



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPLICATION NO. 57 of 2010 (J.R.)

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDER OF CERTIORARI

AND

IN THE MATTER OF LANDS DISPUTES TRIBUNAL ACT NO.18 OF 1990

IN THE MATTER OF LANDS DISPUTES TRIBUNAL AT GICHUGU CASE NO. 5 OF 2009

AND

IN THE MATTER OF GICHUGU MAGISTRATE'S COURT LDT NO.4 OF 2009

REPUBLIC APPLICANT

VERSUS

GICHUGU LANDS DISPUTES TRIBUNAL..... 1ST RESPONDENT

GICHUGU SRM 'S COURT 2ND RESPONDENT

PATRICK MUCHIRA MARIRI 3RD RESPONDENT

AND

MARIRI IKUA alias MARERE EBUA EXPARTE APPLICANT

R U L I N G

This is the Applicant's Notice of Motion dated 29/11/2010 filed pursuant to the leave granted by this court on 9/11/2010. The Applicant seeks the following orders:

1. An order of certiorari to remove into the High Court and quash the award of the Gichugu Division Land Disputes Tribunal and consequently Order of Gichugu Senior Resident Magistrate adopting the award as Judgment of the court on 28/7/2010 in Land Disputes Tribunal No.4/09 Gichugu.

The application is grounded on the following;

- The Tribunal acted ultra vires by determining issues relating to title to land.
- The Applicant is the lawfully registered owner of the land BARAGWE/KARIRU/383.

Its supported by the Applicant's statement of facts and the verifying affidavit.

The Respondent in his replying affidavit says the Applicant is not the registered owner of the land No.383. And that leave ought not to have been granted. He says once the matter was adopted it ceased to be a decision of the Tribunal.

Mr. Ikahu for the Exparte Applicant submitted that the Applicant is the registered owner of the land No.BARAGWE/KARIRU/383. The same was subdivided into portions following the award of the Tribunal. The Tribunal exceeded its jurisdiction.

Mr. Mwonwonga has in his submissions raised several issues including the regularity of the leave giving rise to these proceedings, the form and format in citing parties; adherence to Order 53 Rule 2 Civil Procedure Rules. He says the Applicant participated in the proceedings at the Tribunal and ought to have raised the issue of jurisdiction then. The brief history of this matter is that the 3rd Respondent filed a reference before the Gichugu Land Disputes Tribunal demanding for a share of land from parcel No.BARAGWE/KAIRURI/383 which belonged to the Applicant herein. The tribunal heard the matter and gave an award dated 20/5/2009. In it, it ordered that the parcel be sub-divided into several portions. From the names it appears the beneficiaries were the Applicant's family members. The award was filed at Gichugu Law Courts as LDT NO.4/09. It was adopted as a judgment of the court and a decree drawn on 18/8/2010.

It is these orders that have given rise to the Application before this court.

The Applicant herein came to court on 9/11/2010 seeking leave to file Judicial Review for an order of Certiorari to quash the Award and the court's decree.

Mr. Kahiga for the Respondent has challenged the leave granted herein saying it was irregular and should be vacated. That it was erroneously granted as the Applicant had taken 16 months from 20/5/2009 to file the Application. He cited the case of **REPUBLIC –VS- NG'ARUA LAND DISPUTES TRIBUNAL & ANOTHER –VS- CHARLES MWANGI MATHENGE & OTHERS H.C. MISC. CIVIL APPLICATION NO.14/09 NYERI**. It is true that the award was read out on 20/5/2009. An Award in itself is toothless. It can never be executed before it is adopted as an Order of the court. It's at that point of adoption that a decree to be executed is drawn. The Applicant could not file Judicial Review of an Award which could not be executed. Once the award became a judgment the Applicant filed for leave for Judicial Review within 6 months. And the Hon. Justice Karanja Wanjiru granted the leave under the provisions of Order 53 rule (2) Civil Procedure Rules.

The main reason for the Application touches on Jurisdiction. When jurisdiction is lacking the proceedings can not stand. In the case of **WAMWEA –V- CATHOLIC DIOCESE OF MURANG'A REGISTERED TRUSTEES [2003] KLR 389**. The court categorically stated in its holding that "*Tribunals and Land Disputes Appeals Committees do not have jurisdiction to hear disputes over title to land*".

Yet this is exactly what the Gichugu Tribunal did. It is clear the Tribunal exceeded the jurisdiction given to it by the ACT which created it. It subdivided land which was registered under Cap.300 into several parcels. In other words it cancelled the Applicant's title to pave way for other titles. The Tribunals have no such jurisdiction under Section 3(1) of the Land Disputes Act No.18/1990. The 1st and 2nd Respondents have correctly been sued because Orders complained of were issued by them. Nobody is overlooking the Judgment of the Senior Resident Magistrate Gichugu. All that the SRM did was to adopt the award as provided for under the ACT NO.18/90. The court at that point does not look into the merits or otherwise of the Award. It is that judgment that will be quashed if it is found that the process adopted in issuing the award was not proper.

Even if the Applicant had gone to the Appeals Committee there would be no difference because the Appeals Committees do not have jurisdiction to deal with issues touching on title to registered land. The Tribunals **should know their mandate** and it would not be right as Mr. Ikahu wants this court to believe that the Applicant willingly submitted himself to the Tribunal and should have raised the issue of Jurisdiction at the Tribunal. It has not been shown that the Applicant was aware of the extension of the jurisdiction of the Land Disputes Tribunal. That would not in anyway validate the ultra vires acts of the Tribunal. And for the above reasons I do find for the Applicant.

I therefore remove into this court the award of the Gichugu Division Land Disputes Tribunal and the

Order of the Gichugu Senior Resident Magistrate adopting the award as judgment of the court on 28th July 2010 and quash them forthwith.

All other consequential orders are set aside. Each party bears his/her own costs.

DELIVERED, SIGNED AND DATED AT EMBU THIS 14TH DAY OF DECEMBER 2011.

H.I. ONG'UDI

JUDGE