



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 27 OF 2010

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF
CERTIORARI**

AND

IN THE MATTER OF THE LAW AWARDS MADE ON 26TH FEBRUARY 2010

IN THE KIAMBU DISTRICT LAND DISPUTES TRIBUNAL CLAIM NO. KW/LND/9/6/109/2008

BETWEEN

REPUBLIC.....APPLICANT

AND

- 1. KIAMBU DISTRICT LAND TRIBUNAL.....1ST RESPONDENT**
- 2. THE PRINCIPAL MAGISTRATE'S COURT KIKUYU.....2ND RESPONDENT**

AND

- 1. SAMUEL NGUGI KINUTHIA1ST INTERESTED PARTY**
- 2. MARY NG'ENDO NGUGI.....2ND INTERESTED PARTY**

EX PARTE: SAMUEL NGUGI MUIRURI

RULING

The ex parte applicant's application dated 19th May, 2010 seeks the following orders:

“1. That this honourable court be pleased to issue orders for judicial review for an order of certiorari to remove into the High Court and quash the decision/award of the 1st respondent made in Kiambu Land Disputes Case No. KW/LND/9/6/109/2008 and the subsequent judgment by the 2nd respondent in PMCC Land Case No. 31 of 2009 on 16/4/2010.

2. That the costs of this application be provided for.”

The application was made on the following grounds:

“(a) That the interested parties instituted Kiambu Land Disputes Claim No. KW/LND/9/6/2008 claiming a share of Land Parcel Nos. KARAI/GIKAMBURA/577/583 claiming that the same was family land.

(b) That after hearing and determination of the dispute the following orders were awarded on 26/2/2010: -

(i) That Kiambu District Land Surveyor visits KARAI/GIKAMBURA/577 and excise 3 acres on the eastern side next to the road bypass.

(ii) That the 3 acres so excised as about order (sic) be for Mary Ng'endo, the second complainant in the case.

(iii) That the Executive Officer, Kikuyu Land Courts, (sic) executes and signs all consents, as may be necessary, to subdivide and transfer the 3 acres out of KARAI/GIKAMBURA/577 to Mary Ng'endo.

(c) That subsequently, the 2nd respondent adopted and entered the above orders as judgment on 16/4/2010 in PMCC Land Case No. 31 of 2009.

(d) That the said land is jointly owned by the applicant and his deceased mother Lillian Kabui Muiruri.

(e) That the applicant was not initially served with the statement of claim but only with a copy of a hearing notice dated 21/5/09 for a hearing that was scheduled for 18//6/09.

(f) That it was only after his advocates on record wrote to the Chairman of the 1st respondent vide the letter dated 3rd June 2009 that the same was served.

(g) That the matter instituted by the interested parties is subject to Nairobi Succession Cause No. 3846 of 2005 hence was *sub judice* which position was well stated to the 1st respondent's chairman vide the said letter dated 3/6/2010 by the applicant's advocate on record and also in the applicant's statement of defence in the matter.

(h) That with the 1st respondent's award having been entered as judgment, the interested parties will proceed to have the applicant's land parcel excised yet the said land is jointly owned by the applicant and his deceased mother Lillian Kabui Muiruri and did not form part of family land.

(i) That under the Land Disputes Tribunals Act 1990, the 1st respondent had no jurisdiction to determine a dispute based on trust. Further the same was in *sub judice* as it was and still pending

the High Court at Nairobi as aforesaid and neither does it fall under section 3(1) of the said Act.”

The application was supported by a verifying affidavit sworn by **Samuel Ngugi Muiruri**, the ex parte applicant. He stated that Land Parcel Number KARAI/GIKAMBURA/577 belonged to his grandfather, Kiromo Warare, who was the registered proprietor thereof as from 16th April, 1959. His grandfather transferred the land as a gift to the deponent’s late father, Muiruri Ngugi, on 22nd May, 1974. After the death of Muiruri Ngugi in 1979, the land was by transmission registered in the names of the ex parte applicant and his late mother, Lillian Kabui Muiruri, on 19th February, 1986 as trustees for themselves and the deponent’s siblings. A copy of the abstract of the title was annexed to the affidavit.

