



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JR. ELEC. MISC. CIVIL APPLICATION NO.16 OF 2011**

**IN THE MATTER OF: AN APPLICATION BY PAUL KARANJA FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI MANDAMUS AND PROHIBITION AGAINST THE LAND DISPUTE TRIBUNAL MAKUYU IN RESPECT OF LAND PARCEL LR.10726/1 OR ITS PORTIONS THEREOF**

*AND*

**IN THE MATTER OF: THE CHIEF MAGISTRATE’S AT THIKA CASE NO.98 OF 2010**

*AND*

**IN THE MATTER OF: LAND DISPUTES TRIBUNAL ACT 18/90**

*AND*

**IN THE MATTER OF: CO-OPERATIVE SOCIETIES ACT CAP.490**

*AND*

**IN THE MATTER OF: THE REGISTRATION OF TITLES ACT CAP.160 LAWS OF KENYA**

*BETWEEN*

**REPUBLIC.....**

**.....APPLICANT**

**-VERSUS-**

**LAND DISPUTE TRIBUNAL MAKUYU.....**

**.....1<sup>ST</sup>RESPONDENT**

**CHIEF MAGISTRATES COURT THIKA.....**

**.....2<sup>ND</sup>RESPONDENT**

*AND*

**UNITED APOSTOLIC CHURCH OF HOLY GHOST OF KENYA.....**

**INTERESTED PARTY**

**EX-PARTE ..... PAUL**

**KARANJA**

**JUDGMENT**

Following an ex-parte chamber summons application filed in Court on 15<sup>th</sup> February, 2011, the Applicant Paul Karanja (*herein after referred to as the Applicant*) obtained leave to institute judicial review proceedings seeking orders of certiorari and prohibition. Pursuant to the said leave, the applicant filed a Notice of Motion dated 4<sup>th</sup> March, 2011 praying that orders of prohibition be issued against the respondents prohibiting the Chief Magistrate's Court at Thika from hearing or entertaining any further proceedings or issuing orders in ***L.T.D. Case No.98 of 2010*** and Makuyu Land Dispute Tribunal from entertaining similar proceedings affecting title to land and ownership of a portion christened Plot No.56 to be excised out of LR.10726/1.

The applicant also sought orders of certiorari to bring to the High Court and quash proceedings and award of the Makuyu Land Dispute Tribunal in respect of ***Plot No.56*** within parcel number ***LR.10726/1*** or the award in ***L.D.T. Case Number 98 of 2010*** at Thika and that costs of the application be provided for.

The application was supported by a statutory statement as verified by an affidavit sworn by the applicant on 14<sup>th</sup> February, 2011.

The application was not opposed by the Respondents but it was opposed by the Interested Party vide a replying affidavit sworn by its Pastor Peter Gachara on 28<sup>th</sup> April, 2011. Following directions by the Court, the applicant and the Interested Party through their respective advocates filed written submissions which were briefly highlighted in court on 14<sup>th</sup> November, 2011.

Having carefully considered the substantive motion filed by the applicant and the submissions made by Mr. Mugo for the applicant and Mr. Kariuki for the Interested Party, I find that it is clear from the depositions in the applicants verifying affidavit and the replying affidavit sworn on behalf of the Interested Party and their annexures that what was before the Makuyu Land Dispute Tribunal (*hereinafter referred to as the tribunal*) in case No.40/2010 was a dispute over ownership of a portion of land known as Plot No.56 within parcel number LR.10726/1. The ownership dispute was between the applicant and the interested party. This is clearly demonstrated by averments in Paragraph 2 and 8 of the applicant's verifying affidavit, Paragraph 2(a) of his statutory statement and Paragraph 6, 11, 12, 13, 14 and 15 of the interested party's replying affidavit.

The applicant and the interested party were both claiming ownership or proprietary interest in plot No.56 which was marked for excision from title number LR 10726/1 held by Methi & Swani Co-operative Society (*hereinafter referred to as the suit land*). From the proceedings before the tribunal exhibited as annexure PKI, it is evident that the tribunal deliberated over who between the applicant and the interested party owned the suit land and subsequently made an award to the effect that the suit land was owned by the interested party as the land had been issued and registered under its name and not the name of the Church's splinter group Sabina Israel Church of Holy Ghost of Kenya led by the applicant.

It is the applicant's case that the Makuyu land disputes Tribunal had no jurisdiction to entertain or determine issues of ownership regarding the suit land.

Section 3(1) of the Land Disputes Tribunal Act (*hereinafter referred to as the Act*) which donates jurisdiction to land disputes Tribunals states as follows:

*“Subject to this Act, all cases of a civil nature involving dispute as to:*

- (a) *the division of, or the determination of boundaries to land, including land held in common;*
- (b) *a claim to occupy or work land; or*
- (c) *trespass to land,*

*shall be heard and determined by a Tribunal established under Section 4”.*

It is clear therefore from Section 3(1) of the Act that Land Disputes Tribunals do not have

jurisdiction to determine issues regarding ownership of land. It is worth noting that under Section 2 of the Act, land has been defined to mean agricultural land whether or not registered under the Registered Land Act as long as it did not fall within the categories of legislation specified in the said provision of the law.

The argument by the Interested Party that Plot No.56 aforesaid was not registered land and that therefore the tribunal had jurisdiction to determine issues of ownership in respect of it cannot be sustained unless the interested party availed proof that the suit land fell under the category of land exempted from the application of the Act by virtue of the definition of land which was subject to adjudication by land disputes Tribunals under the Act as shown in Section 2 thereof. The interested party did not avail such proof in this case.

In this case I am satisfied that the Makuyu Land Disputes Tribunal acted in excess of its jurisdiction when it purported to determine the ownership dispute between the applicant and the interested party. That being the case its decision is a nullity in law and ought to be quashed by an order of certiorari as prayed.

The interested party has argued in its submissions that the orders sought in this application should not be granted allegedly because the applicant had no *locus standi* before the Land Disputes Tribunal and before this court. That he was a mere busy body or a stranger.

I find this argument by the interested party interesting because it is clear from the proceedings in the tribunal that it is the interested party who had instituted Case No.40/2010 in the tribunal against the applicant in recognition of his claim of ownership to the suit land. In this case the applicant contends that the ruling by the tribunal was made without jurisdiction and if not quashed by orders of certiorari, it will prejudice his proprietary interest in the suitland. In my view, this claim by the applicant demonstrates that he has sufficient interest in the matter which gives him legal standing to challenge the tribunal's decision.

Whether or not the applicant had evidence to proof ownership of the suit land was not an issue for determination by this court. What concerned the court in this application was whether or not the tribunal acted within or outside its jurisdiction in determining the issues placed before it by the interested party and I have already made my finding that it did not have jurisdiction to entertain or determine the issue of ownership as it did in respect of the suit land.

In the circumstances, I allow the application and issue orders of certiorari to remove to the High Court and quash the proceedings and award in Makuyu Land Disputes Tribunal in respect of Plot No.56 within LR.10726/1. I also issue orders of prohibition as prayed in Prayer 1. The costs of this application are awarded to the applicant and will be borne by the Interested Party.

**Dated, Signed and Delivered** by me at Nairobi this 6th day of December, 2011

C. W. GITHUA  
**JUDGE**

In the presence of:

Florence – Court Clerk

..... for Applicant

..... for Respondents

.....for Interested Party