

EX PARTE

PHILIP KARIUKI KATHENGE

J U D G M E N T

The Exparte Applicant's Notice of Motion dated and filed on 9th September, 2010 seeks the following orders:

- 1) THAT an order of prohibition do issue directed at the Ruiru District Land Tribunal and the Senior Principal Magistrate, Thika to prohibit them from receiving, reading and forwarding the award for adoption as judgment of the Court.
- 2) THAT an order of certiorari do issue directed to the High Court to quash the decision and orders that have been issued by the Ruiru Land Dispute Tribunal in RUIRU/LDT/03 of 2010.
- 3) THAT costs be borne by the Respondent.

The Notice of Motion is supported by the statutory statement dated 28th July 2010 and the verifying affidavit sworn by the exparte applicant Philip Kairuki Gathenge on 28th July 2010.

In the said verifying affidavit, the exparte applicant (***hereinafter referred to as the Applicant***) depones that he is the registered proprietor of land known as RUIRU KIU BLOCK 2/GITHUNGURI/2282 Ballot No.2458 which he inherited from his late father (***hereinafter referred to as the suit land***). The land had originally been allocated to his late father by the Githunguri Constituency Ranching Co. Ltd. as can be seen from letter attached to the verifying affidavit and marked PKGI. Upon his father's death he inherited the said parcel of land and had it registered in his names on 23rd June 2004 – **see copy of title deed annexed as exhibit marked PKG10.**

The applicant further depones that a complaint relating to the suit land was filed by a fraudster at the Ruiru District Land Disputes Tribunal being Claim No. RUIRU/LDT/03/2010 and after hearing the disputes, the tribunal declared that the fraudster was the owner of the land. The proceedings of the tribunal annexed to the applicant's affidavit show clearly that the claimant was the interested party herein. The tribunal found that the interested party had bought the suit land from one Felista Njoki Mburu and consequently awarded the suit land to the interested party.

The applicant complains that the Land Disputes Tribunal exceeded its jurisdiction in making the aforesaid award. The said award had the effect of purporting to nullify his lawful title to the suit land.

The applicant's motion was opposed by the interested party only as the Respondents though duly served with the motion did not file any response. They chose not to participate in these proceedings.

In her replying affidavit, the interested party claimed that the applicant had no proprietary or beneficial interest in the suit land and supported the tribunal's award that she was the rightful owner of the suit land. In her view, the applicant's motion was premature as it was filed before the tribunal's award was read and adopted by the 2nd Respondent as a judgement of that Court. She urged the court to dismiss the Applicant's motion.

Having considered the applicant's motion and the brief submissions filed by advocates for the applicant and the interested party, I find that the tribunal exceeded its jurisdiction when it purported to determine a dispute concerning ownership of registered land. It is not disputed that the applicant is the registered proprietor of the suit land. By awarding the suit land to the interested party, the tribunal acted *ultra vires* the provisions of Section 3(1) of the now repealed Land Disputes Tribunals Act and usurped the powers preserved for the High Court and Subordinate Courts in appropriate cases by Section 159 of the Registered Land Act Cap.300 Laws of Kenya.

Under Section 159 of the Registered Land Act, it is only the High Court and the Subordinate Courts subject to value of the land in question that have power or jurisdiction to determine issues of ownership or

disputes relating to title to registered land.

Section 159 states as follows:

“Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease of charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate’s Court, or, where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunals Act in accordance with that Act”.

Section 3(1) of the Land Disputes Act which specifies the jurisdiction conferred to Land Disputes Tribunals is in the following terms:

3(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

From the foregoing, it is clear that the Ruiru Land Disputes Tribunal not only acted *ultra vires* Section 3(1) of the Land Disputes Act but also purported to usurp the powers of the High Court and Subordinate Courts when it determined a dispute concerning ownership of the suit land which was registered land. The resultant award was therefore null and void *ab initio* and had no legal effect.

The Applicant was therefore right in approaching the court when he did to avoid a situation where what was essentially a nullity in law was given a semblance of legality by the award being read and adopted as a judgement of the 2nd Respondent. Even if the said award was adopted by the 2nd Respondent, the resultant decree would be a nullity and of no legal consequence.

The Applicant did not need to wait for the illegal award to be taken through the motions prescribed under Section 7 of the Land Disputes Act before moving the court to have the said award quashed at the earliest opportunity before the 2nd Respondent was used to further perpetrate an illegality. In my view, Section 7 of the Land Disputes Tribunals Act would only lawfully apply where an award is made by a tribunal in the proper exercise of its jurisdiction under the Act.

In my considered view, a party who becomes aware of a decision made by an administrative body like the Land Disputes Tribunals in contravention of the law is at liberty and is in fact duty bound to approach the court as fast as he/she can to have such a decision formally declared null and void before it adversely affects his rights or the rights of others. In the circumstances, there is no substance in the interested party’s claim that the applicant’s Notice of Motion was prematurely filed.

Whereas ordinarily a court or other statutory body cannot be prevented from acting in accordance with the requirements of the law, where it is shown like in this case that the tribunal had acted without jurisdiction and had forwarded its illegal decision to the 2nd Respondent for it to be read and adopted as a judgement of the court, I find that it is appropriate for this court to issue the orders of Prohibition as sought in Prayer I to prohibit the 2nd Respondent from committing the unlawful act of reading and adopting an illegal award as a judgement of the court. I therefore issue an order of prohibition prohibiting the 2nd Respondent from receiving, reading or adopting the award made by the Ruiru Land Disputes Tribunal as a judgement of the court. I will not make any order of prohibition against the Land Disputes Tribunal since the prayer made in respect of the tribunal is obviously misplaced.

From the evidence placed before the court, the applicant has demonstrated that he is deserving of

orders of certiorari sought in this case. I therefore issue an order of Certiorari to bring to this Court and to quash the award issued by the Ruiru Land Disputes Tribunal in Ruiru/LDT/03 of 2010 dated 8th July 2010.

Since the applicant has been successful in his application, I award him costs of this application which will be borne by the interested party. It is so ordered.

Dated, Signed and Delivered by me at Nairobi this 29th day of May 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk
Kelwony holding brief for P.K. Njoroge for Applicant
N/A for Respondents
N/A for Interested Party