

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Judicial Review 29 of 2009

SIMON WANGOMBE WAHOME..... EXPARTE APPLICANT

Versus

**THE CHAIRMAN PROVINCIAL APPEALS COMMITTEE,
CENTRAL PROVINCE - RESPONDENT**

NEHEMIAH WACHIRA MURAGE -

TABITHA WANGUI WACHIRA INTERESTED PARTIES

RULING

Simon Wang'ombe Wahome, took out the notice of motion dated 4/7/2009 pursuant to the provisions of order LIII rule 3(1) of the Civil Procedure rules in which he applied for the decision of the Provincial Appeals Committee to be removed to this court for purposes of being quashed. The motion is accompanied by a statement of facts and verified by the affidavit of the exparte applicant sworn on 4th July 2009. Tabitha Wangui Wachira, the interested party herein opposed the motion by filing a replying affidavit she swore on 3rd September 2009. The Provincial appeals committee, the Respondent herein, through the provincial litigation counsel, filed a notice of preliminary objection to oppose the motion.

It is the submission of Mr. Njoroge, learned advocate for the exparte applicant that the Provincial Appeals Committee made an award dated 21/5/2009 vide Nyeri Land Case No. 19 of 2004 without jurisdiction. It is said that the Respondent ordered the exparte applicant to transfer to the interested party 3 acres out of his parcel of land known as Mweiga/Watuka/648.

It is the submission of Waruinge, learned advocate for the interested party that the Provincial appeals committee had jurisdiction to make the award having been prompted to do so by the exparte applicant. Miss Munyi, learned Provincial Litigation Counsel did not make any submissions.

I have considered the material placed before me plus the oral submissions made by learned counsels. It is not in dispute that the Provincial Land Disputes appeals Committee made an award on 21.5.2009 vide claim No. Nyeri 19 of 2004 directing the exparte applicant to transfer 3 acres to the Interested Party to be excised from L.R. Mweiga/Watuka/648. The dispute appears to have arisen out of a land sale agreement entered between the exparte applicant and one Nehemiah Wachira Murage, deceased. It would appear the exparte applicant had agreed to sell 3 acres to the late Nehemiah Murage to be excised from L.R. NO. Mweiga/Watuka/648 at a cost of Kshs. 20,000/- per acre. Payments appear to have been made in installments. The exparte applicant reneged on the agreement. A complaint was filed before the Mweiga Land Disputes Tribunal vide Land case No. 15 of 2004. The dispute was heard and determined by the aforesaid tribunal in which the Exparte applicant was ordered to receive the balance of the purchase sum and to transfer the 3 acres to Nehemiah Wachira, deceased. The exparte applicant was unhappy with the decision. He appealed to the Provincial Land Disputes appeals Committee. Again he lost since the Appeals committee confirmed the decision of the Mweiga land Disputes Tribunal

After careful consideration of the matter I am convinced that the Provincial Land Disputes Appeals Committee and the Mweiga Land Disputes Tribunal heard a dispute which they had no jurisdiction to do so. The decision to direct the exparte applicant to transfer 3 acres to the Respondent means that title known as Mweiga/Watuka/648 will have to be interfered. That is not what was envisaged by the law under section 3 of the Land Disputes Tribunals Act. I have already stated in brief that the dispute which was presented to the Land Disputes Tribunal at Mweiga and to the Appeals Committee revolved around a contractual dispute over land between the Exparte Applicant and the late Nehemiah Wachira. Such disputes cannot be heard and determined by the Land Disputes Tribunal. Such jurisdiction was not conferred by the Act.

For the above reasons I am convinced the motion dated 4th July 2009 has merit. It is allowed as prayed save that costs shall be paid by Exparte Applicant to the Interested Party since he was the one who filed both the complaint before the Mweiga land Disputes Tribunal and the Appeal at the Nyeri Provincial land Disputes Appeals Committee.

Dated and delivered this 13th day of January 2010.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Macharia h/b Kirubi for exparte/Applicant, Wairunge for I.P. and Makura h/b Munyi for Respondent.