



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Judicial Review 24 of 2009

SIMON NGERU MAINA APPLICANT

Versus

THE CHAIRMAN PROVINCIAL

LAND APPEALS 1ST RESPONDENT
WANGARI GATIMU 2ND RESPONDENT

RULING

The ex parte applicant herein, Simon Ng'eru Maina, took out a motion pursuant to LIII rule 3(1) of the Civil Procedure Rules in which he applied for the following orders:

- 1. That the honourable court be pleased to issue an order of certiorari to remove into the High Court and quash the entire award granted by the Provincial Appeals Committee on 22nd April 2009***
- 2. That the honourable court be pleased to issue and order of mandamus to compel the Respondent to comply with the award of Kangema Land Disputes Tribunal which is just and proper in the circumstances.***
- 3. That the honourable court be pleased to issue an order in respect of property LOC 12/Subloc/Muringaini/T.284.***
- 4. That the costs of this Application be in the cause.***

The motion is supported by the affidavit of the ex parte applicant. It is also accompanied by a statement of facts. When served with the motion, Wangari Gatimu, the interested party herein filed a replying affidavit to oppose the same. The Provincial Land Disputes Appeals Committee, the Respondent herein was served with the motion, but it did not file any reply.

It is the submission of the ex parte applicant, that the Provincial Appeals Committee did not give him a right of hearing. The other grounds raised by the ex parte applicant relate to the merits of the decision of the Land Disputes Appeals Committee. Wangari Gatimu, the interested party herein filed a replying affidavit to oppose the motion. She was of the view that the properties listed in the petition were lawfully subdivided and shared.

The history behind this motion started when the ex parte applicant filed a complaint before the Murang'a Land Disputes Tribunal against Wangari Gatimu over the parcel of land known as LOC 12/Sublocation 1/1711. The Kangema Land Disputes Tribunal heard the dispute and in its judgement of 14/6/2007 vide claim No. Murang'a 11/2005, the tribunal ruled that the parcel No. Loc. 12/subloc.1/1710 in the name of Maina Gatuiku, deceased be consolidated with Loc. 12/subloc. 1/1711 in the name of Wangari Gatimu after which the same be redistributed equally between the three brothers. The three brothers were also

ordered to file succession cause together over Loc. 12/subloc.5/428 and Loc.12/Subloc.5/Muringaini/T284 and succeed equally. The interested party, Wangari Gatimu, appealed against the decision to the Provincial Land Disputes Appeals Committee. After hearing both the interested party and the exparte applicant, the appeals' tribunal ruled that Wangari Gatimu would retain the parcel of land known as Loc.12/Sub-Loc.1/1711 and that the exparte applicant would share in equal portions Loc.12/Sub-loc.1/1710, Loc.12/Subloc 5/428 and Loc.12/Subloc.5/Muringaini/T.284.

The exparte applicant is now before this court seeking to have the aforesaid decision removed to this court for quashing by an order of certiorari. In the statement of facts, the applicant has raised two main grounds to support the motion.

First, it is said that the Appeals Committee acted ultra-vires the Land Disputes Tribunals Act. No. 18 of 1990.

Secondly, that the appeals committee had no jurisdiction to order registration and transfer of the suit land.

I have carefully considered the grounds argued by the applicant and the response put forward by the interested party. The nature of disputes the Land Disputes Tribunals can handle are defined in S. 3 of the Land Disputes Tribunals Act No. 3 of 1990. The complaint that was filed before the Murang'a Land Disputes Tribunal was basically that of the distribution of the land belonging to the late father of the parties to this dispute. It was more of a succession cause. It is obvious that the dispute did not fall within the definition given under section 3(1) of the Land Disputes Tribunals Act No. 18 of 1990. I am unable to agree with the submissions of the applicant that the decision of the Murang'a Land Disputes Tribunal should be confirmed. The Tribunal had no jurisdiction to hear and determine the dispute. The appeals committee also purported to make a decision affecting title to land. I agree with the submission of the exparte applicant that the appeals committee acted without jurisdiction. It acted ultra-vires the provisions of S. 3(1) of the Land Disputes Tribunals Act No. 18 of 1990.

In the end the motion is allowed in terms of prayer 1. I dismiss prayer 2 as lacking in merit. In the circumstances of this case I will direct each party to meet his or her own costs.

Dated and delivered this 13th day of January 2010.

J.K. SERGON
JUDGE

In open court in the presence of the parties and in the absence of learned advocates. Mr. Makura h/b Munyi for Respondent.

J.K. SERGON
JUDGE