



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
MISC. CIVIL CASE NO. 84 OF 2008

REPUBLIC.....APPLICANT

VERSUS

CENTRAL LAND DISPUTE TRIBUNAL NANYUKI.....1ST RESPONDENT
NANYUKI SENIOR PRINCIPAL
MAGISTRATE'S COURT.....2ND RESPONDENT
PHERIS NYARUAI.....3RD RESPONDENT

AND

NGENIA FARMERS COOPERATIVE SOCIETY LTD.....INTERESTED PARTY

DANIEL MUTHEE NDERITU.....EXPARTE APPLICANT

RULING

Pursuant to *Order LIII rule 3* of the Civil Procedure Rules (now order 53 Rule 3) Daniel Muthee Nderitu, the exparte Applicant herein, took out the Motion dated 23rd May 2008 in which he prayed for the following orders:

1. ***That the Honourable court be pleased to issue an order of certiorari to remove into this court and quash the decision of central land Disputes Tribunal, Laikipia East made on 13th December 2007 in respect of parcel of land number NANYUKI/SOUTH TIMAU/BLOCK 1/464 NANYUKI South between the Exparte Applicant and the interested party.***
2. ***That the Honourable court be pleased to issue an order of certiorari to remove to this court and quash the decision of the senior Principal Magistrate Nanyuki in Land case number 46 of 2007 between the subject and the interested party made on 2nd April 2008.***
3. ***That costs of this application be awarded to the subject.***

The Applicant swore an affidavit in support of the Motion. Ngenia Farmers Cooperative society Ltd., the Interested Party herein, filed the replying affidavit of Charles Wang' Ondu, its secretary, to oppose the Motion. Pheris Nyaruai, the 3rd Respondent filed a replying affidavit she swore to oppose the Motion. Miss Munyi, learned Provincial Litigation counsel, filed a notice of preliminary objection on behalf of the 1st and 2nd Respondents to resist the Motion.

When the Motion came up for interpartes hearing, on 21st March 2011, the Respondents and the Interested Party were granted leave to proceed exparte when the Exparte Applicant and his counsel failed

to turn up despite having been served with a hearing notice.

It is the contention of Mr. Wairoma, learned litigation counsel, that the tribunal decision having been adopted on 2nd April 2008 as the decision of the Nanyuki Senior Principal Magistrate's Court, the same cannot be quashed because the suit has been overtaken by events. It is said that the land in question is registered in the name of Ephraim Kahiga, deceased, the husband of the 3rd Respondent. The *ex parte* applicant herein was said to have been the person who filed a complaint before the Land Disputes tribunal which heard and dismissed the complaint. The Interested party on the other hand has stated that she is a non-suited party having not participated in the case before the tribunal. It is also alleged that the Interested Party was undergoing winding up proceedings.

In the circumstances of this case, I feel obliged to look at the pleadings filed by the *Ex parte* Applicant in order to discover the issues in dispute. There is evidence that the *ex parte* applicant herein filed a complaint before the Central Land Disputes Tribunal, Nanyuki, claiming ownership of the parcel of land known as **NANYUKI/SOUTH TIMAU/BLOCK 1/464**. The Land Disputes Tribunal heard the same and dismissed the complaint in its decision delivered on 13th December 2007. The tribunal also found that the aforesaid land belonged to one Ephraim Kahiga, deceased, and proceeded to award the same to his widow. The aforesaid was presented for adoption as the decision of the Nanyuki Senior Principal Magistrate's Court on 29th April 2008. The *Ex parte* Applicant is now before this court claiming the Land Disputes Tribunal had no jurisdiction to hear and determine the dispute relating to title to land. It is obvious from the word go that the *ex parte* applicant herein is blowing hot and cold at the same time. He is the one who approached the tribunal to hear and determine his dispute. When he lost, he changes his position claiming the tribunal had no jurisdiction to hear and determine the dispute. Of course it is trite law that parties cannot give a court or a tribunal jurisdiction to hear matters they have no jurisdiction by filing cases before such courts or tribunal. It did not matter whether it was the Applicant or any other party who had filed the dispute before the tribunal. What is paramount here is whether the complaint filed in the tribunal was the kind defined under *Section 3 (1)* of the Land Disputes Tribunal's Act.

The main issue raised and argued by Mr. Wairoma is that since the Tribunal's decision has been adopted as the decision of the Senior Principal Magistrate's Court, the same cannot be quashed. With respect, I do not think that is the correct exposition of the law. Mr. Wairoma's argument can be sustained only if the Tribunal's decision has been adopted and executed. There is no evidence that the Nanyuki Senior principal Magistrate's adoptive decision has been executed. The Interested Party has stated that Ngenia Estate Ltd. has undergone compulsory wind up proceedings hence it cannot be sued. That may be so, but the decision of the Land Disputes Tribunal still stands. In any case the Interested Party was named not as a main player in the suit but a peripheral one. The main players in this dispute are the *Ex parte* Applicant and the Respondents.

Having disposed of the preliminary issues raised by the Interested Party and the Respondents, let me now address my mind to the main issue in dispute. The question is whether or not the tribunal had any jurisdiction to hear and determine the dispute. A careful perusal of the tribunal decision is that it made a decision which determined ownership of the parcel of land known as **L.R. NANYUKI/SOUTH TIMAU/BLOCK 1/464**. The Tribunal specifically stated that the land belonged to the late Ephraim Kahiga Kihia. It went ahead to award the land to his widow, the 3rd Respondent herein. It is obvious that the Land Disputes Tribunal had no jurisdiction to hear a dispute not falling within those defined under *Section 3 (1)* of the Land Disputes Tribunal's Act. If indeed the land was found to be owned by Ephraim Kahiga Kihia, deceased, then the tribunal acted in excess of jurisdiction when it purported to transmit the land to the deceased's widow. The tribunal usurped the powers of a succession court.

In the end I am convinced that the Motion has merit. It is allowed as prayed save that costs shall not be awarded to the *Ex parte* Applicant because he is the author of the misfortune which later befell him. Each party to meet his or her own costs.

Dated and delivered at Nyeri this 3rd day of June 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Chweya holding brief Wanjohi for the 3rd Respondent & Interested Party. No appearance for Ombachi for Applicant. No appearance Wairoma for State.