



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 125 OF 2007

THE REPUBLIC APPLICANT

VERSUS

MARAGUA LAND DISPUTES TRIBUNAL 1ST RESPONDENT
SENIOR RESIDENT MAGISTRATE KIGUMO 2ND RESPONDENT
LAND REGISTRAR MURANG'A 3RD RESPONDENT
JAMES KAGUCIA MWANGI 4TH RESPONDENT
EX PARTE
FRANCIS MWANGI CHEGE

RULING

Francis Mwangi Chege, the ex parte applicant, hereinafter referred to as “**the applicant**”, filed an application by way of Notice of Motion dated 15th March, 2007. He sought the following orders:

- “(a) An order of certiorari to remove into the High Court for purposes of quashing all the proceedings and award made by the 1st respondent and read by the 2nd respondent on 10th November, 2006 and made an order of the court on the 15th of December, 2006 Cases No. 129 of 2006 and Kigumo Senior Resident Magistrate Tribunal Case No. 45 of 2006 filed by the 4th respondent in respect of LOC. 7/Gathera/2262 and quash all the consequential entries made in the register of the suit land at Murang’a Land Registry.
- (b) An order of prohibition to prohibit the Land Registrar, Murang’a from dealing with the suit land until the determination of this suit.
- (c) An order in respect of the costs of this application.”

The application was made on the grounds that:

- “1. The 1st respondent had no jurisdiction to hear and determine the dispute presented before it by the 4th respondent as it purported to do and has no jurisdiction to award title by adverse possession as it purported.
2. The proceedings before and the award by the 1st respondent thereof contravened the provisions of the Land Disputes Tribunal Act No. 10 of 1990 and Cap 300 of the Laws of Kenya as well as the Succession Act Cap 160 Laws of Kenya.

3. The Senior Resident Magistrate, Kigumo, making the award an order of the court has given effect to an award that is null and void which the Land Registrar, Murang'a, has acted upon thereby giving effect to an award that was not to be in the first instance and all these should be reversed by this honourable court."

The application was supported by a statutory statement and a verifying affidavit sworn by the applicant. The applicant stated that he is a joint administrator of the estate of one Kimuhu Njoroge (deceased) together with one Charles Mwangi Wambui. The letters of administration in respect of the said estate were issued by the High Court of Kenya at Nairobi in **Succession Cause No. 1672 of 2004**. The late Kimuhu Njoroge was the registered proprietor of a parcel of land known as **LOC.7/GATHERA/2262**, hereinafter referred to as "**the suit land**". A certificate of official search was annexed to the applicant's affidavit.

The applicant further stated that the deceased had sold to him 0.8 acres of the suit land and also sold to the 4th respondent 1 acre of the same. However, the deceased died before he had transferred the applicant's portion to him. As a result, the applicant filed the above succession cause and cited the 4th respondent to accept and/or apply for letters of administration. The 4th respondent did not honour the citation but one Charles Mwangi Wambui appeared as an objector.

Before finalization of the aforesaid succession cause, the 4th respondent filed a claim at Maragua Land Disputes Tribunal, being **Tribunal Case No. 129 of 2006**. He was seeking removal of a caution that had been registered in favour of the applicant against the title to the suit land. The tribunal heard the claim and delivered an award. It held that the 4th respondent was entitled to the suit land by way of adverse possession. The tribunal further directed that the 4th respondent do move the court to seek removal of the said caution. Thereafter the 4th respondent caused the suit land to be registered in his name.

The applicant deposed that the tribunal did not have jurisdiction to determine the aforesaid matter and make the aforesaid orders.

The 4th respondent filed a replying affidavit and denied that the applicant is an administrator of the deceased's estate. He further denied having been served with a citation in the aforesaid succession proceedings. With regard to ownership of the suit land, the 4th respondent stated that in the year 2002 he purchased from the deceased the whole of the suit land at a consideration of Kshs.200,000/= which he fully paid over a period of time and took possession of the suit land in the same year. He further stated that the vendor obtained and delivered to him the original title deed, the requisite Land Control Board consent and a duly executed transfer in the month of June 2003.

The 4th respondent further stated that the applicant used to rent a portion of the suit land for cultivation but had not purchased any portion thereof from the deceased. After the death of the deceased on 29th October, 2003 the 4th respondent went to the District Land Registry sometimes in 2006 to register the transfer but was unable to do so because of a caution that had been filed by the applicant claiming purchaser's interest. As a result, he filed a complaint with the Maragua Disputes Land Tribunal seeking removal of the caution. In his view, the tribunal had jurisdiction to hear and determine the dispute. He denied that the applicant had drawn attention to the succession proceedings that were pending before this court.

On 1st December, 2010 Mr. Irungu Mwangi and Mr. Mulandi for the 4th respondent appeared before this court for the mention of this matter. The court directed the applicant to file and serve his submissions and list of authorities within 30 days and the respondent was directed to respond thereto within 21 days from the date of service. The record shows that it is only the applicant who filed his submissions.

The applicant's main contention is that the Maragua Land Disputes Tribunal had no jurisdiction to hear and determine the dispute that was presented to it by the 4th respondent. Consequently, the

proceedings and the award were a nullity and ought to be quashed.

The jurisdiction of the Land Disputes Tribunal is stipulated under **Section 3(1)** of the **Land Disputes Tribunal Act**. It is clear that such a tribunal has no power to make orders regarding ownership of a registered parcel of land, and more so based on the doctrine of adverse possession. Such jurisdiction is exclusively given to the High Court. Any order made by a tribunal without jurisdiction is a nullity in law. It follows therefore that the orders made by the 2nd respondent are also a nullity. It is a well known maxim of equity that out of nothing comes nothing. If the tribunal did not have jurisdiction to make the orders complained of by the applicant herein, the tribunal acted *ultra vires*. An order made by a body which lacks jurisdiction ought to be quashed by an order of certiorari.

Jurisdiction is a creature of statute and it matters not whether the issue was raised before the tribunal or not. As long as the tribunal proceeded without jurisdiction, its decision cannot be allowed to stand.

Consequently, I grant the order of certiorari in terms of prayer (a) of the applicant's application.

It appears that the wording of prayer (b) meant that the order of prohibition sought was to prohibit the 3rd respondent from dealing with the suit land until the determination of these proceedings. In view of the fact that Emukule J had earlier ordered that grant of the leave to apply for the order of certiorari do operate as an order of stay of any further dealings with the suit land until this matter is determined, prayer (b) aforesaid is therefore misplaced. The costs of this application shall be borne by the 4th respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY, 2011.

D. MUSINGA
JUDGE

In the presence of:

Nazi – Court Clerk

Mr. Mwangi for the Applicant

No appearance for the Respondents