



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**JUDICIAL REVIEW NO. 50 OF 2010**

**IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDER OF CERTIORARI  
AND PROHIBITION**

**AND**

**IN THE MATTER OF GICHUGU DIVISION LAND DISPUTES CASE NO. 7 OF 2010**

**AND**

**IN THE MATTER OF GICHUGU SENIOR RESIDENT MAGISTRATE L.D.T. NO. 15 OF 2010**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE DISTRICT LAND DISPUTES TRIBUNAL GICHUGU DIVISION.....1<sup>ST</sup>  
RESPONDENT**

**THE SRM GICHUGU LAW COURTS.....2<sup>ND</sup> RESPONDENT**

**ROSE WAMBUI GIKUNJU.....3<sup>RD</sup> RESPONDENT**

**BEATRICE WAMBURA GIKUNJU.....4<sup>TH</sup> RESPONDENT**

**AND**

**EX-PARTE**

**ALBERT GIKUNJU NJERU.....INTERESTED PARTY**

**RULING**

The *exparte* Applicant filed this Judicial Review by way of Notice of Motion dated 15/11/2010 against the 4 (four) Respondents for the following orders:

a) That an order of Certiorari do issue to remove into the High Court and quash the award of the Gichugu Division Lands Disputes Tribunal and the subsequent Order of the SRM Gichugu adopting the award as Judgment of the court on 22/9/2010 in Land Disputes Tribunal case No.15/2010.

b) That an order of prohibition directed to the SRM Gichugu and all officers thereof prohibiting them from enforcing or assisting in the enforcement of the said award and subsequent Orders.

c) Costs of the application.

The grounds are as follows;

- The Tribunal lacked jurisdiction in all that it did.

The Application is supported by the verifying affidavit of the Applicant plus annexures.

The 3<sup>rd</sup> Respondent filed a Replying Affidavit. She says the *ex parte* Applicant was being pushed in this matter by one Samuel Obadiah Koigi a purported purchaser of the land. She refers to a matter in SPM's court Kerugoya No.166/09.

There is a consent (RWG) given by the Land Control Board to have the land registered in joint names. She says the orders sought have been overtaken by events and so the Application should be dismissed.

The *ex parte* Applicant has submitted that the Land Disputes Tribunal went beyond their jurisdiction in all that they did. The Respondents 3<sup>rd</sup> and 4<sup>th</sup> too after being served with the Notice of Motion on 29/10/2010 went ahead and had the land No.KABARE/KIRITINE/1657 registered in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents and the Applicant.

Counsel cited two cases;

**1) C.A. NO.259/2000 Nyeri – Beatrice M. Marete –vs- Republic & others.**

**2) HCCA NO. 128/1999 at Nyeri – Thuo Gakungu & Another –vs- Chege Kimichu & Another.**

Maina Kagio for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents submitted that;

The 2 Respondents (3<sup>rd</sup> & 4<sup>th</sup>) are the Applicant's wives. There was consent from the Land Control Board for them to be registered as co-owners with the *Ex parte* Applicant. And that the Tribunal has jurisdiction to enforce rights to occupy and work on the land.

- One Samuel Mbui Obadiah is the one pushing the Applicant for this case.

That there was indolence on the part of the *ex parte* applicant after the award of the Tribunal was read and finally adopted. He submitted that there was no award to be quashed as a new title deed had been issued. He further said the Respondents have a reserved right to seek for specific performance in view of the Land Control Board's consent and the signed transfer forms. That under Article 159(2)(b) and (d) of the New Constitution this court is entitled to also look at the substantial justice as applicable to all parties irrespective of the procedural technicalities. And that since the Applicant did not seek for cancellation of the title he is bound by his pleadings.

The pleadings, annexures and submissions reveal the following salient facts which are not in dispute.

- That prior to the new title the *exparte* Applicant was the registered owner of the land No.KABARE/KIRITINE/1657.
- The Gichugu Land Disputes Tribunal in their case No.7/2010 in respect of the Land KABARE/KIRITINE/1657 made an award to the effect that the said land be registered in the names of the 3<sup>rd</sup> Respondent, 4<sup>th</sup> Respondent and the Applicant.
- The 3<sup>rd</sup> and 4<sup>th</sup> Respondent are wives of the *exparte* Applicant.
- And that this award was adopted as a Judgment of the Court by the SRM on 22/9/2010.
- A decree was drawn and based on that decree a new title deed was issued in the three names on 15/11/2010.

The Judgment of the court emanated from the award of Gichugu Land Disputes Tribunal made on 7/4/2010.

The issue here is whether the Tribunal had jurisdiction in making the award it made.

The Land Disputes Tribunal is established under the Land Disputes Tribunal Act No.18/90. This Act in section 3(1) gives jurisdiction to the Tribunal to deal with certain issues touching on land. And these are:

- a) The division of or the determination of boundaries to land including land held in common.
- b) A claim to occupy or work on land.
- c) Trespass to land.

There are very many decisions from both the High Court and the Court of Appeal outlining the jurisdiction of the Land Disputes Tribunal. In spite of this the Tribunals have gone ahead to deal with matters outside their jurisdiction. The matter before the Tribunal was not about boundaries, trespass or a right to work or occupy land. The issue here is not about technicalities. It was about interest in land. The Respondents had a very noble reason of pinning down the Applicant to have them register as co-owners with him in the land the subject of this suit. The reason is very obvious. However, it's their approach that was wrong. After being granted consent by the Land Control Board they should not have gone to the Land Disputes Tribunal to enforce the consent, because the land was registered under the Registered Land Act. The result of the Tribunal's award was cancellation of the original title and issuance of a new title. It's only the High Court under Section 159 of the Registered Land Act which can cancel titles.

I wholly rely on the case of **M'MARETE –V- REPUBLIC & 3 OTHERS CIVIL APPEAL**

**NO.259/2000 NYERI** which explains the extent of the Land Disputes Tribunal's jurisdiction.

The Respondent's counsel submitted there was no award to be quashed as a new title deed had already been issued. Orders emanating from want of jurisdiction are null and void.

From the foregoing it is clear that the Land Disputes Tribunal had no jurisdiction to issue the orders of canceling a registered title. I therefore grant the prayers sought and call into the High Court and quash the award of the Gichugu Division Land Disputes Tribunal and the Confirmation Order by the SRM's court Gichugu plus all the consequential orders.

The new title deed in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Respondent and Applicant is one of such consequential orders. It's hereby cancelled. Prayer of Prohibition has been overtaken by events and cant issue. Each part to bear his/her own costs.

Right of appeal explained.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 15<sup>TH</sup> DAY OF NOVEMBER 2011.**

**H.I. ONG'UDI  
J U D G E**