With regard to Land Parcel Number KARAI/GIKAMBURA/583, the deponent stated that his late father purchased it from Mbugua Gathigu resulting to its registration on 19th December, 1968. Upon the death of his father the same was by transmission registered on 19th February, 1986 in his name (ex parte applicant) as well that of his deceased mother as trustee for themselves and the deponent’s siblings. A copy of the abstract of the title was also annexed to the affidavit. The ex parte applicant further amplified in his affidavit the aforesaid grounds relating to the determination made by the Land Disputes Tribunal and the subsequent adoption of the said decision by the Kikuyu Principal Magistrates Court on 16th April, 2010.

In view of the foregoing, the interested party stated that the Kiambu Land Disputes Tribunal had no jurisdiction to hear and determine the dispute relating to the said parcels of land since the claim was based on trust in respect of registered parcels of land. Further, the said land dispute was *sub judice* as it was the subject matter of **Nairobi High Court Succession No. 3486 of 2005**.

Samuel Ngugi Kinuthia, the 1st interested party, filed a replying affidavit. He denied that Land Parcels Numbers KARAI/GIKAMBURA/577/583 formed part of the estate of the late Peter Muriru Ngugi since they had already been registered in the names of the ex parte applicant and his late mother. In his view, the claim presented before the Land Disputes Tribunal fell squarely under its jurisdiction since the claim was about family land and the same was being held on trust for all the family members. He defended the award made by the tribunal saying it was fair, just and reasonable.

The respondents did not enter appearance and neither did they file any document at all.

The ex parte applicant and the interested parties filed their respective submissions which I have carefully perused.

The main issue for determination is whether the 1st respondent, Kiambu District Land Disputes Tribunal, had jurisdiction to hear and determine the land dispute referred to herein. **Section 3(1) of the Land Disputes Tribunal Act** provides:

- “(1) 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 including land held in common;**
 - (b) a claim to occupy or work land; or**
 - (c) trespass to land, shall be heard and determined by a tribunal established under section 4.”**

Considering the nature of the dispute that was before the tribunal, it did not relate to any of the aforesaid categories. It was a claim to ownership. The two parcels of land had been registered in the names of the ex parte applicant and his deceased mother as trustees of themselves and others. The interested parties may have been among the beneficiaries of the said trust and rightly believed that they were entitled to a share of the land. But even if that was the case, they ought to have instituted their claim before a court of competent jurisdiction. The tribunal went beyond its jurisdiction when it made orders as to how the two parcels of land were to be subdivided. It ought to have taken into consideration that the two parcels of land were registered properties and its powers to determine ownership of such lands or to make orders as would affect their registration was expressly excluded by the provisions of **Section 3(1) of the Land Disputes Tribunal Act**. See **BEATRICE M'MARETE v REPUBLIC & OTHERS ex parte JOHN GITONGA MBUI**, Civil Appeal No. 259 of 2000.

Secondly, it is not denied that prior to the lodging by the interested parties of the Kiambu Land Dispute Case herein, they had instituted in the High Court of Kenya at Nairobi, Succession Cause No. 3486 of 2005. The main issue for determination in the Succession Cause is ownership of the suit property. The case involved the same parties as in the land dispute. It is therefore evident that the land dispute case was *sub judice* the said succession cause.

In view of the foregoing, I find and hold that the 1st respondent exceeded its jurisdiction and also its decision was *sub judice* in view of the aforesaid High Court Succession Cause No. 3486 of 2005. The order of certiorari as prayed by the ex parte applicant is well merited and I grant the same. The interested parties shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MAY, 2011.

D. MUSINGA

JUDGE

In the presence of

Nazi – Court Clerk

Mr. Nderitu for Mr. Kiarie Njuguna for the 1st and 2nd Interested Parties

Mr. Kamau for Miss Mbilo for the Respondents

No appearance for the Ex Parte Applicant