



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELC MISC. CIVIL APPLICATION NO. 97 OF 2009

REPUBLIC APPLICANT
VERSUS
THE ATTORNEY GENERAL1ST RESPONDENT
DISTRICT LAND DISPUTES TRIBUNAL...2ND RESPONDENT (RUIRU)
DAMARIS WANJIRU KAMAU.....3RD RESPONDENT
SUSAN WANGUI MURIU EXPARTE

RULING

The ex-parte applicant was aggrieved by the proceedings and ruling by the District Land Disputes Tribunal (Ruiru) and sought leave to apply for orders of certiorari to issue quashing the proceedings of the District Land Tribunal read in award No. 47 of 2009 at Thika Law Courts. She also sought an order of prohibition to restrain the Respondents from interfering with her peaceful enjoyment of parcel of land No. Ruiru/Mugutha 1/T 2495. Leave having been granted, she filed the substantive application and served the same upon the respondents.

The 3rd respondent filed a Notice of Preliminary objection on the following grounds;

1. That the application is not property before the court in that it was commenced under the file in which the leave was sought and obtained.
2. That the application is incompetent in that it seeks orders of prohibition against the 3rd respondent who is a person clothed with no authority to perform any public duty or warrants such orders to be issued against her.
3. That the application is fatally and incurably defective in that the facts and verifying affidavit of the ex-parte application are in clear contravention of the law.
4. That the application filed is incompetent and bad in law.
5. That the application is bad in law as it offends the mandatory rules of procedure and provisions of the law.

The parties herein have filed written submissions to address the preliminary objection and the main Notice of Motion. However as at this point, only the preliminary objection is to be addressed in this ruling.

I have related the preliminary objection to the pleadings and the replying affidavit on record. The preliminary objection when upheld is supposed to terminate the proceedings because, it has to be founded on law and that being the case, no substance remain after the court makes the decision to uphold the same.

The objections raised by the 3rd respondent with respect are, such that they are infact, a reply to the

Notice of Motion and going by the replying affidavit sworn by Damaris Wanjiru Kamau, that indeed has been captured. There is no way this preliminary objection can determine the issues raised in the Notice of Motion with finality. That being the case, what the objection has contributed to is the delay in finalization of these proceedings. The order of prohibition is not directed at the 3rd respondent alone but all the respondents. There is also the issue of jurisdiction which cannot be ignored by this court; but since I am not addressing the main Notice of Motion I say no more in that regard. It is enough at this stage to say that I see no merit whatsoever in the preliminary objection and accordingly dismiss the same with costs to the Ex-parte applicant.

The parties shall now indicate to the court whether or not they intend to highlight the submissions in respect of the Notice of Motion or leave it to court to write the Ruling in respect thereof.
Orders accordingly.

Dated, signed and delivered at Nairobi this 11th day of March, 2011.

A. MBOGHOLI MSAGHA
JUDGE