REPULIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.121 OF 2009

(CONSOLIDATED WITH JUDICIAL REVIEW NOS. 7 OF 2010 AND 122 OF 2009)

IN THE MATTER OF AN APPLICATION BY NGURUMAN LIMITED FOR JUDICIAL REVIEW ORDERS OF CERTIORARI

AND

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

AND

IN THE MATTER OF TITLE NO.NAROK/NGURUMAN/KAMORORA/1

AND

IN THE MATTER OF THE PROCEEDINGS AND DECREE GIVEN ON 16TH JUNE, 2009 BY THE

SENIOR PRINCIPAL MAGISTRATE, NAROK IN NAROK SPMMLC NO.13 OF 2009

AND

IN THE MATTER OF THE PROCEEDINGS AND DECISION OF THE OLOLULUNG'A LAND DISPUTE TRIBUNAL

GOVEN ON 2ND APRIL, 2009 IN OLOLULUNG'A LAND DISPUTE TRIBUNAL CASE NO. 11 OF 26TH MAY, 2009

AND

IN THE MATTER OF THE PROCEEDINGS AND ORDERS GIVEN ON 5TH AUGUST, 2009 BY THE

SENIOR PRINCIPAL MAGISTRATE, NAROK IN NAROK SPMMLC NO.13 OF 2009

AND

H.C.J.R.MISC. NOS. 121 & 122/2009 & 7/2010

IN THE MATTER OF THE DECESION OF THE OLOLULUNG'A LAND DISPUTE TRIBUNAL MADE ON 20TH JULY, 2009

IN OLOLULUNG'A LAND DISPUTE TRIBUNAL CASE NO. 11 OF 26TH MAY, 2009

BETWEEN

REPUBLIC.....
....APPLICANT

VERSUS

OLOLULUNG'A LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

THE SENIOR PRI. MAGISTRATE NAROK.....2ND RESPONDENT

EX-PARTE

NGUMAN LIMITED.....APPLICANT

RULING

At the centre of this dispute is parcel of land **No. NAROK/NGURUMAN/KAMORORA/1** (the suit property) measuring approximately 26,9993.0Ha. It is not denied that the original registered owner of this land was **NGURUMAN KAMORORA GROUP RANCH.** There is also evidence, which is controverted that the suit property was transferred to the applicant, **NGURUMAN LIMITED** in 1984.

In April, 2009 a reference was made to the 1st respondent, Ololulung'a Land Dispute Tribunal (the Tribunal) by the 2nd and 3rd interested parties in Nakuru High Court Misc. Civil Application

No.7/2010 and 12 others. It was their contention before the Tribunal that the applicant had obtained the title to the suit property
Fraudulently. They, on that score and sought the cancellation of the title deed and an order that the same be issued to them.

On 2nd April, 2009, the Tribunal rendered the following decision, in pertinent part;

"DECISION

1. After this land dispute, Tribunal summoned the objector three times who refused to attend, we find that is evidence of neglect because he had obtained the title deed fraudulently.
2. ……...
3. ……...
4. ……...
5. ……...
6. This land dispute tribunal therefore directs the District Land Registrar <u>to cancel the title deed and issue it to the fourteen members in the name of Kamorora Group Ranch as it originally</u> was since the duration of lease period had expired way back in 2006"
(Emphasis supplied)

It is that decision that provoked this application, Nakuru High Court Misc. Civil Application No.121 of 2009 for orders of *certiorari* to quash that decision and the subsequent decree of the Narok Resident Magistrate's Court. The applicant also filed Nakuru High Court Misc. Civil Application No.122 of 2009 in which it sought to

prohibit by an order of prohibition the Registrar of Group Representation (the Registrar) from issuing certificate of incorporation to the interested parties in Nakuru High Court Misc. Civil Application No.7 of 2010.
When the applicant discovered that the Registrar had already incorporated Kamorora Group Ranch, it has brought now Nakuru High Court Misc. Civil Application No. 7 of 2010. The three applications were consolidated and argued together.
In view of the fate of Nakuru High Court Misc. Civil Application No.122 of 2009, this ruling therefore only relates to the motions in Nakuru High Court Misc. Civil Applications Nos. 121 of 2009 and 7 of 2010. Both seek *certiorari* to quash the decision of the Tribunal and the Registrar.
In respect of the latter, it is averred that the Registrar in incorporating Kamorora Group Ranch acted against the law, in bad faith, *ultra vires* and fraudulently. The applicant contends that Kamorora Group Ranch having been lawfully dissolved in 1985, the Registrar exceeded her powers by issuing the Certificate of Incorporation dated 3rd November, 2009 to Kamorora Group Ranch and also failed to comply with conditions precedent to incorporation in terms of **Section 5(1)** and **7** of the **Land (Group**

