



IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.61 OF 2010

IN THE MATTER OF APPLICATION FOR ORDER OF CERTIORARI

AND

IN THE MATTER OF REGISTERED LAND CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

NJORO LAND DISPUTE TRIBUNAL.....RESPONDENT

AND

JULIUS K. KOECH.....1ST INTERESTED PARTY

CATHERINE HWERE.....2ND INTERESTED PARTY

EXPARTE

RULING

Pursuant to leave granted to the applicant (William Langat), on 28th May, 2010, he has brought the instant motion for *certiorari* to quash the proceedings and decision of the Njoro Land Dispute Tribunal in Dispute No.22 of 2009. The application is premised on the grounds that the Tribunal acted in excess of jurisdiction by determining issues of ownership and proceeding to issue an order which amounted to cancellation of the applicant's title deed. It is also averred that the applicant was not heard.

The application was opposed by the 2nd interested party who has deposed in her reply that the applicant has no *locus standi* to bring this application having failed to participate in the Tribunal after he was duly summoned; that the applicant has approached the court with unclean hands in that although he purchased a ¼ of the suit land, he has fraudulently registered the entire suit property in his name; that the registration was obtained after the decision of the Tribunal.

I have considered these arguments, written submission as well as the single authority cited by counsel for the 2nd interested party. The 1st interested party and the respondent did not participate despite service.

An order of *certiorari* will issue where the court is satisfied that the impugned decision was made without or in excess of jurisdiction, or where the rules of natural justice are not complied with. See **Kenya National Examination Council Vs. Republic Ex parte Geoffrey Gathenji Njoroge and others**, Civil Appeal No.266 of 1996. It is common ground that the 1st interested party, Julius K. Koech was the registered proprietor of NJORO/NJORO BLOCK 4/890 (BELBUR) measuring 0.56 Ha. It is also a matter of fact that he entered into two separate written agreements with the 2nd interested party, Catherine Hwere and the applicant. The agreement between the 1st interested party and the applicant is dated 5th November, 2007 while that with the 2nd interested party is dated 21st May, 2009. It is clear from the two agreements that the 1st interested party intended to dispose of only ¼ acre of the 0.56 Ha property to each purchaser.

At one point, the 1st interested party failed to transfer the ¼ acre portion sold to 2nd interested party prompting the latter to seek redress in the Tribunal. The case before the Tribunal revolved around the sale agreement between the two interested parties and all the 2nd interested party prayed for was an order compelling the 1st interested party to produce the title deed for purposes of effecting a transfer of the purchased portion to her. The Tribunal in its decision stated:

“VERDICT:

- 1. This title deed Njoro/Njoro/Block 4/890 should be surrendered to lands office to be mutated to pave way for the persons one Catherine Hwere (1/4 an acre) and the remaining half to John K. Koech to enable them acquire the respective title deeds.**
- 2. Whoever is interfering with the middle plot which is belonging to Catherine Hwere should be stopped with immediate effect.”**

The Tribunal's jurisdiction as contained in **Section 3** of the **Land Dispute Tribunals Act** does not

include a dispute arising from a sale agreement or breach of contract. It is therefore clear that the Tribunal exceeded its jurisdiction by entertaining the dispute arising from alleged breach of contract and issued what amounted to specific performance

Secondly, it is apparent that the existence of the applicant as a buyer was brought to the attention of the Tribunal yet he was not given an opportunity to be heard. The alleged summons to the applicant is not sufficient evidence of service. The applicant being one of the purchasers had legitimate expectation to be heard before any decision affecting his title was made. He has *locus standi* to bring this application.

For the reasons stated, the application is allowed as prayed and it is ordered that the impugned decision be and is hereby quashed by *certiorari*.

In conclusion, I would like to emphasize that this ruling does not decide the rights of the parties but deals only with the procedure and the jurisdiction of the Tribunal. The applicant has not explained how he acquired the title for the entire suit property measuring 0.56 Hectares (approximately 1.4 acres) whereas he only purchased ¼ acre from the suit property. That is food for thought for the interested parties. I award costs to the applicant.

Dated, Delivered and Signed at Nakuru this 8th day of March, 2011.

W. OUKO

JUDGE