



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Miscellaneous 187 of 2005

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN MERU CENTRAL DISPUTES TRIBUNAL RESPONDENT
JAPHET KINYUA MUTHAMIA EX PARTE APPLICANT

JUDGMENT

The *ex parte* applicant obtained leave from this court on 19th December 2005 to seek for orders of judicial review of *certiorari* to remove to this court for the purpose of quashing the elders' award by Meru Central District Dispute Tribunal. On obtaining that leave, the *ex parte* applicant filed the substantive Notice of Motion dated 11th January 2006. My predecessor Justice Emukule invited the parties to prepare written submissions and because he has been transferred out of Meru Court, the responsibility of writing the judgment fell upon my shoulders. The *ex parte* applicant by his verifying affidavit stated that the first respondent awarded to the second respondent 0.72 acres from his land parcel number *Abogeta/Upper Kithangari/263*. The *ex parte* applicant deponed that the said award was contrary to the law and more particularly contrary to sections 27, 28 and 159 of the Registered Land Act. Further, he stated that the Tribunal in making the award relied on a sale agreement of 1976 which was between the 2nd respondent and the deceased father of the *ex parte* applicant. I wish to begin by dealing with preliminaries and comment that the *ex parte* applicant in filing the substantive Notice of Motion erred in annexing yet another affidavit entitled, '*Applicant's supporting affidavit*' without the leave of the court. I therefore proceed to strike out that affidavit sworn by the *ex parte* applicant on 11th January 2006. Having struck it out, I am of the view that the Notice of Motion survives because it is supported by the previous affidavit filed in support of the Chamber Summons seeking leave. I have considered the party's skeleton submissions. The 2nd respondent in opposition to the Notice of Motion filed grounds of opposition. He did not file a replying affidavit. Those grounds of opposition are as follows:-

1. ***That the application dated 11.5.2006 is fatally defective and misconceived.***
2. ***That the applicant has not disclosed to this court the date of the decision of the elders award.***
3. ***That the application offends the provisions of Order LIII Rule 2 of the Civil Procedure Rules.***
4. ***That the court cannot just remove an order and or award for purposes of it being quashed when no date of such order award is not disclosed to it.***

From those grounds, it was not clear what the 2nd respondent's opposition was to the *ex parte* applicant's application. It wasn't until I considered the written submissions that I realized that the 2nd respondent was arguing that the *ex parte* applicant was seeking to quash by way of judicial review order of *certiorari* an award that was made beyond the six months period before leave was sought. The 2nd respondent argued that for that reason, the application before court was fatally defective. As stated before, the 2nd respondent did not file an affidavit in reply. That being so, the court has no evidence that the award being quashed was made when the second respondent says it was. The ruling of the tribunal although signed is undated. The *ex parte* applicant in his prayer in the Notice of Motion stated that that ruling was read by the chief Magistrate Court Meru on 3rd November 2005. The application for leave was filed on 24th November 2005. There therefore does not seem to be any contravention of Order LIII rule 2 of the Civil Procedure Rules. That Rule is in the following terms:-

“2. Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

The Land Dispute Tribunal entertained a claim by the second respondent where he alleged that the deceased father of the *ex parte* applicant sold him land in 1976. The matter was before the Land Dispute Tribunal in 1990. Bearing those two dates in mind, there is no doubt that the 2nd respondent's claim in contract was time barred as per Section 4 of Limitation of Actions Act Cap 22 and as per Section 7 the claim was also time barred because it, relating to land, was brought after 12 years. The Land Dispute Tribunals by Section 13 (3) of the Land Dispute Tribunal Act are prohibited from entertaining a matter which is barred under the law. That section provides as follows:-

“3. For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.”

In addition, the Land Dispute Tribunal had no jurisdiction to deal with title of land. That is made clear by Section 3 (1) of the Land Dispute Tribunal Act. That Section also provides as follows:-

“3. (1) Subject to this Act, all cases of a civil nature involving a 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 has been said time and time again that jurisdiction is everything and without it the court have no power to make one more step. See the case of Owners of the Motor Vessel “Lilian S’ Vs. Caltex Oil (Kenya) Ltd [1989] KLR 1, at p. 14. The implementation of the award of the tribunal would also entail the sub division of the ex parte applicant’s land. That would take the matter beyond the jurisdiction stated in section 3 (1) above. In the case of Republic Vs. The chairman, Meru Land Disputes Tribunal Central District Judicial Review Misc. No. 23 of 2009 I had occasion to consider facts which are similar to this present case and this is what I stated:-

“The issue of the jurisdiction of the Land Dispute Tribunal has been the subject of much judicial decisions. It is clear from all the decisions that the tribunal has no jurisdiction to order cancellation of a title and sub division of the same as was ordered in this case. To mention but just one of such decision is the case of the Court of Appeal Jotham Amunavi Vrs. The Chairman Sabatia Division Land Disputes Tribunal and Enos Kenyani Amunavi High Court Civil Appeal No. 256 of 2002 where the court had this to say:-

“The implementation of the decision of the tribunal entails the sub-division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (See Section 89 of the RLA.) It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrate’s court in cases where such latter court has jurisdiction.”

Bearing all the above in mind, I find the ex parte Notice of Motion dated 11th January 2006 merited and I grant

the

following

orders:-

1. ***An order is hereby issued of certiorari to remove to this High Court and to quash the elders' award made by the Meru Central District Dispute Tribunal Case No. 69 of 2005 read by the Chief Magistrate Court on 3rd November 2005 in LDT Case No. 86 of 2005.***
2. ***An order of prohibition is hereby issued prohibiting the implementation of the award of Meru Central District Tribunal in LDT Case No. 69 of 2005.***
3. ***The costs of the application are awarded to the ex parte applicant to be paid by the respondents.***

Dated and delivered at Meru this 4th day of June 2010.

**MARY KASANGO
JUDGE**