



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 617 OF 2007

**IN THE MATTER OF AN APPLICATION BY MONICA NYAMBURA NJUGUNA AND JOHN
MBUGUA NJUGUNA ON BEHALF OF THE**

**ESTATE OF DAVID NJUGUNA MBUGUA (DECEASED) FOR LEAVE TO APPLY FOR
ORDERS OF JUDICIAL REVIEW**

AND

IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT NO. 18 OF 1990

AND

IN THE MATTER OF REGISTERED LAND ACT (CHAPTER 300)

**AND IN THE MATTER OF THE PROVINCIAL LAND APPEALS COMMITTEE RIFT
VALLEY PROVINCE AWARD**

**DATED 10TH APRIL, 2007 APPEAL NO. 17 OF 2005 DIRECTING TRANSFER OF L.R. NO.
KERICHO**

SORGET/MUGUMOINI BLOCK 2.27, TO IBRAHIM MBURU NJOROGE

AND

**IN THE MATTER OF THE PROCEEDINGS IN KERICHO RESIDENT MAGISTRATE'S
COURT CIVIL SUIT NO. 57 OF 1984**

REPUBLIC
APPLICANT

VERSUS

1. THE PROVINCIAL LAND APPEALS COMMITTEE RIFT VALLEY PROVINCE.....1ST
RESPONDENT
2. KERICHO DISTRICT LAND REGISTRAR.....2ND
RESPONDENT
3. IBRAHIM MBURU NJOROGE.....3RD
RESPONDENT

EX PARTE

MONICA NYAMBURA NJUGUNA AND

**JOHN MBUGUA NJUGUNA (on behalf of the estate of DAVID
NJUGUNA MBUGUA (DECEASED))**

RULING

The applicant's application dated 26th June, 2007 seeks the following orders:

- “1. An order of certiorari to remove into the High Court and quash the award of the Provincial Land appeal Committee Rift Valley Province in Appeal No. 17 of 2005 dated 10th April 2007 directing transfer of KERICHO/SORGET/MUGUMOINI bloc 2/27 to Ibrahim Mburu Njoroge.**
- 2. An order of prohibition to the Kericho Resident Magistrate Court adopting, the awards of the Provincial Land Appeals Committee as judgment of the court in Appeal No. 17 of 2005 dated 10th April 2007.**
- 3. An order of prohibition directed to the Kericho Land Registrar from complying with the award of the Provincial Land Appeals Committee dated 10th April 2007 in Appeal No. 17 of 2005 directing transfer of KERICH/SORGET/MUGUMOINI BLOCK 2/27 to Ibrahim Mburu Njoroge.**
- 4. Costs of this application be provided for.**
- 5. Such further and other relieves that this honourable court may deem expedient to grant.”**

The application was supported by an affidavit sworn by the respondent who is the legal representative of the estate of David Njuguna Mbugua, deceased. The deceased was the registered proprietor of a parcel of land known as **Kericho/Sorget/Mugumoini Block 2/27** hereinafter referred to as **“the suit land”**. The 3rd respondent lodged an appeal before the Provincial Land Appeals Committee, Rift Valley (the 1st respondent) claiming ownership of the suit land. The 1st respondent heard the claim and ordered cancellation of the deceased's title over the suit land and further directed that the land be registered in favour of one Ibrahim Mburu Njoroge.

The applicant states that the 1st respondent had no jurisdiction to make the aforesaid orders since the deceased had been the registered proprietor of the suit land for more than 27 years before the date of the

1st respondent's ruling. The applicant therefore urged this court to quash the said decision and prohibit the 2nd respondent from acting on the same. The 3rd respondent opposed the application and stated that the deceased's acquisition of the suit land was fraudulent. His purported ownership of the land was based on an exchange transaction that never materialized as land which he had offered in place of the suit land was non-existent. In his view therefore, the tribunal's decision was proper in law since issuance of a title deed is a culmination of a process and if the process was not lawful then any title deed issued as a result can be nullified.

I have considered the rival arguments advanced by the parties. There is no dispute that the deceased was the registered proprietor of the suit land since 1989. **Section 27 of the Registered Land Act Cap 300** states as follows:

“The registration of a person as the proprietor of the land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

The 1st respondent's decision purported to nullify the deceased's title over the suit land. It is clear to me that the 1st respondent exceeded its jurisdiction that is expressly provided for by **Section 3(1) of the Land Disputes Tribunals Act** which states as follows:

“3(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; or**
- (b) a claim to occupy or work land; or**
- (c) trespass to land, shall be heard and determined by the tribunal established under Section 4.”**

A Land Disputes Tribunal or a Provincial Land Disputes Committee that is established under Section 8(1) of the Act has no power to adjudicate over the issue of title to land since that jurisdiction is vested in the High Court and/or the Resident Magistrate's Court where the value of the subject land does not exceed Kshs.500,000/=. See **JOTHAM AMUNAVI v THE CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL & ANOTHER Civil Appeal No. 256 of 2002**. The Court of Appeal held:

“It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the land disputes tribunals act. Such a dispute can only be tried by the high court or by the Resident Magistrates Court in cases where such latter court has jurisdiction.”

It matters not whether the deceased had fraudulently acquired the suit land. If that was the case the 3rd respondent ought to have filed a case before a court of competent jurisdiction since a land dispute tribunal was precluded from interfering with the deceased's title.

I am satisfied that the orders sought by the applicant are merited and I grant the same. The 3rd respondent shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF JULY, 2011.

D. MUSINGA

JUDGE

In the presence of:

Jane – Court Clerk

Mr. Gathogo for the Ex Parte Applicant

No appearance for the Respondent