



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
JUDICIAL REVIEW 42 OF 2011

REPUBLIC.....
.....APPLICANT

VERSUS

CHAIRMAN MWEA EAST DIVISION LAND DISPUTES TRIBUNAL.....
.....1ST RESPONDENT

SRM WANGURU LAW COURTS.....2ND
RESPONDENT

FREDRICK KARIUKI NJIRI.....
....INTERESTED PARTY

DAVIS NAMU JOHN.....EX-
PARTE APPLICANT

R U L I N G

Pursuant to the Leave granted to the exparte Applicant on 21/7/2011 to apply for an order of certiorari the Applicant filed this Notice of Motion dated 3rd August 2011 under Order 53 of the Civil Procedure Rules and Section 8 & 9 of the Law Reform Act. The orders sought were:

1. Certiorari to remove into the High Court for the purpose of it being quashed the decision of the Mwea East Division Land Disputes Tribunal in Mwea Arbitration Case No. 3 of 2011 ordering cancellation and alteration of titles to parcels of lands Nos. KIRINYAGA/MARURUMO/514 and KIRINYAGA/MARURUMO/516 filed in Wang'uru Senior Resident Magistrate's Court as Arbitration No. 9 of 2011 and read and adopted as the Judgment of the court on 7/7/2011.

2. Costs of Application.

The Application is grounded on the affidavit of the Applicant, statement of facts and annextures. It is premised on the ground that the Tribunal acted beyond its jurisdiction by ordering cancellation and alteration of titles to parcels of land Nos. KIRINYAGA/MARURUMO/514 and KIRINYAGA/MARURUMO/516. In his affidavit he says he is the registered owner of land No. KIRINYAGA/MARURUMO/514 measuring 1.62 hectares, while the interested party owns land parcel

No. KIRINYAGA/MARURUMO/516.

The interested party filed a claim at the then Mwea East Division Land Disputes tribunal vide Arbitration No. 3 of 2011. After the hearing the Tribunal made an award in the following terms.

“The Tribunal elders ordered the District Land Registrar to cancel both title deeds and made the following alterations. Fredrick Njiiri Kariuki the Plaintiff should be issued with the correct title deed of 4 acres while the defendant Davis Namu John should be issued with a title deed of 2 acres.” (DNJ3)

And on 7/7/2011 the award was adopted as a Judgment of the Court. (DNJ4). The interested party filed a replying affidavit stating that he lives and works on the land parcel No. KIRINYAGA/MARURUMO/514 which is registered in the names of the exparte Applicant. And that the exparte Applicant works on land No. KIRINYAGA/MARURUMO/516 which is registered in the names of the interested party. They both occupy their respective portions but with different titles. And so the issue before the tribunal was on wrong occupation only which issue the Tribunal had jurisdiction to deal.

Both counsels duly filed their written rival submissions which I have read alongside the affidavits, annexures and statements of facts. Mr. Mithega is putting the matter as simple as an issue of wrong occupation of land. Had it been that simple the two warring parties would have gone to the Land Registrar and simply agreed on the way forward. It went to the Tribunal because in spite of the occupation of the land on the ground, the exparte applicant clings to the title as the registered owner. How does he relinquish that title without the proper forum hearing and determining that issue of title?

I have read the proceedings of what transpired before the Tribunal (DNJ3). It is clear from the proceedings that the issue is deeper than just the title deeds reading the wrong acreage. This is a matter where the court has to determine the interests of these two parties in the two pieces of land which are the subject of this suit. I have read keenly the Judgment of my brother Justice Khamoni in the case or **REPUBLIC VS THE CHAIRMAN LAND DISPUTES TRIBUNAL KIRINYAGA DISTRICT & ANOTHER - EXPARTE PETER MARU KARIUKI – HIGH COURT MISC. CIVIL APPLICATION NO. 129 OF 2004** in which the Hon. Judge found that Tribunals had jurisdiction to deal with matters under the Registered Land Act. I have no problem with that but it is not **all** matters. This is a matter where the issue of title **must** be determined. The exchange of the titles can only be effected once the interest in the land has been determined. And the interest of it can't be determined by the Tribunal. In the case of **WAMWEA VS CATHOLIC DIOCESE OF MURANG'A REGISTERED TRUSTEES [2003] KLR 389** the Court held thus:

1. Tribunals and Land Disputes appeals Committees do not have jurisdiction to hear disputes over title to land.

If it was just an issue of wrong occupation of land, the tribunal could have been within their mandate to direct the parties to occupy their respective portions. It however went ahead to do the following:-

- (i) **Determine interest in land**
- (ii) **Order the land Registrar to cancel titles already issued**
- (iii) **Order the Land Registrar to issue new titles as per their findings.**

The cases of:-

1. REPUBLIC VS SABOTI LAND DISPUTES TRIBUNAL & ANOTHER EXPARTE MERCIA LULIRO & OTHERS [2011] eKLR

**2. REPUBLIC VS KAJIADO LAND DISPUTS & ANOTHER
EXPATE SAMUEL S. MUYAA & 3 OTHERS [2005] eKLR**

Are quit distinguishable from the present case. In the two cited case the Tribunals were declaring what was already there. They did not alter anything in the Kajiado case, the order was for survey to be done. This was part of their mandate i.e. to deal with boundary disputes. And in the Saboti case the Tribunal ordered that the squatters to remain on the 22 acres they had occupied. This they said they did because they had no power to remove the squatters. They could only remove the squatters if they had power to determine title.

In the present case, as I have explained above, the Tribunal determined who is to own what and went further to direct the Land Registrar on what to do. I do find that the Tribunal acted *ultra vires* its mandate.

The exparte Applicant sued both the Tribunal and the Court that adopted the award into a Judgment. I therefore call into this Court the award in Mwea East Division Arbitration No. 3/2011 and the Judgment of Wang'uru Senior Resident Magistrate's Court Arbitration No. 9/2011 and quash them. Any consequential orders rising there from are also set aside.

Each party to bear his own costs.

DELIVERED, SIGNED AND DATED AT EMBU THIS 21ST DAY OF JUNE 2012.

**H. I. ONG'UDI
JUDGE**

In the presence of:-

**Ms. Muthoni for Mr. Kariuki for Interested Party
Njue CC**