



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

PETITION NO. 4 OF 2011

GITAU KAMAU.....PETITIONER

VERSUS

NDUNGU KAMAU.....1ST RESPONDENT
MARAGUA LAND DISPUTE TRIBUNAL.....2ND RESPONDENT

RULING

The subject matter of this ruling is the Petition dated 4th April 2011 in which Gitau Kamau, the Petitioner herein, seeks for the following orders:

- (a) That both the Maragua Land Dispute Tribunal as well as the Nyeri Provincial land Dispute Appeals Committee lacked jurisdiction to completely adjudicate over the dispute.***
- (b) That the decisions of the above two bodies were unconstitutional and null and void as the same infringed on my constitutional right to own property as well as the right to be protected by the law.***
- (c) That given the factual circumstances surrounding this matter, it is only the constitution that can afford me the much needed protection by the law as well as upholding the right to own property.***
- (d) That it is only fair, just and in the interest of justice that the orders sought be granted.***

The Petition is supported by the affidavit of the Petitioner. Ndungu Kamau, the 1st Respondent herein, filed a replying affidavit and an answer to oppose the Petition. When the Petition came up for hearing learned counsels appearing in the matter recorded a consent order to have the Petition determined by affidavit evidence and written submissions.

I have considered the grounds set out on the face of the Petition plus the facts deponed in the affidavits filed in support and against the Petition. The Petitioner argued that being the registered proprietor of the parcel of land known as **LOC. 4/MURUKA/400**, his rights as a registered proprietor are protected under *Article 40 (1)* of the Constitution. The Petitioner pointed out that the decisions of the Maragua Land Disputes Tribunal and the Provincial Land Disputes Appeals Committee which ordered the Petitioner to share the aforesaid land with the Respondent was unconstitutional and contrary to law. It is submitted that the Tribunals had no jurisdiction to hear and determine a dispute touching on title to land. The respondent urged this Court to dismiss the Motion claiming there was nothing constitutional about the Motion. It is pointed out that the Petition basically seeks for the orders sought in a judicial review application under *Order 53* of the Civil Procedure Rules. The Respondent beseeched this Court to find the Petition to be incompetently before this Court.

The facts leading to the filing of the Petition appear to be short and straightforward. The parcel of land known as **LOC. 4/MURUKA/400** is registered in the name of Gitau Kamau the Petitioner herein. **Ndungu Kamau**, the 1st Respondent filed a complaint before the Maragua Land Disputes Tribunal vide **Kandara LDT case No. 169 of 2005** claiming to be entitled to half of the aforesaid parcel of land. The Land Disputes Tribunal heard the dispute and awarded the 1st Respondent 1.5 acres to be excised from **LOC.4/MURUKA/400**. The Petitioner was aggrieved by the Maragua Land Disputes Tribunal, hence he preferred an appeal to the Central Province Land Disputes Appeals Committee sitting at Nyeri. The Land Disputes Appeals Committee dismissed the appeal and affirmed the decision of the Maragua Land Disputes Tribunal with slight alterations. The provincial Land Disputes Appeals Committee's decision was made on 21st May 2009 vide **claim No. Maragua 8 of 2006**. the Petitioner was dissatisfied with the decision hence he was prompted to take out judicial review proceedings in the nature of certiorari in which he sought for the decision to be quashed vide **Nyeri H.C. Misc. App. No. 277 of 2009**. When the application came up for hearing before Justice Makhandia on 16th November 2009, the Petitioner withdrew the application. The Petitioner waited until 4th April 2011 when he filed this Petition.

After a careful consideration of the grounds and the rival affidavits plus the submissions certain facts remain undisputed. The Land Disputes Tribunals Act gave the Land disputes Tribunal jurisdiction to hear certain land disputes under *Section 3(1)* of the aforesaid Act. The Land disputes Tribunals Act also provided for a mechanism of appeal to challenge the decisions before this court on matters of law only within sixty days from the date of the decision. In the alternative an aggrieved party was required to take out judicial review proceedings to have the decision quashed by an order of certiorari under *Sections 8* and *9* of the Law Reform Act and under *Order 53* of the Civil Procedure Rules. Under the Law Reform Act and *Order 53* of the Civil Procedure Rules, an applicant is required to apply for leave to take out judicial review orders of certiorari within 6 months. Of course an aggrieved party can as well file a declaratory suit to upset those decisions. The Petitioner herein has not appealed nor taken up judicial review proceedings nor has he filed a declaratory suit but has instead chosen to file a constitutional petition under *Article 40* of the Constitution. There is no doubt that the Land Disputes Tribunal is a quasi judicial Tribunal established by an Act of Parliament to hear and determine certain Land Disputes specified by the Statute. Therefore whatever decisions the tribunal arrives at cannot be said to be unconstitutional. The law provided the processes of challenging the decisions of these tribunals before a party can rush to file a constitutional petition before exhausting the channels provided by Statute. The fact that the Land Disputes Tribunal has acted in excess of jurisdiction did not entitle the Petitioner automatic right to file a constitutional petition and side step the appellate mechanism provided by Statute. I must state at this juncture that the argument by the Petitioner that the Constitution and the Registered Land Act guaranteed his rights to own property. However, there are instances when the Courts and the quasi judicial tribunals are called upon to make decisions that will take away property rights from registered owners. Those decisions by themselves cannot be said to be unconstitutional because in arriving at those decisions those bodies acted within the law passed by Parliament in accordance with the provisions of the Constitution. In the case before this Court it is alleged that the Land Disputes Tribunal acted without jurisdiction. I have already stated that under the relevant statute there are mechanisms provided for to challenge such decisions. The Petitioner herein was enjoined to show this Court that he followed those processes and procedures provided by the Statute to challenge the decision. The mere fact that *Article 23 (3)* of the Constitution enumerated the appropriate reliefs a Court should give did not mean that a party should ignore the laid down procedures set by the Statute. A careful reading of the reliefs sought by the Petitioner in the Petition will reveal that the Petitioner is basically seeking for the decision to be quashed by an order of judicial review in the nature of certiorari. In such a case the Petitioner was bound to show that before seeking the relief or reliefs that he follow the procedures set out under *Order 53* of the civil procedure rules and the provisions of the Law Reform Act. In the aforementioned provisions, timeliness are set. It is obvious that even if I treated the Petition as a judicial review application, the same will not be competently before this Court because the same was not filed with leave and within the timeliness set by the Statute. On the other land, even if I was to regard the Petition as an appeal, the Petitioner was required to show that the same was filed within the time prescribed by the Statute or that he had sought for leave to appeal out of time. Petitioner has failed to discharge that burden hence his Petition should fail.

In the end I see no merit in the Petition. The same is ordered dismissed with costs to the 1st Respondent.

Dated and delivered at Nyeri this 18th day of November 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Kirubi for the Respondents and no appearance for the Applicant.