Representatives) Act (the act); that the Registrar violated the principle of legitimate expectation.
The Registrar was duly served and the Attorney General entered appearance. But, as is usually the case, that is all the Attorney
General did and therefore the applicant's averments in so far as they relate to the Registrar have not been challenged.
The interested parties have replied to the application stating that the applications in their present form are bad in law, misconceived and incompetent; that the applicant acquired the suit property fraudulently and as such cannot be allowed to benefit from such acquisition. The rest of the replying affidavit, like the applicant's statement of facts and the 76 paragraphed-verifying affidavit dwell more on the merits of the decision yet a judicial review application is only concerned with the procedure and not the correctness or otherwise of the decision.
I have considered the arguments in this application (No.7/2010) and the authorities cited. I reiterate that it seeks in the main an order of *certiorari* to quash the decision of the Registrar contained in a Certificate of Incorporation No.0041 dated 3rd November, 2009 incorporating Kamorora Group Ranch. An order of *certiorari* will issue if the impugned decision is made without or in excess of jurisdiction, or where the rules of natural justice have not

been complied with. See **<u>Kenya National Examination Council</u>** Vs. **<u>Republic</u>** *Exparte* **<u>Geoggrey Gathenji Njoroge</u>**, Civil Appeal No.266 of 1996.
The Registrar's power to incorporate group representatives is provided for in **section 5** of the **Act**. It is in

the absolute discretion of the Registrar to incorporation any group so long as he is satisfied that the requirements of the **Act** or the regulations made under it have been complied with and the group's constitution is acceptable both in substance and form.
The certificate of incorporation is *prima facie* evidence that the procedure laid down in the **Act** has been followed. There is an averment by the applicants that the Registrar attended a meeting held on 29th October, 2009 where officials of Komorora Group Ranch were elected. That she advised them to forward to her certain forms and the minutes of that meeting for the purpose of incorporation. In my view, there is *prima facie* evidence that **section 5** aforesaid was satisfied. The Registrar had the power to issue certificate of incorporation.
Secondly, it is alleged that the Kamorora Group Ranch having been dissolved could not be re-issued with a certificate of incorporation or re-incorporated. What was dissolved was either Kamorora Group Ranch or Nguruman Kamorora Group Ranch. From the annextures, the names of the two groups appear to be used

interchangeably, although the averments in the application leave no doubt that the dissolved group was Nguruman Kamorora Group Ranch. However, if the dissolved group ranch was Nguruman Kamorora Group Ranch, then by virtue of **Section 8(1)** of the **Act**, it is a distinct legal entity from Kamorora Group Ranch hence the question of re-incorporation does not raise. By the same token there is no express bar to re-incorporate a group ranch with the same name as the one dissolved so long as the procedure for incorporation is commenced afresh and properly followed and a different certificate of incorporation from the one for the dissolved group ranch is issued. For these reasons, *certiorari* is not available in the circumstances of this application.
I turn to consider the first application No.121 of 2009. It is enough to recall that the same also seeks *certiorari* but this time to quash the decision of the Tribunal on the grounds of lack of jurisdiction, for failure to comply with rules of natural justice and for being *res judicata* Narok RMCC No.15 of 1991, HMCA No.930 of 1991 and Nairobi Civil Appeal No. 52 of 1993.
The jurisdiction of the Tribunal is limited by **Section 3(1)** of the **Land Disputes Tribunals Act**, 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."

The reference to the Tribunal was expressed to be a claim to occupy or work land. However, looking at the circumstances of the dispute, including the fact that the suit property was duly registered in the name of the applicant and the decision of the Tribunal which I have set out at the beginning of this ruling, and the fact that the Tribunal ordered a transfer of the title to a dissolved body, there cannot be doubt that the Tribunal made a determination as to the ownership of the suit property. It had no powers to decide, as it did, that the title be cancelled and be re-issued to the 1st interested party. The role of the Resident Magistrate's court in matters determined by the Tribunal is restricted to receiving the Tribunal's decision together with any depositions or documents used before the Tribunal. Secondly, the court must enter judgment in accordance with the decision of the Tribunal and, upon judgment being entered, a decree is issued.
It is clear that judgment was entered. However upon being moved, the Senior Principal Magistrate ordered the Executive Officer, Narok Law Courts to execute transfer documents. While the decree is in conformity with the decision of the Tribunal, the order directed at the Executive Officer was in excess of the magistrate's jurisdiction.

Having come to the conclusion that the Tribunal had no jurisdiction to determine the ownership of the suit property, I find no purpose in addressing the other issues raised. The procedural objection taken by counsel for the interested parties that the chairman of the applicant has no authority of the company to bring this application has no merit as there is clear averment in each verifying affidavit that the deponent,

has such authority. It is my considered view that such an averment is sufficient.

In the result and for all the reasons stated, the decision of the Tribunal made on 2nd April, 2009 and all the subsequent orders flowing from it, including the proceedings and the decree in Narok SPMMLC No.13 of 2009 are quashed by an order of *certiorari.*

The interested parties and the 1st respondent in application No.121 of 2009 to pay costs of this application.

Dated, Signed and Delivered at Nakuru this 19th day of May, 2010.

W. OUKO
JUDGE