



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. APPLICATION NO. 49 OF 2010

WANJIRU MBURU GITAU.....APPLICANT

VERSUS

KAHURO LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

THE RESIDENT MAGISTRATE'S COURT AT

MURANG'A.....2ND RESPONDENT

AND

DAVID C. NGIGI GITAU.....INTERESTED PARTY

RULING

The subject matter of this ruling is the Notice of Motion dated 29th July 2007 in which **Wanjiru Mburu Gitau**, the applicant herein, sought for the following orders:

- 1. That this Honourable Court be pleased to issue an order of certiorari to remove into this Court the proceedings, award and/or judgment of the Kahuro Land Disputes Tribunal the 1st Respondent herein in Tribunal case No. 03 of 2006 and quash the same by an order of Cetiorari.**
- 2. That this Honourable Court be pleased to issue an order of Prohibition barring the Resident Magistrate's Court at Murang'a the 2nd respondent herein from hearing and/or determining an application by David C. Ngigi Gitau for confirmation and/or adoption of the Kahuro Land Disputes tribunal award in Tribunal case No. 03 of 2006 as judgment of the court and/or taking any other proceedings antecedent thereto in Murang'a L.D.T. Case No. 26 of 2007.**
- 3. That the costs of this application be provided for.**

The Motion is accompanied by an amended statement of fact and is verified by the affidavit of Wanjiru Mburu Gitau sworn on 4th July 2007. When served David C. Ngigi Gitau, the Interested Party herein, filed a replying affidavit to oppose the Motion.

The main contention raised by the Interested Party is to the effect that the decision sought to be impugned was made on 12th April 2006 whereas the application for leave was filed on 9th July 2007, hence the Motion dated 7th July 2007 was time-barred under *Rule LIII rule 2* of the Civil Procedure Rules. Under the foresaid provision leave to take out judicial review proceedings in the nature of certiorari must be filed within six months from the date of the decision sought to be quashed was made. This being a preliminary issue, the law requires it to be disposed of first. There is doubt that the order for leave was granted on 9th July 2007. I have considered the material paced before this court and it

is clear that the interested party filed a complaint before the Kahuro Land Disputes Tribunal claiming that his later father John Gitau had purchased a portion measuring 1 acre from the Exparte applicant's late husband, Linus Mburu Gitau. The dispute was heard by the tribunal and in its judgment delivered on 4th March 2007, the tribunal ordered the parcel of land known as **LOC. 8/GATURI/52** to be subdivided to excise 1 acre to be transferred to the Interested Party. It is obvious from the affidavit evidence and the annexures therein that the decision of the tribunal was read to the parties on 14th March 2007. The Motion therefore is not time-barred, hence the preliminary point lacks merit.

Having disposed of the preliminary point, let me now consider the merits of the Motion. The main issue raised and argued is to the effect that the Kahuro Land Disputes Tribunal determined a dispute relating to title to land yet it did not have jurisdiction to do so under *Section 3(1)* of the Land Disputes Tribunals Act No. 18 of 1990. There is no dispute that the Exparte Application herein is the registered proprietor of the parcel of land known as **LOC. 8/GATURI/52**. The decision of the Land Disputes Tribunal will lead to the subdivision of the aforesaid land thus the title has to be closed to enable a subdivision measuring 1 acre parceled out. That will obviously interfere with title to land. The Land Disputes Tribunal was not given that jurisdiction to determine a dispute relating to title to land, hence its decision is null and void *ab initio*.

In the end I find the Motion dated 29th July 2007 to be well founded. It is allowed as prayed.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE