



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
JR ELC NO. 101 OF 2008

REPUBLICAPPLICANT

VERSUS

THE
CHAIRMAN, KIAMBU WEST
LAND DISPUTES TRIBUNAL.....RESPONDENT

EXPARTE

GRACE WANJIKU GICHIGO

AND

CHARLES MBUGUA WANJIKUINTERESTED PARTY

JUDGMENT

Application

1. The Notice of Motion before the court is dated 22nd December 2008 and is filed pursuant to leave granted on 5th December 2008. It is made under **Order 53 rule 3** of the **Civil Procedure Rules**. It seeks the following order of judicial review;

(1) That this Honorable Court be pleased to issue an order of Prohibition prohibiting the respondent from proceeding, taking any proceedings, arbitrating or purporting to arbitrate on the dispute lodged by the interested party in Land Dispute Case No. KW/LND/9/6/8 of 2008.

2. The application is supported by the verifying affidavit of Grace Wanjiku Gichigo sworn on 22nd December 2008 and the statutory statement dated 22nd December 2008.

The Applicant's Case

3. The gravamen of the application is that the Kiambu West Land Disputes Tribunal intends to proceed with a matter not within its jurisdiction.

4. The subject of the property known as **SIGONA/795** ("the suit property") is in the name of the *ex-parte* applicant. She avers that she is the absolute proprietor thereof and duly registered under the **Registration of Land Act (Chapter 300 of the Laws of Kenya)** having been given the land by her father in law and therefore the tribunal has no jurisdiction to proceed with any determination of a dispute concerning the matter.

Interested Party's Case

5. The interested party opposes the application on the basis of the replying affidavit sworn on 21st January 2009. He claims that he is a son of the *ex-parte* applicant's deceased's husband and is entitled to be part of the suit property.

6. In order to protect his interest in the suit property, he filed a case before the Kiambu West District Land Disputes Tribunal being Case No. KW/LND/9/6/8 of 2008. In the claim he stated as follows;

- (1) *That the disputed land Sigona/795 is currently registered into the name of the objector who is the wife of my deceased father Christopher Mbuti Ngumi.*
- (2) *That my father has been financing my up-keep through my mother Lucy Wanjiku since Birth and since maturity he had been promising me a share of his land by virtue of being his son.*
- (3) *That when my grandfather subdivided his land amongst his beneficiaries my father did not manage to have his share transferred to him even after his death.*
- (4) *That the objector ignored my beneficial interests when she had the whole land transferred in her name.*
- (5) *That I started living on the land immediately my father died so that I could secure my ownership rights.*
- (6) *That my father had been so much willing to give me half share of the family land.*
- (7) *That the land dispute Tribunal to hear the case and facilitate sub-division of the disputed land into two equal portions and transfer of one portion in my name.*
- (8) *That other facts and witness(es) statements to be given during hearing.*

Determination

7. When this matter came up for hearing neither the interested party nor his advocate appeared in court despite the fact that the hearing date was taken in the presence of the parties advocates. The respondent did not file any response and was not represented in these proceedings.

8. The **Land Disputes Tribunal Act (Act No. 18 of 1990)** was repealed by the **Environment and Land**

Court Act (Act No. 19 of 2011). However, in order to set out the proper legal position regarding the interested party's complaint before the tribunal it is necessary to make this determination so that the parties are guided accordingly. **Section 3** thereof limited the nature of the matters it could deal with. It provided;

3(1) Subject to this Act, all cases of a civil nature involving a dispute as to-

- (a) the division of, or determination of boundaries to land, including land held in common;**
- (b) a claim to occupy land**
- (c) trespass to land shall be heard and determined by a Tribunal established under section 4.**

9. It is clear from the facts of the cause before the tribunal that what the interested party seeks to resolve are matters that would properly be determined by the High Court under the **Law of Succession Act (Chapter 160 of the Laws of Kenya)**. The Land Disputes Tribunal has no jurisdiction to embark upon an inquiry that would lead to the determination of whether the interested party is an heir or beneficiary of the deceased.

10. Furthermore the applicant is the legal and absolute proprietor of the suit property under the **Registered Land Act**. The tribunal therefore lacks jurisdiction to deal with any matter concerning ownership of the property. Any other claim regarding the land would have to be filed in the court with jurisdiction to hear the interested party's claim.

11. By proceeding with the complaint, the Tribunal would be embarking on a journey that is clearly *ultra vires* the statute. In the case of **Kenya National Examination Council v Republic ex parte Geoffrey Githinji Nairobi Civil Appeal No. 266 of 1996 (Unreported)**, the Court of Appeal stated that an order of prohibition, "**[I]s an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the law of the land.**" In the circumstances an order of prohibition would be the appropriate remedy.

12. According to the Replying Affidavit filed by the interested party the proceeding before the tribunal may have proceeded and were awaiting judgment on 14th January 2009. A subsequent affidavit sworn by Samson Ndegwa sworn on 17th June 2009 in support of a motion to dismiss the suit did not mention this issue and nothing further has been said by the parties. I would only note that such proceedings and decision, if any, were conducted in contravention of the order of stay issued on 5th December 2008 by Justice Kubo.

13. In the circumstances I allow the Notice of Motion dated 22nd December 2008 in terms of prayer 1 with no order as to costs.

DATED and DELIVERED at NAIROBI this 9th day of May 2012.

D.S. MAJANJA

JUDGE

Mr Ocholla instructed by Soita and Saende Advocates for the *ex-parte* applicant.