



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISCELLANEOUS APPLICATION 77 OF 2011

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW BY HILDA NYAMBURA MWANGI FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT 1990 (ACT NO. 10)

BETWEEN

**REPUBLIC
APPLICANT**

VERSUS

EMILY KANYI MWANGI

THE SENIOR RESIDENT MAGISTRATE KAJIADO

**LAND DISPUTES TRIBUNAL KAJIADO NORTH DISTRICT
RESPONDENTS**

EX PARTE – HILDA NYAMBURA MWANGI

R U L I N G

Before me is a Notice of Motion dated 21ST April 2011 filed by the *ex-parte* applicant Hilda Nyambura Mwangi. It was filed under the Law Reform Act, and Order 53 Rule 3 of the Civil Procedure Rules. It has three prayers as follows:-

- 1. An order of certiorari to remove into the High Court and quash the decision of the 3rd respondent recalling cancelling and or revoking title to Land Reference Number Ngong/Ngong/25924.**
- 2. An order of prohibition barring the 1st, 2nd and 3rd respondents or persons acting under their directions from illegal transfer of the suit land to other parties or 1st respondent or the 2nd respondent reading the undated award.**

3. That costs of this application be provided for.

The application has grounds on the face of the Notice of Motion. The grounds are in summary that the applicant is registered as the proprietor of Land Reference Number Ngong/Ngong/25924 and the Land Disputes Tribunal did not have jurisdiction to deal with title to land or revoke her title. That the applicant was not allowed to file her defence and tender her documentary evidence before the Tribunal.

The application, though it was filed with a supporting affidavit without leave, that was an error, as the affidavits to be relied upon were those filed with the application for leave. The verifying affidavit filed with the Chamber Summons for leave is therefore the one that supports the application, as well as the statement filed therein. Both are on the file. It was deponed in the verifying affidavit sworn on 31st March 2011, that the 1st respondent had colluded with the brothers and sisters of the *ex-parte* applicant to take her land on the pretext that the respondent did not transfer the land. It annexed a copy of the title in her name.

The *ex-parte* applicant filed written submissions through her counsel Tonny M Odera. It was emphasized that the 3rd respondent, the Land Disputes Tribunal Kajiado, did not have jurisdiction to determine matters of title to land.

The application is opposed. The 1st respondent filed a replying affidavit sworn by herself on 4th July 2011. It was deponed *inter alia*, that the *ex-parte* applicant was a daughter of the 1st respondent, that the *ex-parte* applicant took advantage of the illness of the 1st respondent to persuade the 1st respondent to sign documents for the transfer of the land, that the land was family land, that family discussions had resolved that the land be retransferred to the 1st respondent, and that the decision of the Tribunal was fair and just.

The 1st respondent also filed written submissions through her advocate R.M. Njiriani & Company. It was emphasized that there was a family agreement that the *ex-parte* applicant should retransfer the land to the 1st respondent. It was also contended that the *ex parte* applicant participated in the proceedings before the Tribunal, and in fact grabbed and destroyed the family agreement for retransfer of the land, and ended up being arrested for such conduct.

At the hearing of the application, Mr Odera, for the *ex-parte* applicant stated that the orders by the Tribunal were beyond its powers. Certiorari and prohibition was therefore justified, and called for.

Mr Njiriani for the 1st respondent relied on documents and submissions filed, to oppose the application, and urged that parties bear their respective costs.

I have considered the application, and submissions on both sides, both written and oral. The determination of the Tribunal was in the following terms:-

“After hearing/observing the facts from both parties and the entire family per attached statements we now rule as follows:-

i. That the land registrar to recall Hilda Mwangi’s title Deed No. NGONG/NGONG/25924 (sic) the old lady Emily Kanyi Mwangi.

ii. That however, Hilda (objector) won’t sign the documents (consent) the senior resident magistrate court to appoint its executive officer to sign on behalf of the objector.”

Section 3 of the Land Disputes Tribunal Act, No. 18 of 1990 clearly spells out the jurisdiction of the Tribunal, which is as follows:-

“Subject to this Act, all cases of a civil nature involving a dispute as to-

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

It is clear from the above provisions that the jurisdiction of the Tribunal is specifically restricted. The tribunal cannot either cancel a title or order its return for cancellation. It cannot order the Registrar to recall a title. It cannot order the execution of documents for consent. By making the orders it made, the Tribunal clearly acted outside its powers. Such decision was an illegality and a nullity. The orders sought in this application have therefore to be granted. In my view, cancellation of title is a function of the court, under the appropriate statutory laws. It is not a function of the Land Disputes Tribunal.

For the above reasons, I allow the application and grant the order of certiorari and prohibition requested. As this is a matter between daughter and mother, costs will be in the cause.

It is so ordered.

Dated and delivered at Machakos this 25th day of **June** 2012.

George Dulu

Judge

In presence of:-

Mr Tom Odera for ex parte Applicant

N/A for 1st Respondent

N/a for 2nd & 3rd Respondent

Nyalo – Court clerk.